

LEXSEE 191 MD. 155

**NORWOOD HEIGHTS IMPROVEMENT ASS'N, INC., v. MAYOR AND CITY
COUNCIL OF BALTIMORE et al.**

No. 203, October Term, 1947

Court of Appeals of Maryland

191 Md. 155; 60 A.2d 192; 1948 Md. LEXIS 356

June 17, 1948, Decided

SUBSEQUENT HISTORY: [***1]

Dissenting Opinion Filed July 1, 1948.

PRIOR HISTORY: Appeal from the Baltimore City Court; Sherbow, J.

DISPOSITION:

Order reversed, with costs.

LexisNexis(R) Headnotes**HEADNOTES:**

Zoning — Baltimore City — Ordinance No. 1247 — Paragraphs 21, 24 — Percentage of Area of Lots, etc. — Disregarding Lot Lines and Treating Entire Garden Apartment Development As One Unit — Paragraph 44 — Lots and Buildings Are Units of Zoning — Paragraph 35(a) — Appeals to Baltimore City Court Within 30 Days from Filing of Decision of Board of Municipal and Zoning Appeals — Paragraph 32(d) — Application for Substantially the Same Proposal Filed Within 6 Months of Prior Application.

The Zoning Ordinance of Baltimore City, Ordinance No. 1247, approved March 30, 1931, in Paragraphs 21 and 24, sets up the percentage of area of lot, rear yards, side yards and population density.

The definitions in Paragraph 44 of this zoning ordinance make it clear that "lots" and "buildings" are the units of zoning.

To disregard lot lines and treat an entire development as a unit is to disregard the plain words of this zoning ordinance.

In the case at bar, the application for a building permit for the following project was *held* to violate the [***2] area and yard provisions of Paragraphs 21 and 24 of the zoning ordinance, *supra*. The plan of the development

showed a tract of land, after the area for streets is deducted, of 9.3 acres located partly in E-area and partly in C-area districts, where row houses are prohibited. 80 families are to be housed on the 5.2 acres which constitutes the E-area, which was within the limit under the zoning law. 88 families are to be housed on the 4.1 acres which comprise the C-area, which was well within the limit provided by the zoning ordinance. The project in the case at bar called for a garden apartment development. There were to be 168 open-air off-street parking spaces for the use of tenants. The apartment houses were to be comprised of groups of two-story units containing varying numbers of apartments. The apartments were to be of four and five rooms. 34 such units were to be grouped into the 10 apartment buildings. These units were planned to over-lap and connect at the corners, leaving them separate fronts, sides and backs, except for the corner connections, where the foundation walls and rooms were to be continuous. Each apartment building was to be heated by a common heating [***3] plant from a central boiler. Each group was to have its own water and sewage pipes and playground facilities. Each unit was to have been encompassed by a firewall. There was to be a continuous foundation for each group and each group was to constitute one building under one roof. The appellee-developer claimed that none of the apartment building were to be sold separately, nor could any of the units be separated from the apartment group of which they were to be a part. It claimed that no basements were to be put under most of the units, nor places for separate heating and other facilities were provided, and the cost of excavating basements would be costly and difficult. The appellee contended that the project is to remain as an entity under its ownership and control which will manage it, rent out individual apartments, and collect the rents. The open-air parking spaces and playground were to be for the common use of all tenants and were not to be rented to anyone. There was to be only one gas meter, one water meter and one electric meter for the entire project. It was to be all financed by one mortgage on the entire development. The appellee strenuously contended that

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the [***4] project was designed and will always remain as one unit. It was admitted, however, by the appellee, that there were no "lot lines" laid out on the project for each building. The Court, in addition to holding that the project violated the requirement of the zoning ordinance for division into lots, *held* valid the objection that the absence of lot lines may lead to future difficulty, if the tract were sold off in parcels. It was further *held* that the appeal from the Board of Municipal and Zoning Appeals to the Baltimore City Court, having been taken within 30 days after the filing of the decision of the board, as prescribed by Paragraph 35(a) of the zoning ordinance, *supra*, was timely filed, the Court referring to its decision of the same date in *Scrivner v. Mayor and City Council of Baltimore et al.*, 191 Md. 165. The application for the building permit had been filed within less than 6 months of another application. The appellant contended that the application was "for substantially the same proposal" within the meaning of those words as used in Paragraph 32 (d) of the zoning ordinance, *supra*, and, therefore, that its filing was prohibited by that paragraph. The [***5] Court, comparing the two proposals, *held* that they were not substantially the same within the meaning of that paragraph.

SYLLABUS:

Appeal by Norwood Heights Improvement Association, Inc., from a decision of the Baltimore City Court affirming a resolution of the Board of Municipal and Zoning Appeals approving an application for a permit by The Stulman Building Company, Inc., to erect certain apartment buildings.

COUNSEL:

John F. Heath for the appellant.

Paul L. Cordish for the appellee, The Stulman Building Company, Inc.

Hamilton O'Dunne, Assistant City Solicitor, with whom was *Thomas N. Biddison*, City Solicitor, on the brief, for the appellees, Mayor & City Council of Baltimore.

JUDGES:

Marbury, C. J., Delaplaine, Collins, Grason, Henderson and Markell, JJ. Collins, J., delivered the opinion of the Court. Henderson, J., dissents.

OPINIONBY:

COLLINS

OPINION:

[*158] [**193] This is an appeal by Norwood Heights Improvement Association, Inc., appellant, from a decision of the Baltimore City Court affirming a resolution of the Board of Municipal and Zoning Appeals approving an application for a permit by the Stulman Building Company, Inc., one of the appellees, (hereinafter [***6] known as appellee), to erect on a 15 acre tract, 10 apartment buildings made up of 34 units containing 168 suites and open parking spaces for 168 cars thereon.

The appellee contends that a correct interpretation of Section 135 of the Baltimore City Charter requires an appeal from the Board of Municipal and Zoning Appeals, in a case involving zoning, to be taken to the Baltimore City Court within 20 days, and, as the appeal in this case was not taken within that time, the appeal should be dismissed here. In the case of *DeLancey B. Scrivner v. Mayor & City Council of Baltimore and Chesapeake & Potomac Telephone Company*, 191 Md. 165, 60 A. 2d 190, advanced and heard with the case at bar, in an opinion by Judge Grason, this Court holds that such an appeal having been filed within 30 days is properly before us. It is unnecessary therefore that we discuss that point in this case.

Paragraph 32 (d) of Ordinance No. 1247, provides in part: "If an application is disapproved by the Board of Zoning Appeals, thereafter the Board shall take no [*159] further action on another application for substantially the same proposal, on the same premises, until after six (6) months from the date [***7] of such last disapproval." Appellant contends therefore that the Board of Municipal and Zoning Appeals exceeded its authority in approving the application in the instant case, because it is substantially the same proposal as that covered by the application made by Stulman Building Company, appellee, in application in appeal No. 588-47, which application was denied in a former appeal by Judge Niles, in the Superior Court of Baltimore City, within less than six months before the present application was acted upon. It is evident that the pending application is not substantially the same as that previously applied for. The previous application was for apartment buildings for 179 families, 150 parking spaces, and 26 [**194] garage buildings. The apartments consisting of 3 1/2, 4 and 4 1/2 rooms, made up of 38 units comprised 12 building groups. That application violated the zoning ordinance because of the garage buildings, and also because 118 families were to be housed in the E-area of the tract on 5.2 acres where only 84 families were permissible. It will be seen that the present application is not substantially the same as that previously denied in the Superior Court of Baltimore [***8] City.

The plan of the development in this case shows a tract of land, after the area for streets is deducted, of 9.3

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acres located partly in E-area and partly in C-area districts, where row houses are prohibited. 80 families are to be housed on the 5.2 acres which constitutes the E-area, which is within the limit under the zoning law. 88 families are to be housed on the 4.1 acres which comprise the C-area, which is well within the limit provided by the zoning ordinance. The project calls for a garden apartment development. There are 168 open-air off-street parking spaces for the use of tenants. The apartment houses are comprised of groups of two-story units containing varying numbers of apartments. The apartments are of four and five rooms. 34 such units are [*160] grouped into the 10 apartment buildings. These units are planned to over-lap 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, as in the case of *Akers v. City of Baltimore*, 179 Md. 448, 20 A. 2d 181. Each apartment building is heated by a common heating plant from a central boiler. Each [***9] group has its own water and sewage pipes and playground facilities. Each unit is to be encompassed by a firewall. There is a continuous foundation for each group and each group constitutes one building under one roof. The appellee claims that none of the apartment buildings are to be sold separately, nor can any of the units be separated from the apartment group of which they are a part. It claims that no basements are to be put under most of the units, nor places for separate heating and other facilities are provided, and the cost of excavating basements would be costly and difficult. It is contended that the project is to remain as an entity under the ownership and control of the appellee which will manage it, rent out individual apartments, and collect the rents. The open-air parking spaces and play-ground are for the common use of all tenants and are not to be rented to anyone. There is only one gas meter, one water meter and one electric meter for the entire project. It is all financed by one mortgage on the entire development. The appellee strenuously contends that the project is designed and will always remain as one unit. It is admitted, however, by the appellee, [***10] that there are no "lot lines" laid out on the project for each building.

The primary question for us in this case is whether the present application violates the area and yard provisions of Paragraphs 21 and 24 of Ordinance No. 1247, *supra*. Paragraph 44 (b) provides:

"Lot. A lot is a parcel of land now or hereafter laid out and occupied by one building and the accessory buildings or uses customarily or necessarily incident to it, [*161] including such open spaces as are required by this ordinance."

Paragraph 44 (1) defines a yard as:

"The clear, unoccupied space on the same lot with a building required by the provisions of this ordinance."

Paragraph 44 (m) defines a front yard as:

"A clear, unoccupied space on the same lot with a building, extending across the entire width of the lot and situated between the front line of the building and the front line of the lot."

Paragraph 44 (n) defines a rear yard as:

"A clear, unoccupied space on the same lot with a building, extending across the entire width of the lot and situated between the rear line of the building and the rear line of the lot."

Paragraph 44 (o) defines a side yard as:

"A clear, unoccupied space on the [***11] same lot with a building and extending for the full length of the building between the building and the side lot line."

Paragraph 44 (u) defines a group house as:

"Not less than three and not more than six single family habitations, designed and erected as a unit on a lot."

[**195] Appellee relies strongly on the case of *Akers v. City of Baltimore*, 179 Md. 448, 20 A. 2d 181, *supra*, which involved a permit for a more or less similar type of garden apartments. However, the six separated buildings or groups containing 27 units and housing 108 families in that case, were on separate lots. It was said there, 179 Md. at page 451, 20 A. 2d 182: "The six separated buildings or groups, on separated lots, are to contain twenty-seven units in all, housing one hundred and eight families." The zoning ordinance #1247, *supra*, in Paragraphs 21 and 24, sets up the percentage of area of lot, rear yards, side yards and population density. The definitions in Paragraph 44, *supra*, seem to make it clear that "lots" and "buildings" are the units of zoning. The opinion in *Akers v. City of Baltimore*, *supra*, 179 Md. at pages 450, 451, 452, and 453, 20 A. 2d 181, 182, [*162] [***12] 183, emphasizes the fact that there are lots for each building in that case. Chief Judge Bond, who wrote that opinion, carefully considered whether an aggregation of garden type apartments constituted six buildings, "on separate lots", or 27 buildings. Nothing in that opinion remotely suggested that the whole "development" could be regarded as *one* building. See also *Colati v. Jirout*, 186 Md. 652, 47 A. 2d 613.

Perhaps a surveyor or an advanced mathematician might keep the score of *percentages* of the whole, though this would be difficult and not worth doing. A wilderness at the rear of the whole might furnish percentages for row houses where row houses are prohibited. Unless lots are defined in advance, sales of parts might leave a crazy-quilt of remnants and force the zoning authorities either

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(a) to rezone and thereby remove restrictions or else (b) to block further sales — or even use of the property — by maintaining restrictions that have become unworkable. "Yard" requirements, however, expressed not in *percentages* but in *feet*, mean nothing at all except with reference to define "lots" and "buildings".

To disregard "lot lines" and treat an entire development [***13] as a unit would seem to disregard the plain words of the zoning ordinance. It is, of course, true that it is undoubtedly the intention of the present owners to keep this whole project as a single unit and under one ownership and, if that is done, compliance with the zoning laws as to "lot lines" will not embarrass the owner. However, if because of voluntary, or even forced sale by reason of financial difficulties, the buildings in the project hereafter become separately owned and changes in lines then become necessary, that will be the owner's problem, as it should be. This possibility, however, does not seem to justify the ignoring of the plain requirements in the zoning laws requiring division into lots. It is, of course, possible that the plans for this project might be revised to provide for "lot lines" for each building.

[*163] The order affirming the decision and resolution of the Board of Municipal and Zoning Appeals in this case must therefore be reversed.

Order reversed, with costs.

DISSENTBY:

HENDERSON

DISSENT:

Henderson, J., filed the following dissenting opinion.

The City Zoning Ordinance contains a definition of the word "lot" that appears in the zoning ordinances [***14] of some other cities.

Corden v. Zoning Board of Appeals of City of Waterbury, 1945, 131 Conn. 654, 41 A. 2d 912, 915, 159 A. L. R. 849. It was said in that case, *41 A. 2d page 916*: "The purpose of the provisions in the ordinance as to the uses of the land accessory to the single building which may stand upon a lot is not primarily to fix the character of a tract of land which may be regarded as a lot but to limit the land lying about the building which is so appurtenant to it as to constitute with it a single unit in use." See also *Modern Builders, Inc. v. Building Inspector of the City of Tulsa, 1946, 197 Okl. 80, 168 P. 2d 883.*

The definition is highly artificial, since it states, in effect, that an unimproved tract is not a lot. Nowhere in

the ordinance is there any limitation upon the size of a lot. Nor do I find in the ordinance any definite statement that a particular parcel of land cannot lawfully contain more than one [**196] building, or principal building. Paragraph 21 contains restrictions as to area, yard spaces and population density, which would seem to be equally applicable, whether a particular development is considered as one tract or several. In [***15] the instant case, it is not contended that the proposed development violates any of these requirements. The various municipal departments, the City Plan Commission, the Zoning Board and the Court below were all in agreement that the plan met all the requirements of the Ordinance. The restrictions contained in Zoning Ordinances should not be "extended by implication to cases not clearly within the scope of the purpose and intent manifest in their [*164] language". *Landay v. Board of Zoning Appeals, 173 Md. 460, 466, 196 A. 293, 296, 114 A. L. R. 984.*

There is little force in the objection that the absence of lot lines upon the plan submitted may lead to future difficulty, if the tract were sold off in parcels. Even if it would be practicable to sell piecemeal the various structures, designed for operation as a unit and with common facilities for heating, parking and other services, such a disposition of the property would not be prevented by the mere delineation of lines upon the plat. There would still be nothing to prevent the present owner from selling portions of the tract embracing more than one lot, or fractions of a lot, without regard to lines. In any event, [***16] it would seem that the zoning authorities would have to approve any additional buildings, or a future change in use of the tract.

The type of project under consideration was probably not contemplated at the time the ordinance was drafted, and was not dealt with specifically, as pointed out in the *Akers* case, *179 Md. 448, 20 A. 2d 181, 183*. The problem here presented was not present in that case but the court stressed the "intended singleness in use and operation" of the property. To hold that the development of every tract must conform to the stereotyped conceptions of the era of the brown-stone front, puts an undue premium upon conventional design, and unduly limits architectural conceptions that attempt to meet the modern requirements of off-street parking, playgrounds and service facilities in common. The "garden-type" apartment design, like the university campus, should not be outlawed because it deals with the problem in an unconventional way. I think the order appealed from should be affirmed. I am authorized to say that Chief Judge Marbury concurs in this dissent.