Cases 2869 and 2870

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

Case 2869

APPELLANTS: Dr. Arthur J. Lomant and Dorothy L. Lomant
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Sykesville, Maryland 21784

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Case 2870

APPELLANTS: Charles B. Farley, Esq. and Dorothy C. Farley
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ATTORNEY: Pro se

Cases 2869 and 2870

APPEAL: The Zoning Administrator's approval of the issuance of Building Permit/Zoning Certificate No. 87-2754 for construction of a forty-by-sixty-foot building.

LOCATION: 6115 Emerald Lane, Sykesville, Maryland 21784 in Election District 14; Emerald Valley Subdivision, Section II, Lot 19 as recorded in the Carroll County Plat Records in Book 18, page 65.

BASES: Article 17, Sections 17.2 and 17.4; Zoning Ordinance 1E.

HEARING HELD: December 30, 1987 and January 4, 1988.

FINDINGS

Appellee, Benjamin E. Grubbs, owns two adjoining lots numbered 15 and 19, respectively, located at 6117 and 6115 Emerald Lane, Eldersburg, Maryland, in the Fourteenth (14th) Election District of Carroll County. The lots form part of a recorded subdivision known as Emerald Valley and are zoned "C"

Conservation District. Benjamin Grubbs was the original owner and developer of Emerald Valley. These consolidated appeals by neighboring property owners are the result of Mr. Grubbs's efforts to obtain zoning approval for the construction of a forty-by-sixty-foot barn and storage building on Lot 19.

Lot 15 comprises approximately 3.0733 acres and Lot 19 approximately 4.4858 acres. Although the acreage of each lot is only approximate, it is undisputed that neither, by itself, amounts to five acres. The Grubbses reside entirely on Lot 15. At present, Lot 19 is not improved by buildings of any kind and the Grubbs family does not use it for agricultural purposes or as a pasture.

Lot 14 of the Emerald Valley Subdivision borders Lot 19 to the north and is owned by Dr. and Mrs. Arthur J. Lomant, the appellants in Case 2869. To the south, Lot 19 is bordered by subdivision Lot 18, which is owned by Mr. and Mrs. Charles B. Farley, the appellants in Case 2870.

In September, 1987, Mr. Grubbs received the County's approval, under Building Permit/Zoning Certificate 87-2754, to construct on Lot 19 a forty-by-sixty-foot barn and storage building having a side yard of fifty feet. Initially, it was believed that the building qualified as an accessory use "private stable" under Section 5.3(b) of the Zoning Ordinance. Subsequently, however, the Zoning Administrator discovered that

the building could not qualify as a private stable because it was not located in the rear yard of a dwelling.[1] The building would therefore have to be treated as an agricultural barn and would require a side yard of at least one hundred, as opposed to fifty, feet. Mr. Grubbs thereupon submitted a revised plot plan indicating a one hundred and ninety-five-foot side yard and characterizing the building as accessory to an agricultural use of the property. The revised plot plan was approved on October 7, 1987. It was then discovered, however, that the building as shown on the revised plot plan would encroach upon a flood plain/drainage and utility easement. At the end of October, upon request of the Zoning Administrator, a stop work order was issued pending the submission of yet another plot plan, a floor plan of the building, and a list of the items to be kept in the building.

The requirements of a floor plan and list of items relate to zoning violations occurring upon Lots 15 and 19. On August 27, 1987, the Zoning Administrator issued violation notices for the storage of contractor's equipment and maintenance

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[1] The Board agrees that the building cannot qualify as a private stable, but for a different reason. According to the testimony, the two (2) racehorses that Mr. Grubbs desires to stable on Lot No. 19 would certainly not be maintained as pets or for domestic use. Rather, they would simply be boarded on the property as part of a commercial venture.

of a junkyard on Lot 19. On October 27, 1987, she issued a violation notice for operation of a construction business, including parking of commercial vehicles, on Lot 15. According to the Zoning Administrator, all of those violations had been abated by November 17, 1987. Moreover, in a memorandum to the Board of Zoning Appeals dated December 30, 1987, the Zoning Administrator stated that she had received from Mr. Grubbs the three items necessary for removal of the stop work order. The combined floor plan and list of items to be kept in the building indicated that the building would house two horses and some farm equipment.

In the meantime, on November 5, 1987, the Lomants and Farleys each filed appeals from the issuance of Building Permit/Zoning Certificate No. 87-2754. The Lomants contended simply that the proposed structure would violate the Zoning Ordinance. The Farleys, in their Notice of Appeal, argued in detail about the inability of the structure to comply with the Zoning Ordinance, and further claimed that Mr. Grubbs intended to use the structure to perpetuate his violation of zoning restrictions against storage of contractor's equipment, maintenance of a junk yard, and operation of a construction business.

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The Board of Zoning Appeals heard the appeals on December 30, 1987 and January 4, 1988. At the request of appellants and without objection from appellee, the two cases were heard together. The appellants challenged the validity of the Building Permit/Zoning Certificate on essentially three grounds: compliance with lot size requirements, compliance with distance requirements, and Mr. Grubbs's intended use of the structure. The first consideration, lot size, is dispositive.

For the sake of thoroughness, the other two bases are addressed in this Decision as well.

With some exceptions not relevant here, "lot" areas in the "C" Conservation District must be three acres for dwellings and five acres for "other uses." Zoning Ordinance No. 1E Section 5.5. The Grubbs property clearly consists of two legally independent lots from the standpoint of both the recorded subdivision plat and the County Tax Map. Mr. Grubbs himself subdivided the property into the two lots. Lot 19, on which the barn would be located, has no dwelling as its principal use. Consequently, in order to be lawfully used for anything other than a dwelling, Lot 19 must meet the five acre area requirement of Section 5.5, which it does not do. Through counsel, Mr. Grubbs insists that this Board has consistently aggregated adjoining lots under single ownership when necessary to meet the

five acre requirement. The Board disagrees with counsel's view of the Board's policy regarding aggregation. More importantly, aggregation of Lots 15 and 19 would serve only to thwart the express purpose of the Conservation District, which is to conserve open spaces and other natural resources. Id. Article 5.

The Board and the Zoning Administrator are not at liberty to rewrite the policy underlying the Conservation District or to ignore specific, nondiscretionary lot area requirements. For this reason, the Board concludes that issuance of the Zoning Certificate was error.

The Lomants and the Farleys maintain that, as to each of their properties, the location of the proposed barn does not comply with Section 4.12(d), which requires that the barn "be located at least 200 feet from . . . the curtilage

area within a lot of 3 or more acres improved by a dwelling." Section 20.10B of the Ordinance defines "curtilage" as "buildings and areas in close proximity to a dwelling which are habitually used for residential purposes." Generally, the yard adjacent to a dwelling is considered part of the curtilage. See, e.g., Everhart v. State, 274 Md. 459, 337 A.2d 100 (1975); Ballentine's Law Dictionary (3d ed. 1969). Outbuildings near to a dwelling and used for residential purposes have also been held to fall within curtilage. The concept of curtilage is somewhat fluid, varying according the physical environs in any given case.

With respect to the Lomant property, the Board concludes that the proposed structure violates Section 4.12(d) on two separate grounds. First, Doctor Lomant testified that the distance between the edge of the Lomants' yard, i.e., the point at which their yard ends and their paddock begins, and the proposed barn measures 197 feet: three feet short of the required minimum. Both Lomants testified as to their habitual use of the yard for residential purposes. The yard therefore constitutes part of the Lomants' curtilage, and the proposed barn fails to comply with Section 4.12(d) as to the yard.

Second, the Board finds that the Lomant stable and pasture, which are also less than 200 feet from the proposed barn, constitute part of the Lomants' curtilage. The Lomants testified that the two horses housed in their stable are kept solely as pets. They seldom ride and, because of its advanced age, one of the horses is incapable of being ridden. The family frequents the stable and the paddock on a daily basis.

The situation with respect to the Farleys is somewhat different. Although their dwelling apparently is situated well over 200 feet from the proposed barn, the Farleys' yard extends in the direction of the barn. The yard contains a swingset which the Farleys' child uses and which the Farleys claim is less than

200 feet from the site of the barn. Mr. Grubbs did not contradict this evidence. The Zoning Administrator testified that, because the plot plans placed the Farley dwelling at a great distance from the barn, no formal determination was ever made as to whether the barn would meet the minimum distance requirement from the Farleys' curtilage.

Based upon this evidence, the Board finds that the Farleys' swingset lies within their curtilage and that it was error to issue the Building Permit/Zoning Certificate without first determining the distance between the swingset and the proposed building site. Subsections (b) and (c) of Section 16.2 mandate as much, and the Farleys have successfully established that the subsections were not met as to them.

A great deal of the testimony and evidence centered upon what Mr. Grubbs intended to do with the barn and storage space. Mr. Grubbs testified that he owns an interest in two racehorses and planned to house them in the barn whenever the horses were neither racing nor away being trained. All training was to occur off of the property. The floorplan submitted to the Zoning Administrator as a result of the stop work order allots space for two fifteen-by-twelve-foot stalls, two fifteen-by-twenty-foot hay and straw storage bins, and a twelve-by-twelve-foot tack room, with the remainder of the floor area, some forty by thirty feet,

serving as storage space for a tractor, a bush hog, a post hole digger, a hay rake, and an item about the same size as the hay rake.

The Lomants and Farleys urge that Grubbs plans to use the barn for operation of his contracting business and storage of his contractor's equipment. Dr. Lomant, Mrs. Lomant, and Mrs. Farley all testified that Grubbs openly declared this intention to them on multiple occasions. Appellants further offered abundant evidence of the egregious and disruptive nature of Mr. Grubbs's recently abated zoning violations, all of which stemmed from his operation of the contractor's business off of Lots 15 and 19. Appellants also produced evidence that the building would be excessively large for its stated purposes.

Mr. Grubbs rebutted by acknowledging his past declarations about the purpose of the barn and his recently abated zoning violations, but he denied any intention of using the barn for purposes other than keeping the racehorses and storing the equipment shown on the floorplan.

The Board is empowered under Section 17.2(a) to hear and decide appeals in which "it is alleged there is an error in any order, requirement, decision or determination" of the Zoning Administrator. Whether a building permit applicant is or is not telling the truth about the purpose of a proposed structure may well be a determination that defies categorization as erroneous

or correct. However, when the Zoning Administrator has as much reason to question the intentions of an applicant as the facts of this case generate, the Administrator should not hesitate to demand exacting proof that the intentions are lawful before approving a permit. "A county need not await actual use of land, and possible public detriment, before it moves to enforce zoning regulations." Joy v. Anne Arundel County, 52 Md. App. 653 (1982), cert. denied, 295 Md. 440 (1983). In view of the evidence that Mr. Grubbs has, until very recently, wanted to build a barn on Lot 19 for the purpose of storing contractor's equipment, the evidence that Mr. Grubbs has, until very recently, actively conducted a contractor's business from Lot 19, and the Board's opportunity to observe the demeanor of witnesses and assess their credibility first hand, it is not possible to believe that the proposed structure would be put to an entirely lawful use. The Board finds that appellants have met their burden in discrediting appellee's assertions concerning his intended use of the barn.

CONCLUSION

Based upon the record in this case, the Board concludes for the foregoing reasons that Building Permit/Zoning Certificate No. 87-2754 should not have been approved by the Zoning Administrator and hereby reverses that approval.

Feb. 4, 1988
Date

John Totura
John Totura, Chairman