

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

ZAAP NUMBER 20-1432

PETERSON & GWYNN APPEAL

EIGHTH ELECTION DISTRICT

DATE HEARD: SEPTEMBER 10, 2020

ORDERED BY:

**Mr. Hayden, Ms. Delahay, Mr. Ichniowski
Mr. Miedzinski, and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: September 24, 2020

Pleadings

Stephen Peterson and Wayne and Judith Gwynn (collectively, “the Appellants”) appealed the decision of the Director of Land Use and Growth Management (“LUGM”) to approve a Temporary Use permit, Permit No. 20-1432, for a multi-day, private religious event in June 2020 on the Thomas & Elizabeth Klug’s property (the “Subject Property”). At the September 10, 2020 Board of Appeals (“Board”) hearing, Neil A. Murphy, Deputy County Attorney, moved on behalf of the Appellee to dismiss the appeals on the grounds that the Director of LUGM never made such a decision.

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on August 21, 2020 and August 28, 2020. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the Subject Property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the St. Mary’s County website on September 2, 2020. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on September 10, 2020 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented.

The Property and Procedural History

Lynn Klug filed with LUGM an application for a Temporary Use Permit on June 19, 2020 for an event that was to occur from June 19, 2020 through June 21, 2020 on the Subject Property, which is located at 19889 North Snow Hill Manor Road, Lexington Park, Maryland.¹ LUGM reviewed the application and forwarded it to the St. Mary’s County Health Department (“Health Department”) for its review. The Health Department did not review the application in time and, therefore, did not approve the event before the event had concluded. Consequently, without Health Department approval, LUGM never issued a permit for this event—neither orally, written, nor after-the-fact.

That same day, Mr. Peterson filed an appeal because “[t]he permit for this event was issued the day after they had started setting up and partying.” Ex. 2, Att. 5. The next day, the Judith Gwynn similarly filed an appeal of LUGM’s decision to issue a permit. Ex. 2, Att. 6.

At the September 10 Board hearing, the Appellee moved to dismiss the appeals.

The St. Mary’s County Comprehensive Zoning Ordinance

Pursuant to § 20.3.4.a of the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”), which outlines the “Powers and Duties” of the Board:

4. ***Powers and Duties.*** The Board shall have the following powers and duties:
 - a. To hear and decide appeals when it is alleged there is an error in any order, requirement, decision, or determination made in regard to the enforcement of this Ordinance or of any amendments adopted pursuant thereto.

¹ The Gwynns allege that the event in fact began on June 17.

The Evidence Submitted at the Hearing by the Appellants

The Appellants submitted the following evidence:

- The Appellants believed that because the event was held on the Subject Property, then LUGM had issued a permit—orally, written, or after-the-fact—for the event.

The Evidence Submitted at the Hearing by the Appellee

The appellee submitted the following evidence:

- The Subject Property is in the Rural Preservation District (“RPD”).
- Lynn Klug applied for a Temporary Use Permit under Use Type Number 128, “Shows and Events, Outdoors,” which is permitted as a limited use in the RPD pursuant to CZO Schedule 50.4.128.
- The multi-day, private religious event on the Subject Property was unpermitted.
- LUGM received the Temporary Use Permit application and forwarded the application for Health Department review. Given the untimeliness of the application, the Health Department was unable to approve the application before the event had completed.
- The Director of LUGM confirmed that, because the Health Department did not approve the application, LUGM never issued a Temporary Use Permit for the June 2020 event.
- On July 16, 2020, Judith Gwynn emailed Amber Thompson of LUGM and requested copies of the Temporary Use Permit application and the Temporary Use Permit. Ms. Thompson responded that same day, writing, “You were sent everything in the permit file. *There was no permit issued, therefore, no permit document to be sent.*” (Emphasis added). Ms. Gwynn then inquired, “So the permit

was denied? I need the date of that decision.” In response, Ms. Thompson wrote, “*I never stated the permit was denied.*” (Emphasis in original). Ex. 3, Att. 3.

Decision

Upon review of the facts and circumstances, the Board finds and concludes that Appellee’s motion to dismiss should be granted. Several factors support our determination.

First, and most dispositive to this Board’s decision, CZO § 20.3.4.a narrowly circumscribes the authority by which this Board may hear appeals. Under that subsection, this Board may only hear and decide appeals where “it is alleged there is an error in any order, requirement, decision, or determination made in regard to the enforcement of this Ordinance or of any amendments adopted pursuant thereto.”

Here, LUGM never issued a Temporary Use Permit for the June 2020 event on the Subject Property. Notwithstanding, the Appellants filed their appeals on the mistaken belief that LUGM erred in its decision to issue a Temporary Use Permit for the June 2020 event. However, as there was no Temporary Use Permit issued, there was no LUGM decision to appeal. As such, this Board is without authority to hear the appeals.

Finally, the Comprehensive Zoning Ordinance affords narrow authority for this Board, and such authority does not authorize this Board to decide a case on the merits where there are procedural defects that mandate dismissal. Consequently, absent such authority, this Board may not, and will not, opine on whether LUGM could issue a Temporary Use Permit in the future for this property under similarly situated conditions.

ORDER

PURSUANT to the appeal of Stephen Peterson and Wayne and Judith Gwynn of administrative decision under Chapter 23 of the St. Mary’s County Comprehensive Zoning

Ordinance to appeal the decision the Director of Land Use and Growth Management to approve the Temporary Use Permit for a multi-day, private religious event in June 2020 on the Subject Property; and

PURSUANT to Mr. Murphy’s motion to dismiss the appeals because the Director of Land Use and Growth Management never issued such a permit;

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary’s County Board of Appeals, that the Appellee’s motion to dismiss is granted.

Date: September 24, 2020

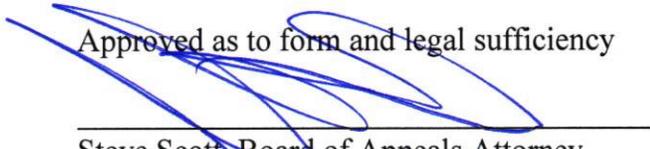

George A. Hayden, Chairman

Those voting to uphold the decision:

Mr. Hayden, Ms. Delahay, Mr. Ichniowski,
Mr. Miedzinski, and Mr. Richardson

Those voting to reverse the decision:

Approved as to form and legal sufficiency


Steve Scott, Board of Appeals Attorney

NOTICE TO APPELLANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.