

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5230

APPEAL OF W. JOHN YOUNG

OPINION ON REMAND
(Hearing Date: June 12, 2002)
(Effective Date of Opinion: July 25, 2002)

Case No. A-5230 is an administrative appeal by W. John Young of the Montgomery County Department of Permitting Services' letter, dated May 3, 1999, denying his application for a Non-Conforming Use. The appellant charged administrative error on the part of the Department of Permitting Services contending that Sections 59-G-4 and 59-G-4.12 of the Montgomery County Zoning Ordinance were misinterpreted. On November 3, 1999, the Board of Appeals held a hearing on the appeal, and on February 28, 2000, the Board issued an opinion granting the administrative appeal. On March 23, 2000 Montgomery County appealed the Board of Appeals' decision to the Circuit Court for Montgomery County. On September 5, 2000 the Circuit Court reversed and remanded the case to the Board and ordered that the Board conduct another hearing.

Decision of the Board: Administrative Appeal **Denied.**

The subject property is Lot P29, Block 19, located at 7133 Carroll Avenue, Takoma Park, Maryland, in the R-20 Zone.

EVIDENCE BEFORE THE BOARD

1. W. John Young received a Notice of Violation from the Department of Permitting Services dated March 18, 1999, citing violations of Sections 59-C-2.41 and 59-G-9.1 for having a multi family dwelling in the R-20 Zone with less than the required lot area. Mr. Young then applied for Non-Conforming Use status for the subject property, to allow five apartments. The Department denied the application and Mr. Young appealed to the Board of Appeals.

On November 3, 1999, the Board of Appeals held a hearing on the appeal. At the hearing, Mr. Young contended that five apartments had been allowed at his property because inspection reports from the City of Takoma Park Code

Enforcement Division reflected its classification as M-5. He submitted documents dating back to 1981 showing this classification, and stated that he bought the subject property in 1984 [Exhibit No. 6, and Transcript, November 3, 1999, p.4]. Montgomery County maintained that a Use and Occupancy Permit was issued for three apartments at the subject property in 1976 [Exhibit No. 5, attachment 6]. Montgomery County further maintained that with a total of 8,634 square feet, the subject property would be allowed to have a maximum of four apartments in the R-20 Zone [Transcript, November 3, 1999, pp15-19.]

On February 28, 2000, the Board issued an opinion granting the administrative appeal. On March 23, 2000 Montgomery County appealed the Board of Appeals' decision to the Circuit Court for Montgomery County.

2. The Circuit Court reversed and remanded the Board's opinion granting the administrative appeal, and ordered the Board to conduct an additional hearing. The Court directed that at the remand hearing, Mr. Young had the burden of proving whether the five apartments were lawful when they were established.

3. The Board scheduled separate remand hearings on the appeal for April 18, 2001, September 5, 2001, December 12, 2001 and June 12, 2002. [Exhibit Nos. 30(b), 31(b), 32(b) and 33(b)].

5. Based Montgomery County's intention to acquire his property, Mr. Young sent requests to continue the remand hearing dated April 10, 2001, December 3, 2001, and June 10, 2001. The Board of Appeals granted the first two continuance requests and denied the third one.

5. On April 12, 2001, the Board received a memorandum from the Montgomery County Department of Public Works and Transportation, Property Acquisition Section, advising the Board of the County's intention and efforts to acquire the subject property. [Exhibit No. 26].

6. The Board of Appeals convened the remand hearing on June 12, 2002. The subject of the hearing, set out in the Board's Notices of Hearing, was whether the five apartments owned by John Young and located at 7133 Carroll Avenue in Takoma Park, Maryland were permitted under the Zoning Ordinance when they were established.

7. Malcolm Spicer, Esquire appeared on behalf of Montgomery County.

8. Mr. Young did not appear at the hearing.

FINDINGS OF THE BOARD

1. The Board finds that according to the Order of the Circuit Court for Montgomery County Mr. Young had the burden of proving that the five apartments were lawful when they were established.

2. The Board further finds that in failing to appear at the remand hearing, Mr. Young has failed to meet the required burden of proof. Therefore,

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that in Case No. A-5230, Appeal of W. John Young, the Board reverses its Opinion of February 28, 2000, and **denies** the administrative appeal.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 25th day of July, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.