

ALLEGANY COUNTY BOARD OF ZONING APPEALS

IN RE: APPEAL OF : CASE NO. 936
PEARSON BECKHAM REALTY, INC. :
CHARGING ADMINISTRATIVE : Hearing Date: 2/5/14
ERROR :
: : : : : : :

FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the "Board") upon Pearson Beckham Realty, Inc.'s appeal relative to the Zoning Administrator's January 14, 2014 determination that a special exception was required for the construction of the subject Dollar General Store in the "G2" – General Urban Development District.

At the hearings on February 5 and March 10, 2014, the Board considered the attached list of exhibits which consisted of information gathered by the Secretary of the Board and information provided by other agencies and individuals.

1. The matter of the Appellant's application for a special exception for the construction of a Dollar General Store at the intersection of Nave's Cross Road and Morningside Drive in the G2 Zoning District came before the Board on December 4, 2013 in Case No. 935.
2. The Appellant proposed demolishing two existing residences at the subject site and constructing an entirely new structure for the conduct of the proposed use.
3. The special exception was sought in accordance with Section 360-82(B)(2)(c) of the Allegany County Code (the "Code") which provides that "conversions of residential structures to commercial uses" are permitted by special exception in the G2 Zoning District.
4. The Board denied the Appellant's request for a special exception due to its failure to satisfy the parking requirements set forth in Section 360-106 of the Code.

5. The Appellant's attorney then sent the Zoning Administrator a letter dated January 13, 2014, stating that it was her client's position that a special exception is not required in order to construct a Dollar General Store at the location proposed. The basis for that position was stated as follows:

We believe that the County's justification for the special exception is that you allege that this is a conversion of a residential structure to a commercial use. It is [the Appellant's] position that no structures will be converted to commercial use as those structures will be demolished and not converted.

6. The Zoning Administrator responded to the foregoing correspondence by letter dated January 14, 2014. He noted that the Appellant's application for a special exception was denied in Case No. 935 and that the subject Land Use Application Permit was subsequently denied based upon the Board's ruling. He further stated that the special exception requirement relative to this case was based upon Resolution 99-23, passed by the County Commissioners on December 30, 1999 with an effective date of January 10, 2000. In effect, the Zoning Administrator stated his opinion that a special exception would be required for the conduct of the proposed use.

7. Aggrieved by the Zoning Administrator's decision, on January 15, 2014, the Appellant filed an Appeal Charging Error in Administrative Ruling or Action, contending that Sections 360-82(B)(2)(c) and 360-82(B)(1) of the Code were misinterpreted and that no special exception is required in this instance as the Appellant is not proposing the "conversion" of a residential structure.

8. Section 360-82(B)(1)(h) of the Code provides that neighborhood commercial uses are permitted as a matter of right in the G2 Zoning District. As defined in Section 360-59 of the Code, neighborhood commercial uses include retail stores. Dollar General Stores are retail stores.

9. Resolution 99-23 seemingly provided for the amendment of a number of sections of the Zoning Ordinance, including, but not limited to, changing the G2 Zoning District special exception use from “[c]onversion of residential structures to commercial uses” to “[c]onversion of a parcel used for residential purposes at the time of the adoption of [the] ordinance to a commercial use.” The language set forth in this Resolution supports the Zoning Administrator’s position in that special exception is required for the conversion of *parcels* used for residential purposes to commercial uses as opposed to the language contained in the Code which requires a special exception for the conversion of *structures* used for residential purposes.

10. The issue regarding whether the current language contained in the Code or that which is set forth in the Resolution states applicable law was resolved by stipulation between the County and the Appellant. They agreed that the Code sets forth applicable law.

11. The Allegany County Code (which includes the Allegany County Zoning Ordinance) was recodified and revised pursuant to Code Home Rule Bill No. 3-11 which was effective September 1, 2011. Section 1-2 of that Bill provides generally that all permanent local laws, acts, ordinances, resolutions and bills enacted prior to the recodification of the Code are superceded and, implicitly, repealed. Therefore, Resolution 99-23 was superceded by the Code and, as of September 1, 2011, it no longer stated the law relative to conversions of residential structures or parcels into commercial uses.¹

11. The Board next considered the issue of whether the language set forth in Code Section 360-82(B)(2)(c) is ambiguous such that that “conversions of residential structures to commercial uses” can be interpreted to include the demolition of residential structures for the purpose of establishing a commercial use.

¹ The Board did not make a determination as to whether Resolution 99-23 was effectively passed as legislation. That issue was rendered moot by Code Section 1-2.

12. The cardinal rule of statutory interpretation is to determine the intent of the legislature that passed the particular law. *Mayor of Baltimore v. Chase*, 360 Md. 121, 128 (2000). “The primary source from which we glean [legislative intent] is the language of the statute itself.” *Subsequent Injury Fund v. Ehrman*, 89 Md. App. 741, 747 (1992) (quoting *Mazor v. Dept. of Correction*, 279 Md. 355, 360 (1977)). “If the words of a statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as written.” *Jones v. State*, 336 Md. 255, 261 (1994). “[I]n the context of statutory construction, ‘ambiguity’ is most accurately defined as ‘reasonably capable of more than one meaning.’” *Lewis v. State*, 348 Md. 648, 654 (1998) (quoting *Greco v. State*, 347 Md. 423, 429 (1997)). Courts look to dictionaries as a starting point for the determination of the common and everyday meanings of words. *Bd. of License Comm’rs. for Charles County v. Toye*, 354 Md. 116, 123 (1999).

13. Dictionary definitions of “convert” or “conversion” quoted by the Appellant and the County include the following:

A. “1. To change into another form, substance, state, or product: transform. . . 3. To adapt to a new or different use or purpose. . .” *Webster’s II Dictionary* (2005 3rd ed.).

B. “[T]he adaptation of a building for a new purpose” and “a building or part of a building that has been adapted in this way.” *Oxford Dictionary*.

C. A change in character, form or function.

D. “[A] material alteration to the structure or fittings of a building undergoing a change in function or legal status.” *World English Dictionary*.

14. Having considered the above-referenced principles of statutory construction as well as the dictionary definitions cited above, the Board determined that the language set forth in Code Section 360-82(B)(2)(c) is not ambiguous.

15. The residential structures which will be demolished in this case are not being altered nor is their function being changed. Upon demolition, their formal function as residences will cease. The process of razing structures and constructing new ones does not constitute the conversion of the razed structures.

16. In light of the foregoing, the Appellant's proposal to demolish the existing residences and construct a Dollar General Store on the subject property is a permitted use under Code Section 360-82(B)(1). The determination that it was a special exception use was erroneous.

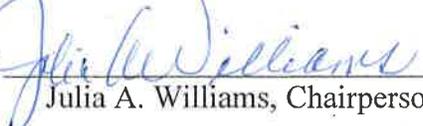
CONCLUSIONS

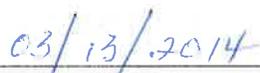
Based upon the findings set forth above, at the March 10, 2014 hearing, the Board voted 3-0 in favor of sustaining the Appellant's claim of administrative error. The Appellant's proposal to demolish the existing residences and construct a Dollar General Store on the subject property should have been treated as a permitted use rather than a special exception use.

ATTEST:



BOARD OF ZONING APPEALS

By: 
Julia A. Williams, Chairperson


Date

Copies to: See Attached List

BOARD OF ZONING APPEALS

FOR ALLEGANY COUNTY, MARYLAND

CASE# 936
DOLLAR GENERAL

MARCH 10TH, 2014 (CONTINUANCE)

EXHIBITS LIST

FINAL

- A. BOZA Docket 935.
- B. Findings for BOZA Case 935.
- C. *Land Use Permit Application Summary* for record #1311004 (Dollar General) noting that the *Special Exception* request was denied by the Board, therefore consequently denied by the Zoning Administrator on 12/4/2013.
- D. Correspondence dated January 13, 2014, from Miss Elizabeth Lamm, Counsel for Dollar General, to Squires, regarding applicability of the special exception requirement and requesting a response.
- E. Correspondence dated January 14, 2014, from James Squires, LDS, to Miss Elizabeth Lamm, regarding applicability of the special exception requirement. FOF for Case 935 and Resolution 99-23, attached.
- F. Completed document entitled *Appeal Charging Error in Administrative Ruling or Action*, dated 1/15/2014.
- G. Maildata: *Adjoining Property Owners/Interested Party List*.
- H. *A Notification of the Hearing*, with attached distribution list, dispatched to adjoining and adjacent property owners and interested parties (Ref: Case 935) by the Secretary of the Board.
- I. *Notification of Hearing* dispatched to the Applicant by Secretary of the Board.
- J. *Inter Office Memo*, prepared by the LDS office, that was distributed to the necessary review agents notifying them of this Case, date, time and requesting comment.
- K. *Public Notification*, dispatched to the Cumberland Times/News, for the purposes of notifying the general public of the hearing date, time and location.
- L. Portion of the Saturday, January 18th, 2014, edition of the Cumberland Times/News, verifying that the *Public Notification* for Case 936 was published.
- M. Correspondence dated February 4th, 2014, from James A. Squires Jr., Division Chief, to the Allegany County Board of Zoning Appeals.
- N. Report: BOZA Cases executed regarding conversion of residential properties to commercial uses.
- O. Memorandum in Support of Appeal of Administrative Error.
- P. Hearing Notifications(s), collectively:
 - *A Notification of the Hearing*, dated February 17, 2014, with attached distribution list, dispatched to adjoining and adjacent property owners and interested parties (Ref: Case 935/936) by the Secretary of the Board.
 - *Inter Office Memo*, prepared by the LDS office, that was distributed to the necessary review agents notifying them of this Case, date, time and requesting comment.
 - *Public Notification*, dispatched to the Cumberland Times/News, for the purposes of notifying the general public of the hearing date, time and location.
 - Page 7B Saturday, February 15th, 2014, edition of the Cumberland Times/News, verifying that the *Public Notification* for Case 936 (continuance) was published.
- Q. Memorandum in Support of Appeal of Administrative Error. (Dated 3/10/2014 – E. Lamm)
- R. Memorandum (includes copy of CHR Bill 3-11, executed, [dated 02/05/2014 – B. Levin])

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Distribution List: Case 936 [FINAL]
March 11, 2014

Maildata Case 936 Continuance 140310a (FINAL)