

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2259

September Term, 2016

WESTMINSTER LIVESTOCK AUCTION &
AUCTION SERVICES, LLC, ET AL.

v.

MAYOR & COMMON COUNCIL OF
WESTMINSTER

Eyler, Deborah S.,
Berger,
Reed,

JJ.

Opinion by Berger, J.

Filed: November 27, 2017

This case involves an administrative appeal from a decision of the Carroll County Board of Zoning Appeals granting a request for a variance filed by the City of Westminster’s Department of Public Works (“the City”). The appellants (“Appellants”), various neighbors of the property for which the variance was granted,¹ sought judicial review in the Circuit Court for Carroll County. The circuit court affirmed the administrative action of the Carroll County Board of Zoning Appeals.

Appellants noted a timely appeal to this Court, presenting two questions for our review:

- I. Did the Board of Zoning Appeals provide sufficient reasoning for its conclusion that a variance should issue, where the record failed to reflect or support a finding that there were conditions that existed peculiar to the property, thereby allowing a requested reduction of required setbacks for the Westminster Wastewater Treatment Plant?
- II. Did the Circuit Court erroneously conclude that the existence of Little Pipe Creek on Appellee’s property constituted a unique circumstance supporting the Board of Zoning Appeals’ findings, when considering whether the Board of Zoning Appeals’ decision provided substantial evidence of conditions peculiar to the property supporting the granting of a variance for required setbacks?

The City moved to dismiss the appeal. For the reasons explained herein, we shall grant the City’s motion to dismiss the appeal.

¹ The appellants are: Westminster Livestock Auction & Auction Services, LLC; Earl Gouker; Victoria Gouker; Robert Andrew Ruff, III; Michele Ruff; and Farm Content, LLC.

FACTS AND PROCEEDINGS

The City operates a wastewater treatment plant (“the Plant”) on property (“the Property”) located at 1161 Old Windsor Pike in Carroll County, Maryland. On February 17, 2016, the City filed a request for a zoning variance in order to perform various improvements to the property. The Plant required upgrades in order to comply with State-mandated limits on the quantities of certain nutrients, including nitrogen and phosphorous, that may be discharged from wastewater treatment facilities.

At the time of the variance request, the Property was located in Carroll County outside the boundaries of the City of Westminster.² The applicable zoning for the Property required a side yard setback of fifty feet and a rear yard setback of 100 feet. The City sought to reduce the required side yard setback to nine feet and the rear yard setback to twenty-two feet. The basis for the City’s variance request was that the improvements to the Plant could not practically be built in a manner that would not intrude upon the setbacks while allowing the Plant to continue operating during construction.

The Board of Zoning Appeals granted the City’s requested variance on May 3, 2016. The Appellants filed a petition for judicial review on May 27, 2016, and the circuit court subsequently affirmed the decision of the Board of Zoning Appeals on December 2, 2016. The circuit court determined that there was “substantial evidence in the record to support the [Board of Zoning Appeals]’s findings” and that the findings of the Board of Zoning

² As we shall explain *infra*, the status of the Property and the applicable zoning has subsequently changed.

Appeals were “sufficient as a matter of law.” Thereafter, the Appellants noted an appeal to this Court.

On June 12, 2017, the City adopted Resolution No. 17-01, annexing the Property into the City, effective July 27, 2017. No petition for referendum of the annexation was filed. The City moved to dismiss the appeal in the instant case, arguing that the annexation of the Property rendered the appeal moot.

MOTION TO DISMISS

A case is moot when there is no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant. *Suter v. Stuckey*, 402 Md. 211, 219 (2007). Only in rare instances will the reviewing court address the merits of a moot case. *Id.* at 220 (“Under certain circumstances, however, this Court has found it appropriate to address the merits of a moot case . . . If a case implicates a matter of important public policy and is likely to recur but evade review, this court may consider the merits of a moot case.”) (citations omitted).

The City asserts that this appeal is moot because the Carroll County Zoning Ordinance no longer applies to the Property. Pursuant to Md. Code (2013), § 5-213 of the Local Government Article (“LG”), “a municipality may adopt zoning regulations, subject to any right of referendum of the voters at a regular or special election as may be provided by the municipal charter.” A locality may, in order “to promote the health, safety, and general welfare of the community,” regulate, *inter alia*, “the height, number of stories, and size of buildings and other structures” as well as “the location and use of buildings, signs, structures, and land.” Md. Code (2012), § 4-102(d) of the Land Use Article.

As a result of the annexation of the Property, the Zoning Ordinance of the City of Westminster applies to the Property. The Zoning Ordinance of the City of Westminster, Maryland

appl[ies] to all land, buildings, properties and their uses within the territorial limits of the City of Westminster. **Should the territorial limits be expanded by annexation, the Zoning Maps applicable under the Carroll County Zoning Ordinance shall be immediately effective in the City of Westminster upon such annexation unless and until otherwise changed pursuant to this chapter.**

Westminster Zoning Ordinance, § 164-5 (emphasis added). *See also* LG § 4-416(a)(1) (“Notwithstanding § 4-104(f) of this title, if an area is annexed to a municipality that has planning and zoning authority at the time of annexation, the municipality shall have exclusive jurisdiction over planning, subdivision control, and zoning in the area annexed.”).³ Accordingly, as a result of the annexation, the Carroll County Zoning Ordinance no longer applies to the Property. The Westminster Zoning Ordinance permits the use of the Property as a wastewater treatment plant with a front yard setback of ten feet, a side yard setback of zero feet, and a rear yard setback of five feet. *See* Westminster Zoning Ordinance § 164-63.

³ LG § 4-104(f) provides: “Article XI-E of the Maryland Constitution, this division, and Division I of the Land Use Article do not authorize a municipality, through procedures under this title or other changes in the municipal charter, to exercise planning authority, subdivision control, or zoning jurisdiction in a political subdivision in which a State, regional, or county unit exercises planning authority, subdivision control, or zoning jurisdiction.”

This appeal is moot because there is no effective remedy that this Court could grant. *Suter, supra*, 402 Md. at 219. Even if we were to agree with the Appellants that the variance in the present case was improperly issued, there is no remedy that this Court could order.⁴ We could not remand to the Carroll County Board of Zoning Appeals because the Carroll County Board of Zoning Appeals no longer has any authority over the Property.

In their response to the City’s motion to dismiss, the Appellants do not address the City’s assertions that this matter is moot. Rather, the Appellants assert that the City’s “attempted annexation” of the Property was “unlawful and of no force or effect because it creates an enclave of unincorporated area.” This Court cannot -- and will not -- make any determination as to the lawfulness of the City’s annexation of the Property. Indeed, such a determination is not a task for an appellate court, nor is there any evidence in the record which would form a basis for such a determination.⁵

The City’s annexation of the Property has rendered this appeal moot. Further, this is not a case that implicates a matter of important public policy and is likely to recur but evade review. Accordingly, we shall grant the City’s motion to dismiss.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANTS.

⁴ We do not suggest in any way that the variance was improperly issued.

⁵ The Appellants characterize the annexation of the Property as being motivated by the City’s “[a]pparent fear[]” of “the outcome of this appeal.” There is no evidence in the record to support this characterization by the Appellants.