F1 2 Mr. 81-C0-2102 e. By removing that portion of the structure CIRCUIT COURT OF MARYLAND Christine Chiofolo, Case No. 85-318-SPH

question? On ealy 24, 1985, Judge Brennan of the District Correspondence of the Dis CHIOFOLO FOR SPECIAL HEARING · CIRCUIT COURT problibited by and outlined in Judge Dewsters' Order of March 22, TY LOCATED ON THE NORTHEAST the expansion of the raterrent property to the value of the Ballings of the grains of the raterront property to the value of the Ballings County Zoning Regulations and will so order FROM THE CIRCUIT COUR TER APPLICATION OF THE RESERVE OF THE PARTY OF THE FOR BALTIMORE COUNTY CHRISTINE CHIOFALO BALTIMORE COUNTY CHRISTINE CHIOFOLO, at al. b. By obtaining from the appropriate soning BALTIMORE COUNTY Caso No. 84-CSP-1677 authorities of Baltimore County, Maryland their finel order Case Nos. 84-CSP-1577 use of the property and the posture of the addition addate the attribute. ALPRED ROVAK, approving the use of that portion of the structure that is It is therefore this 26th day of January 1990 by the County loard of Appeals of Baltimore County OMDERED, that the three buildings existing File No. 87-CG-21(12 87-CG-2102 currently prohibited by Judge Dewaters' Merch 22, 1985 Order. In Re The Petition of On March 18, 1986, E-puty Zoning Commissioner Issued an Order granting the non-CHRISTINE CHIOFOLO Case No. 87-CG-2102 IT IS FURTHER ORDERED, as to case No. 86-CG-2103 that on the subject site be declared a legal nonconformal use but that the expansion of the subject site be declared a legal nonconformal use but that the expansion of the Regulations regarding its REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS waterfront building and ordered the expansion removed to May 1, 1987, on appear the Board of Appeals exceeded its authority insofar as said ALFRED NOVAK from the Deputy Zoning Commissioner's Order, the Board of Appenia assued an (Opinion of the Court) Board ordered that the currently prohibited portion of said structure must be removed and that said matter should be reopened for reconsideration not inconsistent with this Court's Tewson, Maryland Upon the pleadings, memorandum and argument having been through B-13 of the Maryland Rules of Procedure. Thursday, November 12, in open court on Thursday, November 12, 1987, and in Order and Opinion. COUNTY BOARD OF APPEALS conformity, with this Court's Opinion, a copy of which official OF BALTIMORE COUNTY court proceeding transcript has been filed herewith, it is A CONTRACT OF THE PROPERTY OF this 3 day of Sune. 1986 HONORABLE JOSEPH F. MURPHY, JR., ASSOCIATE JUDGE With respect to the contempt matter brough before Consulad as to Contemp that is currently prohibited by Judge DeWaters! Order. APPEARANCES the Court in case No. 84-CSP-1677, the Court finds the alfred Novak Defendants in contempt for using that portion of the property ALFRON NOVAK On Behalf of Christine Chiofalo: prohibited from use by Order of Judge Dewaters, entered on Narch 1985; having found the Defendants in contempt, the S. ERIC DINENNA, ESQUIRE Defendants are hereby ordered to pay, to the State of Maryland, On Behalf of Alfred Hovaks True Copy Test General Fund (to be collected by the Clerk of Court), accounting CURTIS C. COON, ESQUIRE from Heren 12, 1985 One Dollar (\$1.00) per day, unless the Defendants purge themselves of said contempt by successfully PATRICIA A. CIRASOLE performing one of the following two alternatives: 24 Reported by: * The arrearage to be paid within indays of the date Official Court Reporter OF This DRICK a fence built or something to prevent the Chiofalos from going the Board of Appeals, in addition to correcting its order, to get PROCEEDINGS into this room, which right now they don't have to tear down. The second aspect of it involves whether Mr. Chiofalo Baltimore County is greater than the limited power Judge THE COURT: The day of Judge DeWaters' order further and reopen the hearing, so as to permit the Petitioners THE COURT: All right. Look, this is the It's contempt, but I have no intention of resigning from the is capable of convincing the appropriate county officials that DeWaters felt could be exercised on the day of the injunction. MR. DINENNA: Even in light of Judge Brennan the right to argue the points sought to be argued by the motion in light of the total picture here, he should be allowed to make Circuit Court for Baltimore County and living in that room to am persuaded that, indeed, implicit in the law that was THE COURT: Yes. I am not persuaded that J will be typed up, mailed to counsel and made a part for reconsideration, and the right to present to the Board those make sure they don't go in there. And, frankly, the irritation use of that room. In this case, the Board of Appeals went far applicable to this case, 84-CSP-1677, was the power to order the 4 | Brennan's action in this case was any more than a decision ecord in both 84-CSP-1677 and 87-CG-2102. actions by the Zoning Commissioner, which have been brought to to Mr. Novak and the other people, the neighbors who now don's peyond the authority that it was granted and we all concede that structure oe removed. That was not done by Judge DeWaters! see what loning would do. I don't find that to be a judyman On March 22, 1985, Judge DeWaters filed an opinion is the attention of this Court, that suggest the Zoning have as good a view of the river as they once had, while the merits that should operate to the advantage of the opinion and order, and it was not appealed. the Board of Appeals had no business ordering that the Commissioner's decision with respect to this property was indee understandable, has to be weighed against the fact that their structure, the portion of the structure built illegally should So what we have now is contempt by the Defendants for 8 arbitrary and capricious, when compared with the particular, to view now isn't any worse than it would be if there were total be removed. How, we have already gone over that, that's been MR. DINENNA: And to make it clear, to who decisions in somewhat similar cases that have been filed by the were told could be left up untouched on the property. Now, that opedience to judge Dellaters' orders. Indeed, if the National established and it's been agreed to. The most the Board of that dollar per day to be paid? who che addition that had been constructed in violation of Zoning Commissioner and which have been brought to this Court's is contempt of Court, out it is a contempt of Court with a small Guard had camped out in the room to make sure hobody went in Appeals should have been permitted to do was affirm a denial of THE COURT: The money goes to the State of Judge Deliacers concluded his opinion by saying, quote: there, the outer structure would still block the view There 12 the petition and the most the Zoning Commissioner should have 11 11 C as opposed to a contempt of Court with a capital C. It's a Maryland. I am treating it in the form of a fine that will asons stated pefore, the Court will issue an injunction So 1'11 enter orders in each of these cases in might not be Christmas lights and movement of people, but the been permitted to do would be deny the petition or in another little bit like, frankly, somebody buying a piece of furniture collected by this Court and placed in the General fund, just ---iting the Defendants from the use of the improvements in accordance with the opinion that I have stated on the record. 14 forum, using the correct procedure, seek judicial intervention benefits to the Novaka are minimal. No matter what I do, if that carries with it a tag that says, don't tear this tag off if it was traffic ticket. with Section 22-36. Close quote. In note cases, the costs are to be paid by the Chiofalos, and put the Chiofalus in jail for the rest of their lives, that in dealing with a violation. The zoning office had no business under penalty of some kind of law, and the person tears the tag MR. DiNENNA: So that's commencing with Judge Hr. Dillenna, you will prepare an order in each case and have How, it is on the pasis of argument and proffers to still wouldn't remove the structure, because no appeal was taken taking a permit to use something and turning the denial of that off. Well, they violate the law, but what damage do they do? Deslaters' order. My only question to the Court would be wh there's been no serious question, it is crystal clear that atamped examined by Mr. Coon and approved as to form and then from Judge DeWaters' decision that the structure itself didn't permit into an affirmative mandate to tear the thing down. If Now, I understand Ar. Novak's frustration and concern am not, I can appreciate what the Court is saying, but why Defendants have used the goom that was built in violation o presented to me and I will go ahead and at that time file. walk into the soning office and ask them for permission to put about the fact that a ouilding was put up and it shouldn't have it we retroactive to Judge DeWaters' order? Wouldn't it law and that use of the room violated Judge DeWaters's MR. DiNENNA: Your Honor, I have one basic So, there is a contempt. I am prepared to address it. fourth story on my garage, they can say not but they don't have been put up and, now, Mr. Novak looks out of this nouse and he retroactive back, being a constructive contempt, indirect motion against that kind of conduct. So, they are, the question with reference to the dollar a day penalty or whateve and it is my judgment that Mr. Chiofalo pay a dollar a day for sees this room added on to this ouilding and his view down the the right to tell me at the same time in denying it to remove nature, back to the time the contempt petition was filed? Malos, in contempt of Court for violating Judge DeWaters' the Court is referring to there. Until he purges himself, by the use of that room and that he continue to pay a dollar a day river is obstructed and that's unfortunate. It irks him to no THE COURT: No, it goes back further, oecause the garage. purging himself, they can remove the structure or obtain the unless and until ne purges himself of the contempt by either Because the Board of Appeals in this case entered an end, I am sure, to see Christmas lights in those windows and see allegation is, and I am satisfied on the basis of what I have llow, what is the appropriate sandtion for this kind of removing the structure, which he doesn't have to do if he pays order that exceeded its authority, I am remanding the case to movement in that room and to see that, indeed, there is a heard about this case, that the room was always used. The poet? Hell, for me to really focus on this, I have to THE COURT: As soon as the zoning people say h dollar a day, or obtain the necessary zoning variance. Now, 1 the Board of Appeals. I said, the case, now, I am talking abou violation of Judge DeWaters' order. was simply not opeyed because, frankly, it's the kind of an filder a couple of things. First of all, for reasons I have can use it, he doesn't have to pay a dollar a day. And yet, a sanction, a really sort of potential think that deals with the kind of contempt that's involved in 25 86-CG-2102. Because the case is remanded, I am ordering that order that's almost impossible to obey, except the point is, MR. Dinenna: When does the dollar a day start? lady said, I believe that the power of the Circuit Court for sanction is that somehow a curtain be placed or a line drawn of 25 there's the orders, nobody appealed from it, it cuts both w BEFORE IN THE MATTER OF IN RE: PETITION FOR SFECIAL HEARING .. We do believe that the existence of the three structures as was in fact begun pursuant to obtaining a permit but prior to completion, THE APPLICATION OF NL/S of St. George Road, COUNTY BOARD OF APPEALS of 1955 was manifest and therefore hold that the special hearing is granted 825" SE from Middleborough Rd. * DEPUTY ZONING COMMISSIONER as simply not going to put the file in the trash, which FOR SPECIAL HEARING dwellings and subtracting the square footage of two additions (1978 and 1984) to (327 St. George Road) -Baltimore County rescinded the permit. ON PROPERTY LOCATED ON THE 15th Election District so as to permit the nonconforming use of three dwellings this property. OF BALTIMORE COUNTY NORTHEAST SIDE OF ST. GEORGE RD. The Board heard testimony from a number of other witnesses who I'd be doing if I said no sanction should be imposed. the waterside dwelling and of the 1979 bedroom addition to the roadside BALTIMORE COUNTY 825 SOUTHEAST FROM MIDDLEBOROUGH : Christine Chiofolo, Case No. 85-318-SPH have resided in this neighborhood since prior to 1955. The testimony of these RD. (327 ST. GEORGE RD.) dwelling, determined that the 1955 total square footage of all three dwellings ORDER MR. DINEUNA: Thank you, Your Honot. No. 85-318-SPH 15th ELECTION DISTRICT Petitioner Protestants was strongly in conflict with that of Mr. Chiofolo. In particula was 1,652 square feet. Included in his total square footage was the roadside For the reasons set forth in the aforegoing Opinion, it is this MR. DINEHNAL We'll ask that the opinion of the this case comes down to whether or not the addition which Mr. Chiofolo main-1st day of May, 1987, by the County Board of Appeals, ORDERED that the house porch later enclosed for a bathroom. t be typed and sent to us, at which time I'll prepare the The Petitioner herein requests approval, by special hearing, for the non-OPINION tained was made in the late 1940's and altered the waterfront property to make petition for special hearing for the nonconforming use of three (3) dwellings The adjacent neighbor, represented by Counsel, appeared in protest. He conforming use of three dwellings and the expansion of one dwelling. This is an appeal from the Deputy Zoning Commissioner's Order c and have Hr. Coon sign as to substantive form. it L shaped, in fact was completed prior to the adoption of the Baltimore testified that, in 1954 when he moved into the neighborhood, the waterside house is hereby GRANTED, subject to the following restrictions: granting the special hearing which determined that, a nonconforming use of A lengthy history, including alledged zoning violations, District and Cir-THE COURT! All right. Thank you very such. County Zoning Regulations. Testimony of the Protestants was consistent that 1. The 1984 addition to the waterfront house which is approxi was rectangular, with a roof pitched equally in both directions and containing a three (3) dwellings existed on the subject property and restricting the size cuit Court orders, and a May 16, 1985 dismissel of this petition, preceded a mately 101 feet by 15 feet, shall be promptly removed. the L shaped addition was constructed in the late 1950's, most likely 1957. kitchen, a living room and one bedroom. The addition to form the L-shape was motion for reconsideration, the readvertisement and reposting of the property and future use of the structures. 2. No further extension of the nonconforming use for these The calculations necessary to determine what existed in added in the latter part of 1957. A photograph, labeled Protestant's Exhibit 2, dwellings shall be permitted. Following the testimony of the parties in this matter, the and the subsequent public hearing. 1955 were somewhat difficult for this Board to make. The testimony from the shows the described roof. The 1984 addition is currently in use. Another 3. The request for expansion of one dwelling is DENIED CONCLUSION Board la satisfied that prior to 1955 there were three (3) dwellings that Testimony by and on behalf of the Petitioner indicated that the three witnesses on both sides was emotionally charged. Given the number of dwellings, neighbor testified that in 1955 the waterside dwelling was rectangular, long and Any appeal from this decision must be in accordance with existed on the property. The issue before us primarily is to determine the dwellings, as shown on the plan submitted and marked Petitioner's Exhibit 2, the number of improvements made on each of these dwellings, the somewhat Rules B-1 thru B-13 of the Maryland Rules of Procedure. total amount of square foctage for these dwellings that existed in 1955. have existed on the subject property prior to 1953 (tax assessment record, Peti-Counsel for the Petitioner argues that the total square footage in 1955 was speculative nature of the size of each of these additions and ultimately the It is from that amount that we can determine what is presently permissible as tioner's Exhibit 3]. The son of the owner recalled that the squae in the center COUNTY/BOARD OF APPEALS major disagreement as to the timing of these additions, our calculation cannot DY BACTIMORE/COUNTY 1,652 square feet, that there have been 553 square feet of additions (he does an increase of the nonconforming use pursuant to the Baltimore County Zoning of the property has never had additions. The waterside house was L-shaped in be precise. Based on the testimony that we received however, we believe that -not consider the enclosure of the porch of the roadside house for a bathroom as 1955 with a kitchen, living room and two bedrooms on the water side thus forming Regulations (BCZR) Section 104.7. Weith S. Franz, Acting Chairman the L shaped addition was constructed in 1957 or thereabouts, but in any case, an addition) or a 33% expansion; 140 square feet in excess of that allowed in the "L". The second of those bedrooms had been built with a shed roof prior to The testimony of Frank Chiofolo, son of the property owner, was Section 104.1 of the Baltimore County Zoning Regulations (BCZR). after the adoption of the Baltimore County Zoning Regulations. As such, we 1950. In 1978, by permit #01889, 211 square feet (22' x 9.6') was added; and in that the waterside house was rectangular originally but that in the late 1940's feel confident that the square footage as of 1955 did not exceed that which was Counsel for the Protestant argues that the total square footage in 1955 943 he helped his father build an addition such that the dwelling became L shaped. 1984, with permit application after the roof was complete but no delivery of a LEROY B. Spurcier stated by Protestants being 1,420 feet. Under the circumstances, expansions 1,408 square feet because, in addition to the 553 square feet of additions enu-A living room was added in 1978 with dimensions of approximately 11 x 20 feet. permit by the County, a 10.5' x 16.3' patio was enclosed. The latter is virtu-In 1984, the patio was enclosed. In 1978 and 1984, additions were accomplished merated by Counsel for the Petitioner, other additions included the porch encloof this nonconforming use should be no greater than 355 feet. ally complete but unused. The roadside house contained two rooms and an open that were made to this property totaled approximately 800 square feet. pursuant to a permit being obtained from Baltimore County. The middle dwelling sure of 125 square foet on the roadside dwelling, 9.6 square feet more related porch in 1955. About 1965, without the benefit of a permit, the porch, approxitherefore believe that removing part of the additions and in particular, the to the 1978 permit and the 1957 second bedroom of 119 square feet on the wateron the property existed prior to 1955 that had never been expanded. The mately 12.5 x 10°, was enclosed for a bathroom and in 1979, by permit #21548, a THE PROPERTY OF THE PROPERTY O The second second 1984 addition, is necessary in order to have the construction on this property roadside dwelling existed prior to 1955. In 1978, pursuant to a permit, a 12' x 15' bedroom was added. The son filed the applications for permit, in each 5 After due consideration of the testimony and evidence presented, in the edroom was added. Mr. Chiofolo maintained that no other expansions on any showing only one dwelling on the propert nstead of the existing opinion of the Deputy Zoning Commissioner, the 1955 waterside house was a rec-ALBERT OF THE PROPERTY OF THE tangular building 38.8 Feet in length and between 11.4 feet and 12 feet wide,







