

Case 3037

**OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND**

APPELLANT: Eldridge E. Bartlett, Jr.
4907 Roller Road
Millers, Maryland 21107
(Lot 13A of the Alesia Heights Subdivision)

ATTORNEY FOR APPELLANT: Richard J. Kolish, Esq.
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ATTORNEY FOR APPELLEES: Elwood E. Swam, Esq.
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APPEAL: An appeal of the Zoning Administrator's determination, dated August 15, 1988, that there is no violation of the Board's decision in Case 2566 pertaining to retention of storm water runoff on lot 13-B (4909 Roller Road) so as not to adversely affect adjoining lot 13-A (4907 Roller Road) of Alesia Heights Subdivision.

BASIS: Article 17, Section 17.4, Ordinance No. 1E

HEARING HELD: DECEMBER 15, 1988

FINDINGS

In Case No. 2566, decided August 12, 1986, the Board of Zoning Appeals for Carroll County ("the Board") granted Russell and Corinda Manuel, a variance for the reduction in width (from

violation of the Board's decision in Case No. 2566. On September 15, 1988, Eldridge Bartlett appealed the Zoning Administrator's determination to the Board of Zoning Appeals. That appeal is the subject of this decision.

Prior to the hearing on this appeal, counsel for the Manuels moved to have the appeal dismissed on the basis that it was untimely filed with respect to both the Board's original decisions and the Zoning Administrator's September 15 determination. The Board denied the motion, finding the appeal timely (as to the Zoning Administrator's determination) under Section 17.4.10 of the Carroll County Zoning Ordinance and Rule 1-203(d) of the Maryland Rules of Procedure. Counsel renewed his motion at the hearing and the Board again denied it.

With regard to that motion, the Board notes that none of the cases cited by the appellant dealt with a provision similar to that in Maryland Rule 1-203(d). The relationship between Rule 1-203(d) and Section 17.4.10 is a matter of first impression with the Board, as Section 17.4.10 has not long been effective. The Board believes that the best interpretation of Section 17.4, when read in its entirety, incorporates a recognition that the Zoning Administrator often decides issues without a hearing or in a face to face setting so that time for an appeal is calculated not from the date of a letter, but from the date it is presumptively received. Had there been a showing that the Bartletts received actual notice more than 30 days prior to their appeal, the Motion to Dismiss would have been proper and the appeal would have been dismissed. The record, however, does not reflect actual notice; therefore, the appeal was filed within thirty days of the action being appealed.

Appellant's evidence at the hearing consisted of testimony and several exhibits. Appellant contended that additional drainage onto his property since construction of the garage has caused severe erosion in the backyard, washed away grass in the sideyard, exposed roots and rocks, and cracked the foundation wall. At times, the water stands several inches deep before

finally draining off his property. Appellant illustrated his testimony with photographs introduced as exhibits.

Witnesses called by Appellant included Richard Owings, a former Building Inspector for Carroll County, Scott Keefer, Chief Grading Inspector for the County, Stan Pennington, a soil conservationist for the Carroll County district, and Ralph E. Green, Chief of the County's Bureau of Permits and Inspections. Among other things, their testimony establishes that connection and extension of two rain leaders through an underground pipe to the front of the Manuels' property was deemed necessary by the Bureau of Permits and Inspections for compliance with the Board's decision in Case 2566. Scott Keefer stated that the Manuels' contractor told him the leaders would be so connected and extended. However, none of the officials who inspected the property ever viewed the point of connection. Moreover, through October of 1988, none of those officials viewed the location at which the water purportedly discharged to the surface. On October 23, 1987, Michael Maring, the Deputy Building Official, advised the Manuels that the rain leaders did not comply with the variance as granted. See Appellant's Exhibit 9 (admitted over objection). Ralph Green testified that he originally assumed the proper connection had been made, but later decided otherwise. In October of 1988, he requested the Manuels to "[E]xpose the drains where they are connected and also where they surface. This will allow us to tell if the correct size pipe was installed to carry the water from the roof of the addition and also if the water is discharged at the proper location." Appellant's Exhibit 12.

The Manuels did not expose the connection, although at the hearing, Mr. Manuel testified that he would be willing to expose it. James Mummert, who built the garage, testified on behalf of the Manuels that the leaders were in fact properly connected. However, testimony by Mr. Mummert concerning his placement of rain gutters and downspouts on the back of the Manuel residence was flatly impeached by Eldridge Bartlett through testimony and the introduction of a photograph. Appellants' Exhibit 13. In a post-hearing visit to the premises, the Board confirmed that the

downspout was not where Mr. Mummert had assured the Board it would be. In view of that fact, the Board is unable to accord much weight to Mr. Mummert's testimony.

CONCLUSION

Based on the entire record in this matter, the Board finds that the Manuels have failed to comply with the decision in Case No. 2566. Accordingly, the decision of the Zoning Administrator dated August 15, 1988, is hereby **REVERSED** and a violation is found to exist. The Manuels shall take such corrective measures as are directed by the Chief of the Bureau of Permits and Inspections and shall have until May 1, 1989 to abate the violation.

Jun. 30, 1989

Date

John Totura

John Totura, Chairman