

Tax Map/Block/Parcel
No. 63-15-135

Building Permit/Zoning
Certificate No. 92-1770

Case 3767

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

APPELLANT: Jerry Hagan Builder, Inc.
2030 Liberty Road
Sykesville, Maryland 21784

ATTORNEY: Donald J. Gilmore, Esquire
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APPEAL: An appeal of a Notice of Denial (corrected), dated September 10, 1992 by the Bureau of Permits and Inspections through the Zoning Administrator for Carroll County for a building permit

LOCATION: Lot 6, Home Dale subdivision recorded in Carroll County Plat Records in book 4, page 27, and located east of Klee Mill Road with access therefrom about 2,000 feet north of Cherry Tree Lane intersection in Election District 14

BASIS: Article 17, Section 17.4; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: August 26, 1992; continued October 27, 1992

On August 26, 1992, the Board of Zoning Appeals heard testimony and received evidence concerning an appeal of a Notice of Denial, dated June 10, 1992 pertaining to Building Permit and Zoning Certificate 92-1770 for a dwelling to be constructed on lot 6 of Home Dale subdivision.

During the public hearing, it was determined that the expressed reason for the denial was in error. The Board continued the public hearing to October 27, 1992 to allow the zoning administrator to correct the notice. Notice of the continuation was published using the corrected Notice of Denial, dated September 10, 1992, and the continuation proceeded based on the corrected notice.

The Board first visited the site August 21, 1992. The Board revisited the site October 19, 1992 because membership of the Board had changed September 1, 1992 with the appointment of two new members.

The Notice of Appeal, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board reversed the zoning administrator, affirming the appeal of the denial of Permit Application/Zoning Certificate 92-1770.

FINDINGS OF FACT

Lot 6 is located within Home Dale subdivision, east of Klee Mill Road. The 26 lot subdivision was recorded in the Carroll County Land Records in plat book 4, page 27 in January 1957. The subdivision plat portrays a road or street plan providing each lot with road frontage, but does not name or describe the rights-of-ways except to note widths in each of the segments.

No paved roads have been constructed to provide vehicular access to the lots. A driveway located within the right-of-way extends easterly from Klee Mill Road, and provides access to lot 6 and three existing single-family dwellings. The dwellings are located on lots 7, 8, and 9.

The building permits and zoning certificates for the dwellings on lots 7 and 8 were approved by the zoning administrator, based on provisions governing lots created by deed and exempted from the subdivision regulations as being off-conveyances. No explanation was provided of why lots in the lawfully recorded subdivision were considered to be off-conveyances, or why the building permits and zoning certificates were authorized as if the lots were off-conveyances.

The building permit and zoning certificate for the dwelling on lot 9 was denied by the zoning administrator in November of 1983, based on the provisions of Section 16.2(c) of the zoning ordinance and the concerns of the department of public works, the county fire protection engineer, and the planning and zoning commission regarding the unconstructed subdivision road. On appeal, the Board found that the permit application had been processed correctly, but that a petition for construction of at least part of the subdivision street justified authorization of Zoning Certificate 84-6042, subject to the condition that the Use and Occupancy Certificate for the dwelling not be issued until a Private Street Ordinance for construction of the street had been executed. (Case 2067.) Later, the Use and Occupancy Certificate of the dwelling was issued even though the Private Street Ordinance had not been executed.

A second driveway extends northward from the first driveway, providing access to a dwelling on adjoining land to the north. The driveway extends across lot 16, as a right-of-way depicted on Appellant's Exhibit 4, and appears to have been constructed solely to serve the dwelling on the adjoining land. The driveway is also located within the right-of-way of another portion of the road within the subdivision.

The appellant, Jerry Hagan Builder, Inc. purchased lot 6 April 18, 1986 from Stanley A. Webster and Claire B. Webster. (Appellant's Exhibit 2.) On June 8, 1992, Mr. Hagan applied for a building permit and zoning certificate for a new residence on the property. (Zoning Administrator's Exhibit 11.) The area of lot 6 is 16,732 square feet, and from inspection of the plot plan filed with this appeal, the width of the lot at the midpoints of the side property lines is about 103 feet. In addition, the plot plan depicts side yards of the proposed dwelling in excess of the minimum requirement of ten percent of the lot width. On June 10, 1992 the Chief of Zoning Enforcement issued a Notice of Denial for Building Permit and Zoning Certificate 92-1770 for reason that the subdivision had not been approved by the Carroll County Planning Commission.

During the public hearing August 26, 1992, the zoning administrator determined that the notice was incorrect, and the Board continued the public hearing to October 27, 1992 to allow the zoning administrator to amend the notice.

The corrected Notice of Denial, dated September 10, 1992, cites the provisions of Article 15, Section 15.1(b) of the zoning ordinance as the basis for denying the Building Permit/Zoning Certificate 92-1770, and states the reason for denial, in relevant part, as:

In consideration of the concerns expressed by the Public Works Department, the Fire Protection Engineer and the Planning and Zoning Commission regarding further development within Home Dale subdivision without acceptable road construction; and based on Article 15, Section 15.1(b) of the Carroll County Zoning Ordinance 1E....

As the lot was lawfully created prior to the adoption of the zoning and subdivision regulations, and the proposed side yards of the dwelling comply with the respective requirements of paragraphs 1 and 2 of Section 15.1(b), only the provisions of paragraph 3 are in question in this appeal.

In appealing the denial, Mr. Hagan contended that the application complied with applicable regulations; Section 15.1(b)3 cited by the zoning administrator in denying the permit applies solely to conditions of the lot; there are no extraordinary conditions of the lot that would endanger health or safety as a result of constructing a dwelling on the lot; and, denial of the building permit and zoning certificate was unjustified and should be reversed.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

Lot 6, as well as the remainder of the lots in the subdivision, are zoned "C" Conservation District as depicted on zoning map 63A. The land use provisions for the district are expressed in Article 5. Single-family dwellings are listed as principal permitted uses in Section 5.1, paragraph (e).

As the subdivision plat was duly recorded prior to the adoption of the zoning ordinance August 17, 1965, the provisions of Article 4, General Provisions; Section 4.1, Ordinance Deemed Minimum Regulations; Uniformity, and Section 4.8, Buildable Lots, apply to this lot. Sections 4.1 and 4.8 read respectively:

The regulations set by this ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land except as hereinafter provided.

Any lot which was a buildable lot under the terms or regulations in effect at the time of the adoption of this ordinance, and which was established or recorded at that time shall be deemed a buildable lot for the erection only of a single-family dwelling, subject to the provisions of Section 15.1.

Article 15, Exceptions and Modifications; Sections 15.0, Generally, and 15.1, Lot Area Modification, paragraph (b) read respectively:

The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations:

In any district where a single-family dwelling is permitted, a dwelling may be erected on any lot or parcel of record, despite the fact that the lot or parcel of record does not meet the minimum area requirements of this ordinance, provided: (Amended 4/26/78)

1. The lot or parcel (including any yard requirements) was lawfully created in compliance with all zoning and subdivision regulations applicable at the time the lot or parcel was created;
2. Where the lot or parcel was created prior to August 17, 1965, the side yards must be at least ten (10) percent of the width of the lot, but need not exceed the side yard requirements of the district in which the lot is located;
3. All other regulations, including the standards of the State and County Health Departments, are complied with. The Zoning Administrator may deny a permit for the erection of a dwelling on a lot which is substandard in area or yard if, because of extraordinary conditions, construction of a dwelling on the lot would present a danger to health or safety.

Article 16, Administration; Section 16.2, Zoning Certificates, paragraphs (b) and (c) read respectively and in relevant part:

All applications for zoning certificates shall be accompanied by plans drawn to scale, showing the dimensions and shape of the lot to be built upon; the size and location of existing buildings, if any; and the location and dimensions of the proposed building or alteration.... The application and/or plans shall include such other information as reasonably may be

required by the Zoning Administrator to determine conformance with and provide for the enforcement of this ordinance....

The Zoning Administrator shall approve the issuance of a zoning certificate only if the application complies with the requirements of this ordinance, and provided that such zoning certificate shall be conditioned where necessary on the approval of the County Health Officer, State and/or County Roads Agency, Planning and Zoning Commission, or any other agency concerned,....

REASONING

The subdivision regulations do not restrict the transfer of lots duly recorded in land records prior to adoption of the regulations, and Section 4.8 of the zoning ordinance recognizes use of such lots for single-family dwellings, subject to the provisions of Section 15.1. Neither section addresses the necessity for roads, or rights-of-ways to provide access to such lots, nor are any standards specified for roads or rights-of-ways that may be used to provide access to such lots. However, Section 4.16 regulates the front yard (setback) of lots where rights-of-ways of county streets or state highways are substandard.

In evaluating the Board's decision in Case 2067 relative to this appeal, it is evident that the Board erred in its decision by not considering the provisions of Sections 4.8 and 15.1(b) of the zoning ordinance.

Regardless of their merit, the concerns of the Public Works Department, the Fire Protection Engineer and the Planning and Zoning Commission regarding further development within Home Dale subdivision without acceptable road construction are not regulations of the zoning ordinance. Furthermore, there is no evidence that establishment of a dwelling on lot 6 will present a danger to health or safety. Consequently, denial of the building permit and zoning certificate was not justified.

However, in light of this appeal and the likelihood of additional permit applications for construction of dwellings within the subdivision, it seems advisable for the zoning administrator and others within county government to seek appropriate solutions to the problems associated with further development.

CONCLUSION

Based on the above Findings of Fact, Applicable Law, and Reasoning, the Board reversed the zoning administrator's denial and authorized Permit Application and Zoning Certificate 92-1770.

Date

11/24/92


William Law, Chairman