

Tax Map/Block/Parcel
No. 13/5/272

Building Permit/Zoning
Certificate No. 90-0453 &
90-0454

Case 3364

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPELLANT: Marlene Sprinkle
105 Anchor Street
Westminster, Maryland 21157

ATTORNEY: David L. Johnson, Esquire
196 Pennsylvania Avenue
Westminster, Maryland 21157

APPEAL: An appeal of the determination of an illegal subdivision in the Notice of Denial on Application for Zoning Certificate/Building Permit of the Chief of Zoning Enforcement dated March 29, 1990 pertaining to Building Permit and Zoning Certificates 90-0453 and 90-0454

LOCATION: East side of Band Hall Hill Road, Lots 1 and 2 in Election District 6

BASIS: Article 17, Section 17.2; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: May 31, 1990

On May 31, 1990, the Board heard testimony and received evidence concerning the appeal of the determination of an illegal subdivision in the Notice of Denial on Application for a Zoning Certificate/Building Permit of the Chief of Zoning Enforcement dated March 29, 1990 pertaining to Building Permit and Zoning Certificates 90-0453 and 90-0454.

The Board visited the site on May 23, 1990, prior to the public hearing.

The appeal, 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 appeal and order authorization of the building permits and zoning certificates.

The pertinent findings determining the Board's decision include the following facts.

FINDINGS OF FACT

In August of 1972 following an inquiry with a Carroll County planner, Mr. Robert E. Smith was advised that his plans to subdivide two lots from property located on the east side of Band Hall Hill Road would be permitted, "...by metes and bounds description within deeds." (Applicant's Exhibit 1.)

Descriptions of the lots and a plat depicting the lots were subsequently prepared by a registered surveyor (Applicant's Exhibit 2.) However, incorporation of the descriptions within deeds, or instruments of conveyance, were not recorded within the land records of Carroll County. The failure to do so was apparently based on a misunderstanding of the necessity to record the lots under the then prevailing regulations.

In 1989, the applicant, still believing that the actions taken in 1972 established the respective lots, moved to sell those lots using the surveyors descriptions of the lots prepared in 1972. (Applicant's Exhibit 4.)

A preliminary plan dated January 4, 1990, for the development of the lots was prepared for location of the wells, the percolation test sites and areas to be reserved for the on-site sanitary sewerage disposal systems, and the tentative locations for construction of the dwellings. (Applicant's Exhibit 3.) The percolation tests were accomplished, and the wells were drilled in accordance with county health department requirements. (Applicant's Exhibit 5 and 7.)

The contract purchaser, having no reason to expect a problem in transferring the lots or constructing dwellings thereon proceeded to contract for the construction of a dwelling. (Applicant's Exhibits 10 and 11.) On March 7, 1990, the scheduled settlement for transfer of the two lots was canceled because of the possibility of not being able to obtain building permits on each lot. The permits had been filed on February 23, 1990. On March 29, 1990 a Notice of Denial on Application for Zoning Certificate/Building Permit 90-0453 and 90-0454 was issued.

APPLICABLE LAW

Unless otherwise noted, Articles and Sections cited below are of Ordinance 1E.

The parcel, identified as P. 272 on the site location map used to post the Hearing Notice, and surrounding area are zoned "A" Agricultural District as shown on zoning map 13B. Article 6, "A" Agricultural District; Section 6.7 provides that the minimum lot area and width requirements for dwellings are one acre and 150 feet respectively. The lots comply with the minimum requirements.

Article 17, Board of Appeals; Section 17.2, General powers, reads in relevant part:

The Board shall have the following powers:

- (a) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this ordinance or of any ordinance adopted pursuant thereto.

In exercising the above-mentioned powers, the Board may, in conformity with the provisions of law and this ordinance and amendments thereto, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such or order, requirement, decision or determination as ought to be made.

Article 66B, Zoning and Planning, of the Annotated Code of Maryland includes under Subdivision Control, provisions governing the subdivision of land. Also in Article 66B, within General Development Regulations and Zoning; Section 4.07, Board of Appeals, paragraph (d) General powers, states in relevant part:

The board of appeals shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this article or of any ordinance adopted pursuant thereto.

The Subdivision Regulations for Carroll County, Maryland were duly adopted by the County Commissioners on April 23, 1963 under the authority of Article 66B of the Annotated Code of Maryland.

REASONING

The circumstances in this case, extending back to 1972, are particular and unusual. At that time, the subdivision regulations and zoning ordinance allowed division of the parcel into two lots. Following their inquiry to planning and zoning, the owners proceeded to accomplish the subdivision, employing a licensed land survey to do the work. Their misperception of when the lots were to be recorded in the county land records is their

only error in proceeding with the subdivision and sale of the lots.

The Board recognizes that since 1972 both the subdivision regulations and zoning ordinance have been amended, restricting subdivision of agriculturally zoned land for residential development. However, the Board views this case strictly as an appeal based on the particular circumstances in this case.

The surveying work was accomplished, a plan prepared for the health department, percolation tests conducted for the on-site sewerage disposal systems, wells drilled on both lots to supply potable water, and the lots recorded in the land records, each action involving substantial costs. In addition, contracts for the sale of the lots and an agreement for construction of a dwelling have been executed based on the belief that the lots complied with the provisions of the subdivision regulations and zoning ordinance for construction of single family homes.

CONCLUSION

Due to the circumstances in this case and in order to preclude severe practical difficulty and unreasonable hardship that would otherwise result from strict enforcement of the regulations, adversely affecting the appellant, the Board hereby affirms the appeal, revokes the Notice of Denial, and orders authorization of Building Permits and Zoning Certificates 90-0453 and 90-0454.

June 25, 1990
Date

John Totura
John Totura, Chairman

JDN/bmb/C3364DEC
June 22, 1990