

Tax Map/Block/Parcel
No. 59-21-524

Building Permit/Zoning
Certificate No. 92-0775

Case 3775

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANTS: Michael S. Almony and Pamela A. Almony
3351 Old Gamber Road
Finksburg, Maryland 21048

ATTORNEY: Wesley D. Blakeslee, Esquire
104 East Main Street
Westminster, Maryland 21157

REQUEST: A conditional use for a beauty shop within the basement of the existing dwelling, to be operated solely by a resident; and variances reducing the minimum required setback of 60 feet to 21 feet, plus or minus, from Clover Hill Road, a platted but unconstructed street, and the minimum required lot area of 40,000 square feet to 39,542 square feet

LOCATION: 3351 Old Gamber Road in Election District 4; Clover Hill subdivision, lots 9 and 10 recorded in Carroll County Plat Records in book 4, page 76

BASES: Article 5C, Sections 5C.2(h) and 5C.5; Article 15, Section 15.5; Ordinance 1E. (The Carroll County Zoning Ordinance)

HEARING HELD: August 25, 1992

On August 25, 1992, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use request for a beauty shop within the basement of the existing dwelling, to be operated solely by a resident; and variances reducing the minimum required setback of 60 feet to 21 feet, plus or minus, from Clover Hill Road, a platted but unconstructed street, and the minimum required lot area of 40,000 square feet to 39,542 square feet at 3351 Old Gamber Road. The site is further identified as lots 9 and 10 of Clover Hill subdivision which was recorded in Carroll County Plat Records in book 4, page 76, prior to the adoption of the zoning ordinance August 17, 1965.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board approved the conditional use and variances, subject to the conditions of

authorization imposed below. The pertinent findings determining the Board's decision include the following facts:

FINDINGS OF FACT

An application for the establishment of the beauty shop within the dwelling, which is located wholly on lot 10, and variances reducing the minimum required setback of 60 feet from Clover Hill Road, the minimum required lot area of 40,000 square feet, and the minimum required lot width were filed earlier in Case 3704. The initial hearing of that case was April 29, 1992.

As noted in the decision in Case 3704 after discovery that the dwelling and lot 10 did not conform to the minimum requirements of the zoning ordinance the Board, in the interests of fairness to all parties, ordered that the public hearing be reopened and the public notice be amended to include variances to the applicable requirements. The public hearing was reopened May 28, 1992. Lot 9 was neither part of the original application nor included in the public notice of the reopened hearing; however, during the public hearing the parking and maneuvering area was proposed to extend onto lot 9. Since lot 9 was not included in the application and public notice to inform all interested persons of the proposed site, the Board was limited to consideration of only lot 10. In considering the variances necessary for establishment of the beauty shop solely on lot 10, the Board found no evidence of practical difficulty or unreasonable hardship that would justify authorization of the variances.

The application in this case encumbers both lots 9 and 10 of the subdivision. Lot 9, now owned by Mr. Michael Almony, after being transferred to him, abuts the westerly side of lot 10. Mr. Almony testified that no additional land is available for further enlargement of the premises. The frontage of lot 9 is on Old Gamber Road. The combined area of lots 9 and 10 is 39,542 square feet, 458 square feet less than the minimum requirement of 40,000 square feet. The combined lot width of lots 9 and 10 exceeds the minimum requirement of 150 feet.

As indicated on the plat of the properties, identified as Applicants' Exhibit 1, the closest point of the dwelling to unconstructed Clover Hill Road is 21 feet, plus or minus. The dwelling complies with the minimum building line of 20 feet established by the subdivision plat. The setback of the dwelling from Old Gamber Road exceeds the minimum requirement of 60 feet. The driveway and proposed parking facilities consisting of 5 parking spaces and maneuvering room, will be located partially on both lots. The width of the driveway extending between Old Gamber Road and the maneuvering area serving the parking spaces will be widened to at least twenty feet to comply with the zoning ordinance and to provide for two-way traffic. Two of the parking

spaces are required for Mr. and Mrs. Almony's home and three spaces are required for the beauty shop.

Mrs. Almony is an experienced licensed cosmetologist, and will operate the one-chair shop without employees. Normally not more than two patrons will be in the shop at one time, and not more than two vehicles of patrons will be on the premises at one time. The beauty shop will be operated Tuesday through Saturday. On Tuesdays, Wednesdays and Saturdays appointments will be accepted from 10:00 a.m. to 5:00 p.m., and on Thursdays and Fridays appointments will be from 10:00 a.m. to 7:00 p.m. Mrs. Almony testified that the products used in providing services to patrons of the shop are biodegradable, safe to work with, and that she was not aware of any adverse effects to septic systems or underground water resulting from such products.

The dwelling, Mr. and Mrs. Almony's home, will continue to be the principal use of lot 10. As portrayed by photographs identified as Applicants' Exhibits 3, 4, 6, 7, 8 and 11, the dwelling and landscaped grounds are attractive and well maintained. Establishment of the beauty shop within the dwelling will not alter the appearance of the home.

An expert in real estate testified that establishment and operation of the beauty shop as proposed would not affect the values of nearby dwellings. Although his opinion was challenged, no probative evidence was presented to substantiate unusual detrimental effects resulting from the beauty shop at this location greater than elsewhere in the district.

The State Highway Administration, Engineering Access Permits Division noted that vehicular traffic on that section of road was very low, and that there were no objections to the establishment of the beauty shop.

Mr. and Mrs. Eldridge R. Fisher, adjacent but not contiguous property owners, opposed the request for numerous reasons. One of their objections involved the provisions of Article 17, Board of Appeals; Section 17.8, Disapproval of Applications; Subsection 17.8.1 of the zoning ordinance which reads:

If the application is disapproved by the Board, thereafter the Board shall take no further action on another application for substantially the same proposal, on the same premises, until after two years from the date of such disapproval.

In this case, the premises differ from that originally applied for and, consequently, the variances pertaining to the conditional use are different. Therefore, neither the application nor the premises are the same and Section 17.8.1 does not preclude the Board acting on the new application.

A second objection involved inclusion and consideration of lot 9 with lot 10. Mr. and Mrs. Fisher argued that the zoning ordinance specifies the singular tense for lot requirements. Article 20, Section 20.42 of the zoning ordinance governs in this situation, and Mr. and Mrs. Fisher's interpretation is groundless.

Furthermore, no probative evidence was introduced in substantiation of their allegations.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

Lots 9 and 10 of Clover Hill subdivision are zoned "R-40,000" Residence District as portrayed on zoning map 59A. The land use provisions for the district are expressed in Article 5C. Section 5C.1 paragraph (c) specifies that single family dwellings are principal permitted uses. Section 5C.2, Conditional Uses, (requiring Board authorization), (h) states:

Beauty shops, or barber shops provided that they are one-chair operations and that one resident provides all services in connection with the operation. (Added 12/27/82) (Amended 9/23/86)

Section 5C.5, Lot Area, Lot Width and Yard Requirements specifies in relevant part that for permitted uses not specifically listed and for conditional uses the minimum applicable requirements are:

Lot Area	-	40,000 square feet
Lot Width	-	150 feet
Front Yard	-	60 feet
Side Yard	-	25 feet
Rear Yard	-	75 feet

Article 20, Section 20.09 defines conditional uses as:

Uses which are specified for Board of Appeals approval prior to authorization and which uses, after public hearing, may be approved conditionally or disapproved in accordance with Section 17.2. The term "conditional use" shall constitute the same meaning as "special exception" specified as one of the general powers of the Board of Appeals in accordance with Article 66B of the Annotated Code of Maryland.

Article 15, Exceptions and Modifications; Sections 15.0, Generally, and 15.5 Variance, read respectively and in relevant part:

The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations:

The Board may authorize, upon appeal, in accordance with Section 17.2, variances from...lot area,...yard regulations.... The Board may grant such variance only in cases where the strict compliance with the terms of this Ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare.

Article 20, Section 20.39 defines a variance as:

...a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship.

Article 20, Section 20.42 reads in relevant part:

Words used in the present tense include the future tense; words used in the singular number shall include the plural number; words in the plural shall include the singular number;....

Article 17, Board of Appeals; Section 17.7, Limitations, Guides and Standards governs the Board in considering conditional use requests. However, for purposes of brevity, the provisions will be omitted.

The Board is also governed by decisions of the courts. In the case of *Schultz v. Pritts*, 291 Md. 1, 22, (1981) the decision reads:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its

location within the zone. (Citations omitted.)

REASONING

The circumstances in this case differ significantly from those in Case 3704, primarily by the inclusion of lot 9 with lot 10 allowing the Board to consider both lots as the premises. The variance to the minimum required lot area is now only 458 square feet, which is of little significance; a variance to the minimum required lot width is no longer required; and, it is now evident that for Mr. and Mrs. Almony further enlargement of the site to comply with the minimum required setback of 60 feet from Clover Road is not possible. Therefore, authorization of the variances is necessary to preclude practical difficulty and unnecessary hardship that would otherwise occur.

In weighing the testimony and evidence presented on behalf of the application, the Board is convinced that establishment and operation of the beauty shop as proposed, and in compliance with the conditions of authorization imposed below, will be in accordance with the provisions of Section 17.7 of the zoning ordinance and the standard expressed in *Schultz v. Pritts, supra*.

Conditional uses listed within the particular land use districts of the zoning ordinance have been legislatively determined to be appropriate in the respective district and compatible with the principal permitted uses allowed in the district, absent evidence to the contrary. The allegations presented in opposition to the conditional use were not substantiated by creditable evidence.

CONCLUSION

The applicants have met their burden of proof with regard to the conditional use request and variances relative to establishing the beauty shop within the basement of their home. Therefore, in accordance with the above Findings of Fact, Applicable Law, and Reasoning, the Board authorizes the requests, subject to the conditions of authorization imposed below.

In order to promote the intent and purpose of the zoning ordinance, the Board hereby conditions the authorizations as follows:

1. The authorization for the establishment and operation of the beauty shop within the dwelling is subject to the continuing ownership of lots 9 and 10 of Clover Hill subdivision by the applicants, and lot 9 shall not be improved with a dwelling without first ceasing and abandoning operation of the beauty shop.

2. In accordance with the requirements of Article 5C, Section 5C.2(h) of the Carroll County Zoning Ordinance, the beauty shop is restricted to a one-chair operation conducted solely by one resident, Mrs. Almony, who shall be responsible for providing all services in connection with operation of the beauty shop. No employees are permitted in conjunction with operation of the beauty shop.
3. In accordance with the requirements of the zoning ordinance, the width of the driveway shall be increased to a minimum of 20 feet to provide for two-way traffic between Old Gamber Road and the parking and maneuvering area depicted on the plat submitted to the Board and identified as Applicant's Exhibit 1. The parking and maneuvering area shall be enlarged as portrayed on Applicant's Exhibit 1 to provide for the minimum required number of parking spaces and maneuvering area.
4. In accordance with Mrs. Almony's testimony, the beauty shop may be operated Tuesdays through Saturdays. On Tuesdays, Wednesdays, and Saturdays, appointments may be accepted from 10:00 a.m. through 5:00 p.m. On Thursdays and Fridays appointments may be accepted from 10:00 a.m. until 7:00 p.m. The beauty shop is not authorized to operate otherwise.
5. The Board recognizes that the applicant, Mrs. Almony, must comply with the requirements of the Department of Licensing and Regulations of the Board of Cosmetologists of the State of Maryland with regard to erecting the sign or signs. Nothing in this decision shall be construed to prohibit compliance in accordance with such requirements.

Sept. 9, 1992
Date

John Totura
John Totura, Chairman

JDN/bmh/c3775dec
September 8, 1992