

**STAFF REPORT**

**Henry County Board of Zoning Appeals  
(March 7, 2019 Meeting)**

**Docket # / Project Title:** C: 2319 Joseph & Loretta Perry barn side yard setback

**Staff:** Darrin Jacobs, Zoning Administrator

**Applicant:** Joseph & Loretta Perry

**Property Size:** 5.26 Acres

**Current Zoning:** Rural Residential

**Location:** 120 E Co Rd 650 N, New Castle

**Parcel #:** 011-00648-00

**Background Summary:**

In September of 2018 the County Commissioners received a complaint from John Drum that Joseph & Loretta Perry had built a pole barn without permits and that the barn was too close to Mr. Drum's property line. The Perry's have since obtained permits and inspections and have tried to reconcile what they thought was 12 ft. from Mr. Drum's property line with what a survey indicates is only 3 feet from Mr. Drum's property line. Unable to determine the discrepancy they are requesting to be given a side yard setback of 3 ft. rather than the 10 ft. required.

**Key Issue Summary:**

The following key issue(s) should be resolved through the consideration of this application: Will the Perry's barn be allowed to stand with only a side yard setback of 3 feet instead of the required 10 feet, or will the Perry's be required to demolish or move the structure.

**Decision Criteria:**

When considering a request for a variance special consideration should be taken to: 1.) Insure that the request will not be contrary to the public interest, health, safety, and general welfare or materially injurious to the enjoyment, use development or value of property or improvements permitted in the vicinity. 2.) That the variance is needed due to special conditions that are not self-created, and that a literal enforcement of the provisions of the Code would result in hardship and deny the owner of substantial rights.

**Options:**

In reviewing a request for a variance the Board of Zoning appeals may (1) approve the request, (2) deny the request, (3) continue the request to the next meeting, (4) grant variances less than or different from those requested, or (5) impose such specific conditions and limitations concerning use, construction, character, location, landscaping, screening and other matters relating to the purposes and objectives of this Code upon any lot or property benefitted by a variance.

<b>Current Property Information:</b>	
<b>Zoning and Land Use:</b>	Rural Residential (RR) and Agricultural (A1) used for single family residential <b>Case B: 1859 David Ford received a rezone to RR for a home site.</b>
<b>Site Features:</b>	5.26 acre lot with approximately 691 feet wide by 301 feet deep. Parcel contains a residential structure and pole barn. A driveway 25 feet wide by 848 feet long connects the property to E 650 N
<b>Flood Hazards or County Tiles/Open Drains:</b>	None
<b>Special Circumstances:</b> (Airport Hazard Area, Wellhead Protection Area, etc.)	None that we are aware of
<b>Vehicle Access:</b>	A dirt driveway 25 feet wide by 848 feet long. An access gate blocks entry to the rest of the property approximately 450 feet into the driveway. <b>BZA Case C: 2039 David Ford was granted a road frontage variance for an approximately 30ft wide driveway.</b>
<b>Septic or Sewer:</b>	Septic system, unaware of any violations at this time.
<b>Subdivision Restrictions:</b>	N/A

<b>Surrounding Zoning and Land Use:</b>		
	<b>Zoning:</b>	<b>Land Use:</b>
<b>North:</b>	Agricultural (A1)	Agriculture/Single family residential
<b>South:</b>	Agricultural (A1)	Agriculture/Single family residential
<b>East:</b>	Agricultural (A1)	Agriculture/Single family residential
<b>West:</b>	Agricultural (A1)	Woods/Agriculture

## History of this Location:

The relevant history of this property includes the following:

1. 12-27-2001 the Planning Commission heard Case B: 1859 a request by David Ford requesting to rezone 3.06 acres from Agriculture (A1) to Rural Residential (RR). The Planning Commission tabled the request until an approved septic permit was obtained.
2. 01-24-2002 the Planning Commission took up Case B: 1859 again. Mr. Ford presented the Planning Commission with an approved septic permit. The Commission voted to recommend the rezone request pending a road frontage variance from the Board of Zoning Appeals.
3. 03-05-2002 The Board of Zoning Appeals heard Case C: 2039 a variance request for road frontage approximately 30 ft. instead of the required 150 ft. The Board approved the variance.
4. 03-06-2002 The Henry County Commissioners heard the recommendation from the Planning Commission in regards to Case B: 1859 and approved the rezone.
5. 07-19-2017 Joseph and Loretta Perry purchased the parcel.
6. 09-19-2018 The Commissioner's office received a complaint from John Drum who owns parcel # 011-00515-00. Complaint is that the property owner that adjoins his property has placed a pole barn within 3' of his surveyed property line. The Complaint is against property owner Joseph Perry, parcel #011-00648-00.
7. 09-20-2018 The Building Inspector, Larry Toy, and the Zoning Administrator visited the property to determine if a pole barn had in fact been built on the property. A locked gate with clear no trespassing signs posted prevented entry and they were unable to determine from their vantage point outside of the gate if a pole barn has been constructed. Stop work orders with contact information was placed on the gate and behind the flag on the mail box.
8. 09-25-2018 The Perry's visited the Planning Commission Office and met with the Zoning Administrator. They stated that they had misunderstood when a building permit was required and had in fact recently constructed a pole barn. Now understanding their mistake they requested to apply for building permits so that they can get inspections to ensure that their building is in compliance with building code. They also stated that they believed when they constructed the barn 12 ft. off the property line based on the survey that they had and asked if they could work with Ashton's land surveyors to see if there is a discrepancy in the two surveys. They stated they wanted to get all the proper approvals going forward.
9. 10-03-2018 The Perry's received building permits 0252 for the pole barn as built, and 0253 for a 3 bedroom home. The permit for the pole barn stated that, "The issuing of building and planning permit does not constitute approval of the current location of the structure or its compliance with building code. Building inspections will need to be conducted to the satisfaction of the Building Inspector before a certificate of occupancy will be issued. The location of the already completed building will also need to be verified and found in compliance of Henry County Zoning Code before a certificate of occupancy will be issued."
10. 10-11-2018 The Building Inspector Larry Toy preformed an inspection and noted, "build w/o permit needs GFI on all wall receptacles."
11. 12-04-2018 Since it appeared that no resolution was going to be found through the examination of the two surveys, the Zoning Administrator requested that the Perry's file an application to seek a side yard setback variance for the as built barn from the BZA.
12. 12-29-2018 The Perry's filed a variance request.

### **Comprehensive Plan Consideration(s):**

The Future Land Use Map indicates the future use of land in this area to be Agricultural.

### **Planning Consideration(s):**

The following general site considerations, planning concepts, and other facts should be considered in the review of this application:

1. Building setbacks help to ensure that when property line are in dispute that buildings aren't accidentally built on a neighboring property.
2. Setbacks also ensure the free movement around buildings without encroaching on a neighboring property.
3. Setbacks are important when dealing with small lots and densely populated areas where ordinary use of a structure could disturb a neighbor.
4. There is currently no one living or any habitable structures on Mr. Drum's property.

### **Preliminary Staff Recommendation & Comments:**

Staff recommendation is to **approve** the requested amendment to the current variance for the following reasons:

1. The request can be answered in the affirmative in the findings of fact questions:
  - a. *"The approval will not be injurious to the public health, safety and general welfare of the community;"*
    - i. The barn or use of the barn does not appear to pose any health or safety concerns.
  - b. *"The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;"*
    - i. Mr. Drum's property appears to be used as a wooded lot and for agricultural purposes. The granting of a variance should not affect the overall value of the 16.63 acres.
  - c. *"The need for the variance arises from some condition peculiar to the property involved;"*
    - i. The difficulty in determining the actual property line has caused the need for the variance.
  - d. *"The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought;"*
    - i. If the setback is enforced the Perry's will be forced to remove the barn or \rebuild it seven feet from where it currently stands at their own expense.
  - e. *"The approval does not interfere substantially with the Comprehensive Plan;"*
    - i. The Comprehensive Plan does not have applicable points to address this request.
  - f. *"The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property."*
    - i. The application of the code will require the barn to be demolished or moved.

*This report was compiled by the staff with the best available data at the time. Any errors or omissions are unintended. If errors are discovered please inform staff as soon as possible.*