

Tax Map/Block/Parcel
No. 66-11-317

Building Permit/Zoning
Certificate No. 91-3021

Case 3643

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

APPELLANTS: Charles Edward Graham, Jr. and Lorie Lynn Graham
5097 Fleming Road
Mount Airy, Maryland 21771

ATTORNEY: Clark R. Shaffer, Esquire
6 North Court Street
Westminster, Maryland 21157

REQUEST: An Appeal of a Notice of Violation pertaining to
an alleged illegal second dwelling

LOCATION: 5097 Fleming Road in Election District 9;
Timbermead subdivision, lot 7 recorded in
Carroll County Plat Records in book 20, page 68.

BASES: Article 17, Section 17.4; Article 5; Ordinance
1E. (The Carroll County Zoning Ordinance)

HEARING HELD: November 25, 1991

On November 25, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the Appeal of the Notice of Violation dated September 25, 1991.

The Board visited the site November 19, 1991.

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 will affirm, in part, and reverse, in part, the Notice of Violation.

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

FINDINGS OF FACT

The five acre lot is located on the easterly side of Fleming Road, with vehicular access therefrom by a use-in-common driveway serving other lots within Timbermead subdivision. The property is improved with a single-family dwelling, and a barn designed as a stable. Mr. and Mrs. Graham reside in the dwelling.

An apartment is located in the stable. The stable was constructed at the direction of the previous owner under Permit Application and Zoning Certificate 81-0705 in 1981. Although the

Permit Application did not specify that plans included the apartment within the stable, separate applications for electrical and plumbing work indicate that utilities for the apartment were installed with the original construction of the stable.

Mr. and Mrs. Graham purchased the property in February of 1987. The apartment was part of the inducement to purchase the property.

Following receipt of a complaint, a Zoning Inspector confirmed that the apartment was occupied and being used in violation of the provisions of the zoning ordinance. A Notice of Violation dated September 25, 1991, was issued by the Division of Zoning Enforcement to Mr. Graham for maintaining an illegal second dwelling on the property. The notice specified that the entire kitchen area must be removed from the dwelling.

Mr. and Mrs. Graham now understand that use of the apartment is contrary to the provisions of the zoning ordinance, and request six months to allow the present lessees to secure new accommodations. Thereafter, Mr. and Mrs. Graham will not use the apartment as a separate dwelling unit, and propose that it be used in conjunction with foaling, or providing care for sick or injured horses stabled in the barn. Mr. and Mrs. Graham contend that use of the facilities, including the kitchen utilities, would be customarily and incidental to providing such care.

The stable can accommodate four horses presently, and Mr. and Mrs. Graham indicated that they hope to board and breed horses in the future.

Mr. and Mrs. Graham also contend that to require removal of the entire kitchen area from the apartment would unfairly penalize them for actions of the previous owners, and is unnecessary in order to achieve compliance with the zoning ordinance. In fact, the issue in this case is not whether the kitchen fixtures and facilities violate the zoning ordinance, but whether their use is in violation of the ordinance.

In addition, Mr. and Mrs. Graham assert that the directive issued by Zoning Enforcement to remove the entire kitchen area exceeds the authority of the zoning ordinance and is invalid for reason that the Carroll County Building Code is the governing ordinance regulating construction, not the zoning ordinance.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The property is zoned "C" Conservation District as depicted on zoning map 66B. The land use provisions for the district are

expressed in Article 5. Single-family dwellings, including protective care homes, group homes and alternate living units as defined in Section 20.11 are allowed as principal permitted uses.

Stables are permitted as agricultural uses in accordance with the provisions of Sections 5.1(a) and 5.5.

Section 5.3 provides for accessory buildings and uses customarily incidental to any principal permitted use or authorized conditional use.

Paragraph (e) of Section 5.3 specifies:

Saddlery and tack shop on the premises of any riding academy, boarding stable or horse farm.

Article 20, Section 20.03 defines an apartment as:

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

REASONING

The Notice of Violation regarding use of the facilities within the barn as a dwelling is correct and lawful, even though the facilities are best described as an apartment. Use of the facilities as either an apartment or dwelling is not allowed in the "C" Conservation District by the provisions of Article 5.

However, the directive that the, "[e]ntire kitchen area must be removed," is ambiguous and vague. If the intent is to stop residential use of the premises by the removal of storage cabinets, stove and refrigerator, it is evident that any items removed could be expediently replaced. If the intent extends beyond the kitchen fixtures and facilities, the directive exceeds the limitations of the zoning ordinance and involves the building, plumbing and electrical codes of the county. Correction of code violations rests with the agency responsible for enforcement of the particular code.

To establish compliance with the land use provisions of the zoning ordinance, the order to Mr. Graham should have been to cease residential use of the apartment.

As provided by Section 5.3(e), if horses were boarded as Mr. and Mrs. Graham plan, the premises could be used as a stable and tack shop as an accessory use. Use of the facilities as proposed, to assist during foaling and care for sick or injured horses, would also be an accessory use customarily incidental to the stable, which is a principal permitted use.

CONCLUSION

In accordance with the findings of fact, applicable law, and reasoning, the Board hereby affirms that part of the Notice of Violation regarding the second dwelling, and reverses the directive to Mr. Graham to remove the entire kitchen area. In other words, the apartment shall not be used for residential purposes; however, the kitchen fixtures and facilities need not be removed.

Furthermore, the Board hereby authorizes an extension of time until June 30, 1992, for Mr. and Mrs. Graham to cease use of the apartment for residential purposes.

Dec. 3, 1991
Date

John Totura
John Totura, Chairman

JDN/bdc/C3643DEC
December 2, 1991