CARROLL COUNTY GOVERNMENT
225 N. Center Street
Westminster, Maryland 21157
410-386-2980 888-302-8978
FAX 410-876-9252
T.D.D. 410-848-5355

Office of Zoning Administration
Neil M. Ridgely
Zoning Administrator

Notice of Decision

Case # ZA-828
Permit # 04-0517

Variance Request: For a variance from the side yard setback of 200 feet to 25 feet for a farm building to be used as a stable or shelter for horses at 7239 Morgan Road in Woodbine MD, Election District 14. By Robert and Christina Bruno.

Basis for Variance: Chapters 223-75, 223-16, 223-70 A, and 223-181 of the Carroll County Code of Public Local Laws and Ordinances.

Decision: Approved, with conditions.

Basis for Decision:
Local authority to grant variances originates in Article 66B of the Annotated Code of Maryland. Section 1.00 (m) of Article 66 B defines variance as: "a modification only of density, bulk, or area requirements in the zoning ordinance that is: 1) not contrary to the public interest; and 2) specified by the local governing body in a zoning ordinance to avoid a literal enforcement of the ordinance that, because of conditions peculiar to the property *and not any action taken by the applicant* [emphasis added], would result in unnecessary hardship or practical difficulty."

The issue of a self-imposed hardship or difficulty is specifically addressed in the seminal case on variances, Cromwell v Ward (102 Md. App. 691, 1995) which dealt with a similar circumstance in Baltimore County. The Court ultimately reversed a decision by the Baltimore County Board of Appeals because there was no evidence that the subject property was peculiar or unusual and, thus, disproportionately affected by an area restriction (height in that particular incidence) nor that Ward's self-imposed hardship arising from the construction of an accessory building prior to obtaining a variance was grounds for granting the variance.

There are two primary tests which each applicant must prove to gain a variance per § 223-181 of the Carroll County Code of Public Local Laws and Ordinances:

1. That their property is unique or different to others.
2. That the applicant would encounter a practical hardship if the variance were not granted.

In this instance, the Bruno's testified that their intentions in converting the storage shed to a barn were not malicious or intentionally in violation of County requirements. Mr. Bruno did admit that he did not read the back of his building permit for the "shed" he

applied for to see that it could not be used to shelter animals. While the Bruno's are somewhat a casualty of a subdivision of the adjoining property which occurred after their "shed" was built and inhabited by their horses, that building permit was clearly not issued for a stable. The rolling topography of the Bruno property does constitute a unique circumstance for the first test of the variance.

Beyond the primary points of law on variances, the protestants argued that the setback requirement should actually be 300 feet as provided in § 223-35 B of the Carroll County Code because the barn actually houses three horses and that it does not meet the definition of a *private stable* because there are three horses on the property. This decision will not address that issue as its perspective is focused only on the variance placed before it – for a reduction in a 200 foot setback.

Regarding a practical hardship, relocating the stable to almost any other location on the Bruno property could be considered as imposing a practical hardship; however, it is clear that the intent of § 223-70 A of the Carroll County Code intends to provide a significant separation between agricultural uses and residential curtilage areas (§ 223-16 D), in this case a minimum of 200 feet. The protestants offered persuasive photographic evidence that the stable is located very close to their dwelling; so much so that what negative impacts are inherent in a stable, largely odors, could have a negative impact on the Rolfe's enjoyment of their property. For this reason the variance approval is conditioned as follows:

1. The setback is reduced to 100 feet from the property line.
2. The Bruno property may not have more than three adult horses / ponies at any time.
3. The adjunct area of the stable dedicated to manure maintenance must be screened with opaque board on board fencing unless it is located to the side of the stable farthest from the Rolfe property such that it is fully screened from their view.
4. The stable must be relocated and any fencing installed as outlined in condition #3 within 90 days of the date of this decision.

While the argument was made that the Bruno's hardship is self-inflicted, it is also noted that one should expect properties of this size in the agricultural zoning district to be used for agricultural activities, such as the keeping of livestock. The odors and noises inherent with agricultural activities are best evidenced in Chapter 173 of the Carroll County Code of Public Local Laws and Ordinances, the County's Right to Farm Ordinance.

It is the opinion of the Zoning Administrator that an approval of the variance request with the above stipulated conditions will not:

- Adversely affect the public health, safety, security, morals, or general welfare.
- Result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood.

In making this conditioned determination, the Zoning Administrator cannot answer in the affirmative to the criteria provided in Section 223-191 of the Carroll County Code that:

- There would be a detrimental effect on the people working or residing in the area
- There would be a negative impact on the orderly growth of the community
- There would be a detrimental effect on the peaceful enjoyment of people in their homes.

- That the use would have a negative effect on the conservation of property values.
- That there would be any effect from odors, dust, gas, smoke, fumes, vibrations, glare, and noise upon surrounding property values.

In the instance of "odors", the conditions of this decision should alleviate any detrimental effects.

16 April 2004

Neil M. Ridgely
Zoning Administrator

Per Section 223-182 or the Carroll County Code of Public Local Laws and ordinances, appeals of this decision must be made within 30 days of the date of this decision to the Board of Zoning Appeals pursuant to Section 223-188 of the Carroll County Code. Unless timely appealed, parties may not thereafter challenge the Zoning Administrators' decision.