Tax Map/Block/Parcel
58-5-304

Building Permit/Zoning No.
Certificate Nos. 96-0306A
96-0307A, and 96-3103

Cases 4113 and 4154

OFFICIAL CONSOLIDATED DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANTS: Palmer T. Barker and Phyllis Barker
2470 Collison Drive
Westminster, Maryland 21157

ATTORNEY: David K. Bowersox, Esquire
24 North Court Street
Westminster, Maryland 21157

REQUESTS: An appeal of the Zoning Administrator's denial of Building Permit/Zoning Certificates for a multi-family dwelling and an appeal of the Zoning Administrator's determination of August 27, 1996, for denial of Building Permit/Zoning Certificate Nos. 96-0306A and 96-0307A for in-law apartments

LOCATION: 2470 and 2472 Collison Drive in Election District 4

BASIS: Article 15, Section 15.5.4(a); Ordinance 1E (The Carroll County Zoning Ordinance)

On October 24, 1996, the Board held a consolidated hearing on cases 4113 and 4154. The Cases were consolidated pursuant to a request filed by the appellants' attorney, David K. Bowersox, Esquire. The cases are appeals of the Zoning Administrators' decisions and involve the same property, appellants, issues and law.

Case 4113 is an appeal of the Zoning Administrator's (Solveig Smith) decision of April 2, 1996, denying the request to permit the construction of two basement apartments on each side of a semi-detached dwelling at 2470 and 2472 Collison Drive in Westminster, Maryland.

Case 4154 is an appeal of the Zoning Administrator's (George Beisser) determination of August 27, 1996, denying the request for two in-law apartments on the subject property and requiring the removal of the kitchen facilities from the two basements. The subject property consists of ten acres and is zoned "A" Agricultural.

FINDINGS, DISCUSSION, & CONCLUSIONS

Based on record and testimony presented, the Board makes the following findings.

The property in question is a ten acre agricultural zoned lot which was purchased by the appellants Palmer T. Barker and Phyllis Barker in late 1993, or early 1994. In March of 1994, the appellants entered into a contract with a building contractor whereby the contractor was to build a "4 unit construction consisting of 6,720 square feet," [a four family dwelling]. Mrs. Barker testified she was a novice at the construction of houses and, that this was the first house she has ever had built. Outside of a few details regarding the house, she left all the details to her builder. The builder was to secure all the necessary permits and zoning certificates for the project.

Mrs. Barker thought she was building a structure that would have four separate living units. The main house would be a semi-detached residential dwelling with four bedrooms on each side. Each side of the semi-detached dwelling would have a three bedroom basement apartment. For unexplained reasons, the initial building permit secured to construct the structure did not reflect her intentions; rather, the permit reflected a rancher with an in-law apartment. (Had the permit reflected a 4 unit structure, it would not have been approved and the appellants would not find themselves in this predicament). The permit was later changed to reflect a duplex,[1] when a building inspector questioned the size and layout of the structure, e.g. there were 4 entrances, 2 - 400 amp electric service panels. The building permit was also changed to reflect that it was restricted to "two dwelling units." At the time the permit was modified, the basements were unfinished. After the completion of the building and the issuance of the Use & Occupancy Permit, the basements were finished into complete living units. The work in the basements commenced without the requisite building permit. The appellants state that the builder finished the work while the builder denies it. Again, had the appellants applied for a permit to finish the basement, the appellants would not find themselves in this predicament. The instant case is a result of the inability of the county to issue a Use and Occupancy Permit for the living space in the basements either as apartments or "in-law"[2] units.

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[1]Duplex as used by the Permit & Inspections Department refers to a duplex as defined in the Building Code as actually a two-family dwelling as defined in the zoning ordinance.

[2]"In-law" units is a misnomer used by the appellants and some county representatives to reflect living quarters for members of the immediate family of the owner of the property.

The appellants are seeking now to be permitted to utilize the basements as separate one bedroom apartments. Absent such an authorization, they seek to have the units declared lawful in-law apartments. They would like to have the appellants father live in one apartment and the emancipated son live in the other. The other units upstairs would be utilized by the appellants and six adult patients. The patients are adults who are in need of "Sheltered Housing". The patients are not family members. Except for two female patients who share a bedroom, all other patients have their own bedroom.

The Zoning Administrators' positions are that the while the main house qualifies as a two-family dwelling, the basement apartments can not be lawfully authorized as separate apartments or as in-law units. They cannot be authorized as separate apartments because there is no authority to do so. They do not qualify as "in-law" apartments as they do not meet the necessary criteria for such accessory uses as defined in the ordinance and further described by the administrator as:

1) having access from the main dwelling into the "in-law" dwelling from living area to living area and not by way of stairs, through mud rooms, hallways, breezeways or through garages.

2) not consisting of basement units.

The Zoning Administrator finally notes that establishment of additional dwelling units without the requisite approvals constitutes a zoning violation for which the appellants may be fined.

For reasons which follow and with the hereinafter noted notifications, the Board will affirm the Zoning Administrator's determinations.

It is clear to the Board that the appellants contracted for a four-family structure, and that such a structure on a single lot is not permitted or authorized as a residence in the Agricultural Zone. Clearly, the Board can find no authority in the ordinance to support the appellants' position. Had the application for a building permit reflected a four-family structure[3], it would not have been approved and the appellants

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See Section 6a(e) Ordinance 1E.

[3]The Board takes administrative notice one and two dwellings are constructed to the Council of American Building Officials One and Two Family Dwelling Code whereas the four-family dwelling units are constructed to the Building Officials and Code

would not find themselves before this Board. The Board therefore will affirm the Zoning Administrator's determination that the apartments may not lawfully be authorized. In doing so, the Board would also question the Zoning Administrator's determination that the main structure qualifies as a semi-detached two-family dwelling.

The Ordinance defines a two-family dwelling as "...A detached building with one dwelling unit above the other (Duplex) or two semi-detached dwelling units located on abutting lots or on the same lot separated by a party wall without openings, in either case for or used exclusively for residential purposes, but not more than a total of two families or two housekeeping units." (Emphasis added).

The testimony of Mrs. Barker is that there is a path through door which she uses to care for her patients. The path through door conflicts with the above noted definition and would constitute a zoning violation. Mrs. Barker's testimony also indicated that six unrelated patients reside on the premises, three on each side of the semi-detached dwelling. It is likely that such an arrangement does not qualify as a family or housekeeping unit. Although the Zoning Administrator and Code Official have accepted the structure as a two semi-detached dwelling units, the Board may not so find had this been in issue. [The Board will not reverse the decision of the Zoning Administrator, as that issue was not argued before the Board].

The structure without the path through door and without the basement apartments would satisfy the definitional requirement of a two-family dwelling. The principle issue before the Board can be stated as follows: "Can the use of the basement of a semi-detached two-family residence be lawfully authorized as additional living quarters for members of the immediate family of the owner as allowed in section 6.4(e) of Ordinance 1E?"

The Board can find no support in law or practice to authorize such a use. Section 6.4(e) of the Ordinance provides that, as an accessory use to a residence, the owner may have living quarters for members of the immediate family of the owner of the property. The ordinance defines accessory use as, "[a] use of the land or all or part of a building which is customarily incidental and secondary to the principal use of the property and which is located on the same lot with principal use." Ordinance 1E, page 6-7a.

In analyzing the facts presented with the definition we note

Administrators National Building Code. The codes have different safety and structural requirements which enable the higher density.

that the uncontroverted testimony of the zoning administrator to be persuasive. The common, long established practice in Carroll County is that the accessory use commonly referred to as "in-law apartment" and codified in section 6.4(e) requires the use to have access from living area to living area and may not be in the basement. The Board finds that the common, habitual and long established practice in Carroll County based on the testimony of the Zoning Administrator to be that accessory living quarters for members of the immediate families must have access from the main dwelling from living area to living area and not by way of stairs, through mixed rooms, hallway, breezeways or through garages and not in basements. The use of the basements as the appellants' propose, for additional living quarters for members of their immediate family, is not "customary". The Board cannot authorize that which the law does not permit.

The appellants present that it would be a financial hardship to remove the kitchen facilities, to tear our all the improvements that they made and to cease using the basement(s) as living space. The strict interpretation of the ordinance and established practice would require that both basement kitchens be removed and interior stairs be installed if the basements are to be used as additional habitable space. The Board finds that the kitchens in both units ought to be removed and interior access be provided to the basements if the basements are to be used as living space. However, due to this alleged hardship, the Board has reached the following decision.

The Board will permit use of the basement as an additional living area in unit 2470, provided interior stairs are installed leading from the first floor to the basement. The Board can not sanction the kitchen as a kitchen would make the basement a separate living unit, i.e. an in-law apartment. Therefore the Board will require that the basement stove in 2470 be removed. By reaching this conclusion, the Board is of the opinion that the house will resemble any other semi-detached house with a finished basement. (The Board is not changing the usual and customary practice or requiring that the "in law" apartment on the same level as the rest of the household, and not be located in the basement). However, if the appellants intend to utilize any portion of that area of the basement as a bedroom, then they must comply will all Carroll County Health Department requirements and the Carroll County building regulations.

Unit 2472 is similar in many respects but has the additional element which disqualifies it as an in-law apartment. It is not inhabited by any of its owners. In fact it is inhabited by persons with no relationship to each other. The Board finds that the owner of the property must reside in the property as a requisite for the accessory use contemplated in section 6.4(e) of the Ordinance. Consequently, the Board will require that the stove in the basement of 2472 be removed. Furthermore, the

basement can be used for additional living space only if access is provided from the interior of the main structure.

12/6/96
Date

Karl V. Reichlin
Karl V. Reichlin, Chairman