

Case No. 3184

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

APPELLANTS: Onofrio Anthony Cimino and Jo Ann Cimino
2206 Liberty Road
Sykesville, Maryland 21784

ATTORNEY: Kenneth Holniker, Esq.
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STATUS: Appeal from Zoning Administrator's
Notice of Violation

HEARING DATE: June 28, 1989

The record in this case consisted of Case No. 2444, "Request to Allow Enlargement of a Beauty & Barber Shop, Classified as a Nonconforming Use"; Case 2960, "Request of an Enlargement of Existing Beauty & Barber Shop, Classified Nonconforming Use" and the evidence presented and the testimony received in the hearing held June 28, 1989. The following are the Board's findings and conclusions.

DECISION

This is an appeal from the Zoning Administrator's Notice of Violation dated April 3, 1989, for the property located at 1115 Liberty Road, Carroll County, Maryland, Route No. 26. In December, 1977, when the property was zoned "B-G", Business General, a beauty and barber shop were established within the building. The area was rezoned to R-10,000 by adoption of the comprehensive "Mini" plan for the Freedom Area and environs.

Since the rezoning the beauty/barber shop has existed as a lawful nonconforming use.

Within the past several years the Appellants sought to expand their operation. In 1986, the Appellants sought to enlarge their nonconforming use by the construction of a 20' x 25' addition attached to the rear of their building. The Board denied their request finding that the proposed enlargement would increase the quantity of stormwater runoff, increase vehicular traffic, adversely affect the nearby residential properties, and promote traffic congestion (Case No. 2444, denied 2-21-86).

The Appellants did not appeal the Board of Zoning Appeals' decision, electing instead to reapply after the two (2) year waiting period as required under Section 17.8.1 of the Zoning Ordinance. The Board, in the subsequent application (Case No. 2960), approved an addition to the existing building as shown on the plans identified therein as Appellants' Exhibit No. 2. The plans provided for an addition to the second floor which measures 22' x 36', a copy of which is attached hereto and incorporated herein. As a condition of approval, the Board required the Appellants to expend the necessary efforts to "minimize effects of a previous existing stormwater runoff problem affecting the adjoining property to the West."

Armed with the Board's authorization the Appellants (through their agents) applied for a building permit. The permit application, under description of work, contained "Addition to rear of Building". The first floor size was indicated as 22' x

20'; the second floor size was indicated as 22' x 36'. Contained in the signed application was also the following caution:

CAUTION: I/we have carefully examined and read this application and know the same is true and correct. I/we are also aware that whoever is indicated as the "Contractor" assumes full responsibility for this application and for the construction and will comply with all provisions of the Carroll County Regulations and State Laws whether herein specified or not. I/we further understand that the contractor, plumber and electrician are the only persons authorized to request inspections and the plumbers and electricians must file for their own applications. To start construction before a building permit is issued and to use and occupy the premises before a U & O Certificate is obtained is in violation of the law.

Attached to the application was a set of construction plans which differed materially from the permit application. The second floor addition in the plan measured 44' x 36', i.e., twice as large. Copies of the permit application, in accordance with established County review procedures, are sent to the different departments for their approval. A copy of the application was sent to each of the following departments: Zoning, Building, Plumbing, Electrical, Fire, Health, Grading, State Roads and Utilities. Recommendations of the departments are sent to the applicant to remedy any defects in the application. It should be noted that the plans are reviewed solely for the purposes of assuring compliance with the building code. The application was processed and the Permit No. 88-3169 was issued on December 8, 1989. The permit stated under special conditions zoning requirement per Case 2960. Construction began shortly thereafter. The Building Inspector testified that when he became

aware that the structure under construction did not conform to the permit (i.e. the structure measuring 36' x 44' instead of 22' x 20'), he issued a stop work order.

Subsequently, the Zoning Administrator issued a Notice of Violation, the Appellants appealed and sought to reopen Case 2960, seeking approval for the building as constructed. The Board refused to reopen Case 2960 at the hearing since no allegation of irregularity, mistake or fraud was made.

There were protestants present at the hearing who sought to present evidence of Appellants' non-compliance with the Board's request regarding stormwater runoff in Case 2960. The Board recieved the testimony, overruling Appellants' objection.

The Board recognizes that the Appellants were not aware that this matter would be at issue. However, in light of the Board's finding, no harm was done by hearing this issue. The Board found that the Appellants made a good faith effort to comply with the Boards request to minimize the stormwater runoff. The Board was impressed by the testimony of the County Sediment Control Inspector to that effect.

Turning to the issue of the zoning violation, the Board affirms the Zoning Administrator's finding of a zoning violation. The Appellants do not contest that the structure is in violation of the approved planned expansion of the nonconforming use as approved in Case 2960. The Appellants defend their actions by presenting evidence of their good character and by alleging that the County contributed to their misfortune.

The basis of the Appellants' argument is that the permit application should not have been issued because the plans which accompanied the application were in violation of the permitted zoning expansion and once issued the County is estopped from enforcing the Zoning Ordinance. This argument is without merit.

The Board recognizes that the courts do not favor nonconforming uses. The Court of Appeals in County Council of Prince George's v. E. L. Gardner, Inc., 293 Md. 259, stated:

Such non-conforming uses pose a formidable threat to the success of zoning. They limit the effectiveness of land use controls, contribute to urban blight, imperil the success of community land, and injure property values...Thus, this Court has recognized that the problem inherent in the accommodating existing vested rights is incompatible land uses with the future planned development of the community is ordinarily resolved under local ordinances, by permitting existing uses to continue as non-conforming uses subject to the various limitations upon the right to change, expand, alter or recommence after abandonment. Moreover, this court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of non-conforming uses through economic attrition and physical obsolescence. These local ordinances and regulations must be strictly construed in order to effectuate the purposes of eliminating nonconforming use. 293 at 267-268 (citations omitted).

Carroll County provides some latitude with regard to the expansion of a nonconforming use. A person having a nonconforming use may apply to this Board for approval to make structural alterations and enlargements of the use. The authorization granted is limited by Article 17, Section 17.6. The Board is required and constrained to review any request with regard to the purpose and intent of the Zoning Ordinance.

Accordingly, the conditions imposed upon an authorized alteration must be complied with faithfully.

It is the Appellants' duty to comply with the conditions of Zoning Case No. 2960. As such they are required to seek the appropriate building permits by supplying the permits department with the appropriate information. They failed to do so. In addition, the permit application clearly cautions that the contractor is responsible for compliance with Carroll County's Building and Zoning Regulations.

In addition, the Appellants had actual knowledge that the plans were not in compliance with the zoning requirement. They were the parties in the prior cases. The testimony presented in their defense never explained this discrepancy satisfactorily. (Both plans submitted as Exhibit No. 2 in Case No. 2960 and submitted with the permit application were prepared by or under the direction of the Appellants.)

The Board notes that the application was facially correct. The plans were in error and served to mislead the permitting office into issuing the permit. (It should be noted again that the plans are only reviewed by the permitting office for the purposes of insuring compliance with the Building Code.) The application was reviewed and approved by the Zoning Office because it complied with zoning requirements. The contractor testified that he was very experienced and presented himself to be an expert in the field. Accordingly, the mistake made in the plans becomes more egregious. The Board, in weighing all the

evidence presented, finds the testimony of the Appellants and their contractor to be totally incredible. Appellants may not and should not benefit by their own mistakes.

Further support of the Board's decision is found in Article 16.1(c) of the Zoning Ordinance, where in it states: "All departments, officials and public employees of Carroll County which are vested with the duty or authority to issue permits or licenses shall issue no permit or license for a use, building or purpose if the same would be in conflict with the provisions of this Ordinance. Any permit or license issued in conflict with the provisions of this ordinance shall be null and void." The reason is that a permit so issued is beyond the power of the officer to issue; it has no legal status, it is invalid; it is without power to clothe the holder with any legal rights. To interpret this provision any differently would severely impair the County's ability to govern. Persons obtaining permits by mistake, misrepresentation or fraud may in effect be able to single handedly rezone property or shield themselves from enforcement of the Zoning Ordinance by the improperly issued permits. See Lipsitz v. Parr, 164 Md. 222.

The decision of the Zoning Administrator is hereby

AFFIRMED.

July 26, 1989
Date:

John Totura
John Totura, Chairman

Our File No. 4770-ZV
IM/wmm/tlh/Cimino.c
July 24, 1989