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179 Md. 448, 20 A.2d 181

Court of Appeals of Maryland.
AKERS et al.
v.
MAYOR AND CITY COUNCIL OF BALTIMORE et al.
**No. 11.**

May 20, 1941.

Appeal from Baltimore City Court; W. Conwell Smith, Judge.

Proceeding by H. Albert Akers and others against the Mayor and City Council of Baltimore and others to restrain the proposed erection of certain apartment buildings as being in violation of zoning ordinance. From a judgment affirming the action of the Board of Zoning Appeals of the City of Baltimore which reversed a decision of the buildings engineer who denied a building permit, plaintiffs appeal.

Affirmed.

West Headnotes

[1] **Zoning and Planning 414 ⚿251**
414k251 Most Cited Cases
(Formerly 268k601)
Where zoning ordinance restricted residential buildings in a certain district to height of 40 feet with two side yards of 10 feet each or one of 15 feet, a rear yard of not less than 26 feet, and a front yard of at least 26 feet on a 60-foot street, or 37l/2 feet on a 32-foot street, and required that building should occupy not more than 30 per cent. of its lot area if on an inside lot or 40 per cent. if on a corner lot, with each house having no more than its proportion of 16 families per acre, group of apartment buildings owned and maintained by a single owner as a unit and constructed so as to resemble connected row of houses without side yards except at ends of row were considered as one building instead of separate apartment houses into which unit could be broken up and did not violate restriction.

[2] **Zoning and Planning 414 ⚿391**
414k391 Most Cited Cases
(Formerly 268k621)
That apartment house project contemplated parking lot for automobiles would not warrant refusal of building permit on ground that it was a "commercial use" which could not be permitted in a residential area where the parking was designed for automobiles of tenants in the apartments only and was not for the general public.

[3] **Zoning and Planning 414 ⚿255**
414k255 Most Cited Cases
(Formerly 268k601)
Under zoning ordinance restricting certain area for residential purposes and prescribing what part of each lot should be devoted to "yard" which was defined as "the clear unoccupied space on the same lot with a building required by the provisions of this ordinance", there was nothing to prevent use of yards for parking spaces for automobiles since the restriction was not intended to eliminate a use of yard space temporarily.

[4] **Zoning and Planning 414 ⚿441**
414k441 Most Cited Cases
(Formerly 268k621)
Where the Commission on City Plan was given authority to regulate and approve arrangement of streets in subdivision plans in city and the commission gave its approval to a building permit issued by the buildings engineer, Board of Zoning Appeals had jurisdiction to decide an appeal from action granting the permit.

***449 **182** J. Francis Ireton, of Baltimore, for appellants.
R. Contee Rose, of Baltimore, for appellees Westover Manor Development, Inc., Chas. H. Steffey, Inc., and A. Lloyd Goode Co.
***450** William H. Marshall, Asst. City Sol., of

Baltimore (Chas. C. G. Evans, City Sol., of Baltimore, on the brief), for appellees Mayor and City Council of Baltimore.

Argued before BOND, C. J., and SLOAN, JOHNSON, DELAPLAINE COLLINS, and FORSYTHE, JJ.

BOND, Chief Judge.
This appeal is by neighbors and taxpayers in the western portion of Baltimore City, from an order of the Baltimore City Court on appeal from the Board of Zoning Appeals, denying their petition to disapprove and restrain the proposed erection of what are called garden type of apartments nearby, because in violation of the zoning of that area under the Zoning Ordinance of the city, number 1247, approved March 30, 1931. The Buildings Engineer of the city first refused a permit for the erection, but the Board of Zoning Appeals reversed that action, and the court below concurred in the decision of the board.

The area, lying between Cook's Lane and Edmondson Avenue, is in a district classed as a residential use, E area district, that is, one in which the land is not to be devoted to commercial uses, and in which a building shall be limited in height to forty feet, must have two side yards of ten feet each, or one of fifteen feet, a rear yard of not less than twenty-six feet, and a front yard of at least twenty-six feet on a sixty foot street, or thirty-seven and a half feet on a thirty-two foot street, and must occupy not more than thirty per cent of its lot area if on an inside lot, forty per cent if on a corner lot, with each house having no more than its proportion of sixteen families per acre. By paragraph 29(c) of the ordinance the Board of Zoning Appeals is empowered to give special permission for the erection in such areas of apartment houses complying with these requirements, and on April 12, 1940, the Westover Manor, Inc., through Charles H. Steffey, Inc. as its agent, and the A. Lloyd Goode Company as builder, applied to the Buildings Engineer for a permit to construct on the land, 8.2 acres in extent, six apartment houses, or groups of houses, only two ***451** stories in height, five of them extended irregularly in units with the appearance of so many individual dwellings, but each unit containing four apartments. These units were planned to overlap and connect at the corners, leaving them separate fronts, sides and backs, except for the corner connections, where the foundation walls and roofs are to be continuous. They would have no access from one to another above ground, and only somewhat inconvenient access below. All would be supplied in common with water, electric light, heat and sewerage. The six separated buildings or groups, on separated lots, are to contain twenty-seven units in all, housing one hundred and eight families. The plans show two new streets projected through the area, and two automobile parking lots in it. The objections of the neighboring owners bring in question for the first time in the State ****183** the permissibility of this construction in such an area.

[1] The foremost question is whether, in testing compliance with the ordinance, each structure of the several units combined is to be taken as a single building or as a group of buildings, so that the project is to be considered as one for the erection of twenty-seven buildings. If twenty-seven, then the inside buildings of the groups will lack the requisite side yards. The ordinance does not deal with this type of apartment house specifically, and the arguments have pointed out resemblances to types some of which are permitted in such a district and some are not. It has some resemblance to the more familiar apartment house with several entries, the possession of which does not render the structure a violation of the ordinance. On the other hand it has resemblances to a connected row of houses, which would be restricted to other districts. The owner of houses built together in a row would hardly contend that they complied with the

requirements in an E area if they had the requisite side yards only at the ends of the row.

If these structural resemblances only should be regarded, the question of classification might be close, for the distinctions are slender. But when we consider the ***452** intended singleness in use and operation, and the facts that there is to be no letting of units, but only a letting of suites in them, that the six structures are to be owned and maintained by a single owner as six units, the buildings to be at the care of the owner, with conveniences supplied to all by him, exactly as with apartment houses of the more familiar, unbroken lines, the description of each group as an apartment house seems appropriate, as the court below found. In the face of the unity in the use, the partial separation of the walls and the possession of several entries proposed here is not enough to justify holding, in testing compliance with the ordinance, that there are twenty-seven apartment houses to be considered.

[2] A second objection is that spaces designed for parking of automobiles are not permissible in this E area, and that if permissible otherwise cannot be considered as part of the open areas required on the lots. The parking is designed for the cars of tenants in the apartments only, according to the testimony, and it is not seen how this use can be considered a commercial one. A garage building might be subject to some specifications in the ordinance, but open spaces are not. There are some dangers from accumulation of cars in one space, as counsel point out, but so there are from garages or storage places behind single houses, and these are not prohibited; they are expressly allowed. Occupants of ordinary houses are not prohibited from parking cars in their yards. There seems to be no prohibition in the ordinance which the court could apply to restrict the use of the parking spaces. Of course, if they should be opened to commercial use, for others than the tenants, the courts could furnish a remedy; but this use is not commercial if the testimony is to be believed.

[3] And whatever the objections in fact to the inclusion of the parking spaces in the open spaces or yards required, the ordinance itself does not prohibit it. 'Yard' is defined as 'the clear unoccupied space on the same lot with a building required by the provisions of this ordinance'***453** . Par. 44(1). This cannot mean that nothing can be put on the space temporarily; there might be a variety of uses made other than by buildings which would leave the spaces still unoccupied, and yards, in the sense of this definition. It is with buildings that the ordinance is concerned in the definition, and so long as a space is occupied by none, there is, as the court sees it, no restriction against parking cars in the space required for yards. The protestants regard the restrictive designation of the use, for parking spaces, as a departure from the purpose of the ordinance in requiring yards, and perhaps there is ground for this conception of requirements for a suburban residential development, but it would require a more definite statement in the ordinance to enable a court to find in it a prohibition of the use.

The Commission on City Plan approved the proposed subdivision on condition that the two adjacent public highways, Cook's Lane and Edmondson Avenue, be widened in the future by taking from this property, and the owners agree to make provision for the widening, as they must; so that the plans can be considered as modified to that extent. The area of one lot as now planned will by the widening of Edmondson Avenue be reduced to 1/27 acres, or an area for which the Zoning Ordinance permits the housing of only twenty families instead of the twenty-eight planned. And with Cook's Lane widened as directed the proposed front yards of two groups will be ****184** reduced to eighteen feet, whereas the ordinance requires twenty-six. The adjustment is not shown, but with the proffer of adjustment of

the plans made there is no room for disapproval and restraint of the project because of the need of it.

[4] Objection is made that the Board of Zoning Appeals lacked power to render its decision on appeal, because a provision in the city charter constituting the commission prohibited the issue of any permit for such a new subdivision until the commission had approved it, and the commission had not approved this one when ***454** the board acted. Charter, sec. 264C. The commission was established by an amendment to the charter approved by popular vote on May 2, 1939, and among other functions was given that of regulating and approving, or disapproving, the arrangement of streets in subdivision plans in the city. It did not take action with reference to this particular property until June 27, 1940, whereas the Board of Zoning Appeals rendered its decision reversing that of the Buildings Engineer on June 14, 1940. The Board of Zoning Appeals does not, however, issue permits; that is done by the Buildings Engineer after the board has decided any contest; and the Buildings Engineer issued the permit for this enterprise on July 9, 1941, after the Commission on City Plan had acted, approving the project. The appeal by the neighbors and taxpayers was entered on the day before, July 8, 1941. Lack of a decision by the commission would have delayed the issue of the permit until the decision was rendered, but the court does not find in that requirement any interference with the performance by the Board of Zoning Appeals of its duties under the ordinance subject to the approval of the commission acting within its functions. The commission was not intended to supersede the board. And as the permit was not issued until after the commission had given its approval, there is no departure from the terms of the charter provisions.

Order affirmed with costs.

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