

Tax Map/Block/Parcel
No. 52-15-113,631,632

Building Permit/Zoning
Certificate No. 92-0037

Case 3660

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Galaxy Investors, Inc.
3416 Pine Circle South
Westminster, Maryland 21157

ATTORNEY: John C. Murphy, Esquire
516 N. Charles Street
Baltimore, Maryland 21201

APPEAL: An appeal of the determination of the Zoning Administrator dated January 3, 1992, that "Village of Twin Valleys" subdivision is not subject to Section 6.6 of the Carroll County Zoning Ordinance

LOCATION: The property consists of three parcels of land, totaling 147 acres, located north of Don Avenue and the planned intersection of Wilmont Ridge Road in Election District 4

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

HEARING HELD: January 28, 1992

On January 28, 1992, the Board of Zoning Appeals heard testimony and received evidence concerning the appeal of the determination of the Zoning Administrator dated January 3, 1992, that "Village of Twin Valleys" subdivision is not subject to Section 6.6 of the Carroll County Zoning Ordinance. The property consists of three contiguous parcels of land, totaling 147 acres, located north of Don Avenue and the planned intersection of Wilmont Ridge Road.

The Board visited the site, viewing it from the end of Don Avenue where the road is planned to intersect Wilmont Ridge Road, January 23, 1992. The site is not accessible by automobile.

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 the determination of the Zoning Administrator and deny the appeal.

The pertinent findings include the following facts:

FINDINGS OF FACT

An Application for Approval of Preliminary Subdivision Plan was submitted December 1, 1977, by the contract purchaser of the property, 140 West Associates, Inc., John W. Belcher, president. The preliminary subdivision plan (plan) for 97 lots was prepared by the surveying firm of Environmental Engineering, Inc. (Environmental Engineering) and identified as Village of Twin Valleys. The application indicated that only one parcel of the land was involved, parcel 113, having an area of 147, plus or minus, acres described by deed recorded in the land records in deed book EAS 254, folio 527. The estimated time for completion of the subdivision was three years. No off-conveyances were proposed.

The plan was included with other such plans in Cycle X of the Carroll County Planning and Zoning Commission (Commission), for review and consideration, and was routinely distributed to the members of the Subdivision Advisory Committee December 9, 1977. As noted in the memorandum to the members of the Subdivision Advisory Committee, several preliminary subdivision plans filed for review in Cycle X had been filed for consideration in prior review cycles. Applicant's Exhibit 4 (collective) was introduced and described as a copy of the Commission's file for the subdivision. The exhibit contains letters and memorandums that document processing, and agency reviews and comments regarding the original and revised plans.

The conceptual review of the preliminary plans was held January 25, 1978. At that time, Mr. Bailey, Assistant Planning Director for the county, noted that the plan be redesigned with lot areas of three acres in accordance with the guidelines for rural development of land not planned to be served with either public water and/or sanitary sewerage facilities. In addition, Mr. Bailey noted that it would be necessary to acquire an in-fee simple ownership for access to Don Avenue.

On May 9, 1978, the Subdivision Advisory Committee recommended conditional approval of the plan. However, there is no documentation within Applicant's Exhibit 4 of the committee's action except for the entry on the staff report form to the Commission reviewed by the Commission August 30, 1978.

In a letter dated July 13, 1978, the Health Department informed Environmental Engineering of receipt of "...preliminary plans for approval of a building lot to be located directly in the path of Don Avenue prior to its entrance on this property." The letter also noted previous, as well as new, deficiencies regarding the revised June 19, 1978, plan.

In a special report to the Commission, dated 8/29/78, the Planning staff recommended that the proposed subdivision plan, consisting then of 85 lots, be disapproved because:

There is currently no County or State maintained road frontage available to the subdivision nor does it appear likely that same will be provided by the adjacent property owner.

At its meeting on August 30, 1978, the Commission reviewed and disapproved the plan, based at least in part on the staff's special report to the Commission. Mr. Cueman, Planning Director and Secretary to the Commission, advised Mr. Edward J. Schaefer, owner of the property, by a letter dated October 3, 1978 of the Commission's decision. Neither Mr. Schaefer nor the applicant, 140 West Associates, Inc., appealed the Commission's decision.

Thereafter, at least one undocumented oral inquiry was made to one or more members of the Planning Department's staff, or in recent years, to the Bureau of Development Review's staff. (See Memorandum dated August 7, 1991, to Mr. Cueman, Director of the Planning Department, from Mr. Franklin G. Schaeffer, Chief of the Bureau of Development Review: part of Applicant's Exhibit 4, collective.)

In a letter dated June 16, 1991, to Mr. Cueman, an attorney for Galaxy Investors, Inc. (Galaxy), Mr. Clark R. Shaffer, expressed his client's wishes to pursue subdivision of the property in accordance with the provisions of Section 6.6(c) of the zoning ordinance, and the current regulations of the Health Department. Mr. Shaffer noted that adjacent land had been acquired, resolving the problem of access to the property, and requested that Galaxy be allowed to proceed with the subdivision.

Mr. Cueman responded to Mr. Shaffer by letter August 28, 1991, stating that "[t]he purpose of Section 6.6(c) was to enable those applications which had been filed prior to February 14, 1978, an opportunity to continue processing to the point of review and decision by the Carroll County Planning Commission as to approval, approval with conditions, or disapproval." He also noted that the staff of Development Review had responded to at least one inquiry regarding subdivision of the property by affirming that a new application for subdivision would have to be filed.

Mr. Shaffer answered Mr. Cueman by letter September 5, 1991, averring that the access problem involving the extension of Don Avenue had been resolved; that Section 6.6(c) applied to the subdivision of the property since the application had been filed prior to February 14, 1978; that Sections 6.6(a) and (b) were not applicable; and, that his client, Galaxy, desired authorization to plan for the subdivision accordingly, as well as with the requirements of the Health Department.

Mr. Cueman replied to Mr. Shaffer by letter October 18, 1991, stating:

Section 6.6 was enacted as a traditional "grandfather clause" to protect projects which have begun the process, not to create a perpetual application system. It is our position that a disapproved application no longer can be considered "filed for approval"; to do so would render a disapproval virtually meaningless.

Apparently, sometime thereafter, Mr. Murphy contacted the Zoning Administrator regarding the authority of the Zoning Administrator to interpret the zoning ordinance. Article 16, Section 16.1(b) specifies that the Zoning Administrator shall enforce the provisions of the zoning ordinance and that an appeal of a decision by the Zoning Administrator shall be made to this Board as provided in Section 17.4. In a letter dated January 3, 1992, the Zoning Administrator advised Mr. Murphy that since the Commission had disapproved the plan, the application had also been disapproved. The Zoning Administrator noted that the decision was appealable to this Board within 30 days. Mr. Murphy then filed Galaxy's appeal timely.

Galaxy now contends that since the application and plan were filed before February 14, 1978, and the problem of access for the property to a county maintained road has been resolved, that Galaxy, as owner of the property, should be entitled to proceed with subdivision of the property in accordance with the provisions of Section 6.6(c) of the zoning ordinance and current Health Department requirements.

Furthermore, Galaxy contends that the Commission erred in its October 3, 1978, notice disapproving the plan by failing to comply with the provisions of Section IV, subsection 4.3 of the Subdivision Regulations for Carroll County, Maryland which reads in relevant part:

In event disapproval or approval with modifications or conditions is the action of the Commission, a statement in writing shall be furnished by the Commission to the developer indicating the provisions with which the developer must comply.

APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The three parcels--P113, P631, and P632--now comprising the 147 acres of the property are zoned "A" Agricultural District. When zoning map 52A was adopted, parcels 631 and 632 were not depicted on the map, and at that time may not have been divided from parcel 113. The land use regulations for the district are expressed in Article 6.

Section 6.2, Principal Permitted Uses, paragraph (d) provides for single and two-family dwellings. Section 6.7, Lot Area, Lot Width and Yard Requirements, specify the minimum requirements for dwellings.

Section 6.6, Subdivision of Land for Residential Purposes in the Agricultural District, paragraphs (a) and (b) established standards for subdivision of land zoned "A" Agricultural District effective April 26, 1978, with the adoption of Text Amendment 43.

On June 29, 1989, Ordinance 80 was adopted amending Section 6.6 by adding paragraphs (d), (e), and (f).

Only the provisions of paragraph (c)1 of Section 6.6, which were also effective April 26, 1978, are relevant in this case. The provisions read:

(c) Section 6.6(a) and (b) shall have no application to:

1. Subdivision plans for residential purposes filed for approval prior to February 14, 1978; provided, however, that such subdivision plans shall be subject to the "Guidelines and Standards" of the Planning Commission dated April 5, 1973; and further provided that no dwelling shall be permitted on a lot in a subdivision if the application for the subdivision was filed for approval with the Planning Commission after February 13, 1978, unless the subdivision was created in compliance with Section 6.6.

Article 17, Board of Appeals; Section 17.4, Appeals and Applications to Board (Amended 12/1/89), provides for filing and processing appeals and applications.

REASONING

The application and plan were filed December 1, 1977. Even though the plan was apparently not designed in accordance with the guidelines and standards for rural development, it was processed and reviewed routinely until the Planning staff became aware of the lack of access to the property.

After the Permit Application and Zoning Certificate was filed for the dwelling that would have blocked extension of Don Avenue, the Planning staff presented the special report to the Commission, recommending that the Commission disapprove the plan. Following the Commission's disapproval letter, neither the applicant, 140 West Associates, nor the owner, Mr. Edward J.

Schaefer, requested the Commission to reconsider or clarify the disapproval, nor did they appeal the disapproval. Sometime thereafter 140 West Associates apparently abandoned the application, plan, and contract to purchase the property. Thirteen years have passed, and Galaxy now wishes to reactivate the disapproved and abandoned application and plan to subdivide the property in accordance with Section 6.6(c). The failure to notify 140 West Associates in the Commission's October 3, 1978, disapproval letter that Section 6.6(a) and (b) would apply henceforth to subdivision of the property does not prevent the Zoning Administrator from determining that Section 6.6(a) and (b) are applicable. The Zoning Administrator's determination that the Commission's disapproval terminated consideration of the application and plan, in accordance with Section 6.6(c) of the zoning ordinance, is reasonable and correct.

CONCLUSION

Therefore, in accordance with the findings of fact, applicable law, and reasoning, the Board hereby affirms the determination of the Zoning Administrator and denies the appeal.

Feb. 24, 1992
Date

John Totura
John Totura, Chairman

JDN/bdc/C3660DEC
February 21, 1992