

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPELLANT: Joan Moser
809 Franklin Avenue
Westminster, Maryland 21157

ATTORNEY: John T. Maguire, Esq.
189 East Main Street
Westminster, Maryland 21157

REQUEST: An appeal of the Zoning Administrator's Notice of Violation dated January 30, 1989 pertaining to establishment of a two-family dwelling contrary to: Board of Zoning Appeals decision in Case 2943, Building Permit/Zoning Certificate 88-2546, and appellant's written statement of June 13, 1988.

LOCATION: 809 Franklin Avenue in Election District 7;
Fairfield subdivision, Section C, Lot 102.

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

HEARING HELD: April 26, 1989

On April 26, 1989 the Board of Zoning Appeals heard testimony and received evidence concerning the appeal of the Zoning Administrator's Notice of Violation, dated January 30, 1989 pertaining to establishment of a two family dwelling contrary to the Board of Zoning Appeals decision in Case 2943, Building Permit/Zoning Certificate 88-2546, and appellant's written statement of June 13, 1988. The testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will affirm the Zoning Administrator's Notice of Violation. The pertinent findings include the following facts:

FINDINGS OF FACT

The appellant, Ms. Moser, filed an Application for Hearing on March 31, 1988 requesting authorization for a two-family dwelling as a conditional use. The proposal involved enclosing a carport attached to the existing single family dwelling and interior construction to create an apartment, as described by Ms. Moser. Variances to the minimum required lot area and one minimum required side yard, which would be necessary for the establishment of the two-family dwelling, were administratively included for consideration by the Board at the public hearing. (Case 2943.) In its written decision dated June 2, 1988 the Board denied the conditional use request for the two-family Case

dwelling. With the denial of the conditional use, the variance for reduction of the minimum required lot area for the two-family dwelling was moot and not addressed in the decision. The variance reducing the minimum required northerly side yard--the opposite side yard from the carport--was authorized as existing to preclude practical difficulties even though the record was unclear regarding the necessity for the variance.

A Location Survey of the property, dated July 12, 1988, confirmed that the single family dwelling was located in compliance with the minimum required side yards. (Zoning Administrator's Exhibit 6). On July 25, 1988 Ms. Moser filed a copy of the Location Survey with an application for a building permit and zoning certificate, #88-2546, to enclose the carport to build a "T.V.-den room". Although the application form provides spaces to note apartment unit information, including the number of efficiency apartments, Ms. Moser did not indicate any intention of establishing an efficiency apartment on the form. The original sketch of the proposed floor plan submitted with the application included a kitchen area showing the location for a range, sink, and refrigerator; and a kitchen list in the lower left corner of the plan noting one 30 inch range, one 48 inch sink base cabinet, one 78 inch row wall cabinets, and one apartment size refrigerator. (An unidentified exhibit, and Zoning Administrator's Exhibit 2.) The original floor plan was revised by deleting the kitchen area. However, the kitchen list in the lower left corner of the plan was not deleted on Appellant's Exhibit 1, and Zoning Administrator's Exhibit 7. Another version of the plan, a photocopy of part of the original plan marked "Revised plan," does not include either the kitchen area or the notes with the kitchen list. (An unidentified exhibit, and Zoning Administrator's Exhibit 3.) Based on the revised plan, the Zoning Administrator approved the application on August 4, 1988 subject to the condition that the property was restricted to a single family dwelling. (An unidentified exhibit, and Zoning Administrator's Exhibit 5.)

On August 30, 1988 the Bureau of Permits and Inspections issued permit 88-2546. (An unidentified exhibit, and Zoning Administrator's Exhibit 4.) The description of the work to be performed was changed from that noted on the application and reads, "ENCLOSE EXISTING CARPORT TO CREATE A FAMILY ROOM AND BATHROOM. Apparently the changes were prompted administratively because of the floor plan, Zoning Administrator's Exhibit 7, which depicts the bathroom and, as a matter of discretion, substituting "family room" for "T.V. and den room" The permit notes after Special Conditions, "PROPERTY RESTRICTED TO SINGLE FAMILY DWELLING." The framing inspection was made on September 29, 1988. The final inspection was started on October 6, 1988, but not authorized until the next day, October 7, 1988 after consideration of capped water pipes pictured in the photograph, identified as Appellant's Exhibit 3, that had been installed but left unconnected. The Certificate of Use and Occupancy was

approved October 10, 1988 for a "RESIDENTIAL ADDITION", subject to the special condition, "PROPERTY RESTRICTED TO SINGLE FAMILY DWELLING."

In January of 1989, an advertisement for an "...unfurnished new efficiency apartment..." was posted on a bulletin board in the Carroll County Hospital. Ms. Moser, the appellant, was listed with her home telephone number as the person to be contacted. The notice was removed from the board, photocopied, and then replaced on the bulletin board. On January 25, 1989 the photocopy of the advertisement was submitted with a complaint to the Zoning Administrator and the Bureau of Permits and Inspections. The Zoning Administrator issued the Notice of Violation, dated January 30, 1989. (Part of Exhibit "A" filed with the Notice of Appeal.) The corrective measures ordered by the Zoning Administrator are: "Cease any rental of the unit, remove the kitchen, and return the dwelling to a single family family use immediately."

The Code Official, Mr. Ralph E. Green, forwarded a letter dated January 30, 1989 regarding use of the property and requesting Ms. Moser contact him to arrange for inspection of the property. The inspection was made on February 14, 1989. At that time, the inspector took a photograph showing the sink, cabinets, and part of a range and range hood that had been installed after the final inspection on October 7, 1989.

The Notice of Appeal was timely filed February 22, 1989.

In a letter dated March 3, 1989 the Code Official advised Ms. Moser that the second living unit had been verified, and that it would be necessary to comply with the requirements of the Building Code, including removal of the kitchen unit if her appeal to this Board is denied.

APPLICABLE LAW

The property is zoned "R-10,000" Residential District as shown on zoning map 46A. Article 8, "R-10,000" Residence District; Section 8.2, Conditional uses (requiring Board authority), paragraph(e) lists two-family dwellings.

Article 20, Definitions, of Ordinance 1E provides definitions for the following terms:

Section 20.03, Apartment.

"An area within a structure arranged or designed for occupancy by one family."

Section 20.11 (b) Dwelling, two-family.

"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. (Amended 1-31-85)"

Section 20.15 Family.

"One or more persons occupying a single housekeeping unit."

Section 20.41 Zoning certificate.

"A written statement issued by the Zoning Administrator, authorizing buildings, structures, or uses in accordance with the provisions of this ordinance."

Article 16, Administration; Section 16.1, Zoning Administrator, paragraphs (b) and (c) respectively specify:

"(b) The provisions of this ordinance shall be enforced by the Zoning Administrator. Appeal from a decision of the Zoning Administrator shall be made to the Board of Appeals as provided in Section 17.4."

"(c) 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 any 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."

Section 16.2, Zoning certificates, (a), (b), (c), and (d) state:

"(a) It shall be unlawful for an owner to use or to permit the use of any building, structure or land or part thereof, hereafter created, erected, changed, converted, or enlarged, wholly or partly, until a zoning certificate shall have been issued by the Zoning Administrator. A zoning certificate shall be revocable, subject to continued compliance with all requirements and conditions."

"(b) All applications for zoning certificates shall be accompanied by plans drawn approximately 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. Where no buildings are involved, the location of the present use and/or proposed use to be made of the lot shall be shown. 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 plans shall be retained in the office of the Zoning Administrator.

"(c) 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, and provided the application is accompanied by the required fee. The Zoning Administrator shall maintain a record of all zoning certificates and copies shall be furnished upon request to any person upon payment of the cost therefor.

If a zoning certificate is issued, such approval and issuance thereof does not sanction variance from the terms of this ordinance."

"(d) If the Zoning Administrator shall find any of the provisions of this ordinance being violated, he shall notify in writing, by certified mail, the owner or the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures, removal of illegal buildings or structures or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; and shall, unless compliance is met within a reasonable time, take any other action authorized by this ordinance to insure

"compliance with or prevent violation of its provisions."

In accordance with the provisions of Article 17, Section 17.4.9 of Ordinance 1E, the Board extended the time for issuing this decision.

REASONING

It is evident from the record of this case that Ms. Moser has been determined to establish an apartment in her home, regardless of the Board's denial of her conditional use request in Case 2943, and the regulations of the zoning ordinance. Although the term *apartment* is not included in the definition of a two-family dwelling, the definition notes that the use is for "...not more than a total of two families or two housekeeping units."

The application for the building permit and zoning certificate filed by Ms. Moser, Zoning Administrator's Exhibit 5, describing the work to be performed as "Close in carport to make T.V.-den room," and subsequent deletion of the kitchen area and kitchen list from the proposed floor plan are obvious attempts to pursue establishment of the apartment. Neither the application nor the floor plan depicted the actual work to be performed. Approval and issuance of the building permit and zoning certificate was based on incomplete plans and false information provided by Ms. Moser. The building permit and zoning certificate, as issued, are invalid. Subsequent establishment of the efficiency apartment, a second housekeeping and dwelling unit within the single family home, converting the single family dwelling into a two-family dwelling is patently illegal. Ms. Moser's advertisement for rental of the efficiency apartment in January of 1989 removed any doubt regarding her intentions and actions to obtain the building permit and zoning certificate, and established the apartment regardless of applicable regulations.

CONCLUSION

The Board of Zoning Appeals hereby affirms the Zoning Administrator's Notice of Violation, dated January 30, 1989.

June 14, 1989
Date

John Totura
John Totura, Chairman