

Case 2971

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY MARYLAND

APPELLANT: William Edward Houser
4603 Band Hall Hill Road
Westminster, Maryland 21157

APPEAL: An appeal of the Zoning Administrator's determination, dated April 6, 1988, regarding issuance of Zoning Certificates for additional accessory dwellings.

LOCATION: 4603 Band Hall Hill Road in Election District 6.

BASIS: Article 17, Section 17.4; Zoning Ordinance 1E.

HEARING HELD: June 30, 1988

FINDINGS

The property in question is zoned "A" Agricultural District as shown on zoning map 13B. It is also identified as lot 2 of Dusty Heights subdivision which is recorded in the Plat Records of Carroll County in Plat Book 24, page 24. The area of the lot is 13.7088 acres as noted on the photocopy of part of the subdivision plat submitted by Mr. Houser. The lot may not be further subdivided to create additional lots.

Mr. Houser testified that the property was purchased in 1982, after inquiring with the Zoning Office and being advised that approximately five dwellings could be erected on the property if the dwellings were retained within the family and under one ownership. Neither Mr. Houser or the Zoning Administrator recall who offered the opinion to him in 1982. Mr. Houser was aware that no additional lots could be created by subdivision, but was not concerned by the limitation because of his understanding that additional dwellings could be constructed on the lot. The Zoning Administrator's records indicate that following issuance of Permit Application and Zoning Certificate 83-4729 in 1983, the first dwelling was constructed on the property. A second dwelling was constructed on the property for Mr. and Mrs. Houser's daughter as an accessory dwelling under Permit Application and Zoning Certificate 85-2857, issued in 1985 under the provisions of

Article 6, "A" Agricultural District; Section 6.4, Accessory Uses, paragraph (e) the zoning ordinance which reads:

"(Amended 9-5-78) Living quarters for persons employed on the premises; or for members of the immediate family of the owner of the property."

As cited in Mrs. Houser's letter of March 22, 1988 to Mrs. Smith, the Zoning Administrator, Mr. Houser had earlier discussed with the Zoning Administrator construction of two additional dwellings on the property; one for their son and his family and one for Mrs. Houser's parents. Following the discussions, the plans for Mrs. Houser's parents' dwelling were amended. As now proposed, the dwelling for Mrs. Houser's parents would be converted into a garage after its original purpose has been served. The Zoning Administrator responded in a letter dated April 6, 1988 indicating that the additional accessory dwellings would not be authorized. The proposed future conversion of Mrs. Houser's parents' dwelling into a garage does alter the issue, and the Zoning Administrator's decision stands.

Although the terms "living quarters" and "accessory dwelling" are not defined in the zoning ordinance, Article 20, Section 20.01 defines accessory use as:

"A use of a building, lot, or portion thereof, which is incidental and subordinate to the principal use of the main building or lot."

Article 4, General Provisions; Section 4.17, Principal dwellings, (Added 3-15-77) of the zoning ordinance reads:

"In any district where a dwelling is permitted, only one principal dwelling shall be permitted on any lot, as defined under Section 20.25, except as may be otherwise provided for in the ordinance for two-family and multi-family dwellings."

Section 20.25 defines lot as:

"A piece or parcel of land occupied or intended to be occupied by a principal building and its accessory buildings and uses, including all open spaces required by this ordinance, and having frontage on a street as defined herein."

Thus, while single and two-family dwellings are principal permitted uses in the "A" Agricultural District as specified in Section 6.3(d), only one such dwelling may be permitted on a lot having the minimum required lot area of one acre (Section 6.7) in accordance with the provisions of Section 4.17. The facts that lots may, and commonly do, exceed the minimum lot area requirement of one acre does not permit deviation from this provision. The Zoning Administrator commented that the intent of the amendment allowing living quarters for persons employed on the premises, or members of the immediate family of the owner was not to provide multiple dwellings on a single lot, regardless of the acreage of the lot.

Section 6.4, Accessory uses, paragraph (a) specifies:

"Accessory buildings and uses customarily incidental to any principal permitted use or authorized conditional use, including mobile homes subject to the applicable provisions of Section 14.31. (Amended 11-24-80)"

No evidence was presented to substantiate that the proposed dwellings would be accessory and customarily incidental to the principal permitted dwelling of Mr. and Mrs. Houser; only that in addition to Mrs. Houser's parents, Mr. and Mrs. Houser have five children and twelve grandchildren. In fact, both the existing dwelling of Mr. and Mrs. Housers' daughter, and the proposed dwelling for their son are typical single family dwellings.

CONCLUSION

Administration of Section 6.4(e) of the zoning ordinance to allow multiple living quarters, which has been interpreted to include a dwelling, would clearly defeat restrictions regulating residential development in the "A" Agricultural District, and would be contrary to the intent and purpose of the zoning ordinance. Accordingly, the appeal of the Zoning Administrator's determination is hereby denied.

July 29 1988
Date

John Totura
John Totura, Chairman