Circuit Court for Montgomery County
Case No. 450978-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1687
September Term, 2019

BOARD OF APPEALS FOR MONTGOMERY COUNTY

v.

LARRY J. CREWS, *et al.*

Nazarian,
Friedman,
Wells,

JJ.

Opinion by Friedman, J.

Filed: July 6, 2021

This case concerns the application of a provision of the Montgomery County Zoning Ordinance regarding accessory buildings (basically non-residential outbuildings) on a property-owner's lot. The rule, which the parties refer to as the "50% Rule," provides:

> The maximum footprint of an accessory building on a lot where the main building is a detached house is 50% of the main building or 600 square feet, whichever is greater.

MONT. CNTY. ZONING ORDINANCE, § 59-4.4.6.B.2.d. Larry and Sharon Crews, property-owners in Montgomery County and appellees here, have several accessory buildings on their property and read this provision to apply individually to each accessory building. According to the Crewses' interpretation, no single one of their accessory buildings is or can be bigger than 50% of the size of their house or 600 square feet, whichever is greater. The appellant Board of Appeals, by contrast, reads the provision to apply cumulatively to all of the Crewses' accessory buildings. Thus, according to the Board, the cumulative total of the square footage of all of the Crewses' accessory buildings cannot exceed 50% of the size of their house or 600 square feet, whichever is greater. For the reasons that follow, we hold that the Crewses' interpretation is correct as a matter of law and therefore affirm the decision of the Circuit Court for Montgomery County.

BACKGROUND

Mr. and Ms. Crews own a 29,714 square foot lot in Silver Spring. The Crewses' lot is improved with a detached home of 1,176 square feet and seven (count 'em, 7) accessory buildings: (1) a long, narrow building, that looks like a single-wide mobile home or construction trailer of 840 square feet; (2) a shed of 130 square feet; (3) a shed of 100 square feet; (4) a Costco canopy shed of 200 square feet; (5) a second Costco canopy shed

of 200 square feet; (6) a proposed canopy shed of 200 square feet; and (7) a second proposed canopy shed of 200 square feet.[1] Accessory buildings #6 and #7 are the subjects of this appeal. The Crewses applied for permits to build Accessory buildings #6 and #7 but when the permits weren't forthcoming, as we describe below, built them anyhow. As a result, they now have seven accessory buildings that have a cumulative total square footage of 1,870 square feet.

The Crewses' applications for permits for accessory buildings #6 and #7 were denied by the Montgomery County Department of Permitting Services. The Crewses appealed to the Board of Appeals, which denied their appeal. The Crewses then petitioned for judicial review in the Circuit Court for Montgomery County, which reversed the Board and ordered Permitting Services to issue the permits. The Board appealed to this Court.

DISCUSSION

In appeals from decisions of administrative agencies, we don't review the decision of the circuit court, but look back and review the decision of the agency. We give some deference to the agency's legal interpretation of its governing statute, but otherwise do not defer to the agency when we find their decision is based on erroneous legal conclusions. *Priester v. Board of Appeals of Baltimore Cnty.*, 233 Md. App. 514, 534 (2017). Here, we

[1] Regrettably, the record does not give us many details about the construction, permanence, and use of the Crewses' collection of accessory buildings. We assume that the Crewses' accessory buildings are all permanent structures and subject to the Zoning Ordinance.

are reviewing the agency's interpretation of its governing statute, the Montgomery County Zoning Ordinance, so we are mindful and respectful of the Board's expertise.

As we are engaged in statutory interpretation, we are attempting to determine the intention of the legislative body that adopted the Zoning Ordinance, in this case, the Montgomery County Council. Our analysis begins with the plain ordinary meaning of the statute, as that is often the best indication of the legislative intent. *Daughtry v. Nadel*, 248 Md. App. 594, 611-14 (2020). We also look at the 50% Rule in the context of the Zoning Ordinance as a whole, and in doing so must ensure all of the Zoning Ordinance's parts are in harmony with each other. *Id.*

There is no difficulty in applying the 50% Rule when a property-owner has a single accessory building. The accessory building cannot be larger than 50% of the size of the main building or 600 square feet, whichever is greater. The problem comes, however, when a property-owner wishes to have two or more accessory buildings. As a matter of logic, we can see three alternatives: (1) no property-owner is allowed to have more than one accessory building; (2) a property-owner may have more than one accessory building and each accessory building can have a maximum footprint that is 50% of the main building or 600 square feet, whichever is greater; or (3) a property-owner may have more than one accessory building but all of the accessory buildings can have a cumulative total maximum footprint that is 50% of the main building or 600 square feet, whichever is greater.

No party is arguing for Option 1, that property-owners cannot have multiple accessory buildings regardless of their size. There are several reasons for this. Most basically, it is because the subject of the 50% Rule is the accessory building, not the lot. It

is a rule about how big an accessory building can be, not how many accessory buildings a property-owner can have or how many accessory buildings may be on a property.

Additionally, the Montgomery County Zoning Ordinance contains a very standard interpretive provision, that says that the "singular includes the plural."[2] This interpretive rule makes clear that a property-owner can have more than one accessory building. The interpretive rule allows the singular noun "footprint" to be read as the plural noun, "footprints." The interpretive rule allows us to delete the indefinite article "an," which means "one." *Pleasants Investments v. SDAT*, 141 Md. App. 481, 496 (2001). And it allows the singular noun "accessory building" to be read as the plural noun "accessory buildings." Thus, applying the singular includes the plural interpretive rule to the 50% Rule results in the following: "The maximum footprints of ~~an~~ accessory buildings on a lot where the main building is a detached house is 50% of the main building or 600 square feet, whichever is greater." (strikethrough indicates deletion; underline indicates substituted text). Thus, we know that there is no prohibition on having more than one accessory building.

This understanding of why Option 1 is incorrect also begins to explain why Option 3 (the Board's interpretation) is also not correct. Even accounting for the singular including the plural, the 50% Rule is still directed at the accessory buildings, not the lot. It says how big the accessory buildings can be. Moreover, there is no other singular noun that could be logically made into a plural. That is, it doesn't make sense or advance the Board's argument to talk about "lots" instead of "lot," "detached houses" instead of "detached house," or

[2] The full text of that interpretive rule is: "The singular includes the plural and the plural includes the singular." MONT. CNTY. ZONING ORDINANCE, § 59-1.4.1.

"main buildings" instead of "main building." Thus, we have gone as far as we can with the "singular includes the plural" interpretive tool. It just doesn't get us any further.[3] In the end, we think the text of the rule suggests Option 2 as the correct reading.

To completely rule out Option 3 we rely on two other interpretive tools. First, we are compelled to read statutes and ordinances as written and we disfavor an interpretation that requires us to add words to make them work. *Taylor v. NationsBank, N.A.*, 365 Md. 166, 181 (2001). Although Option 2 is improved and clarified if we pretend the word "each" is in the text of the ordinance, it isn't necessary to the interpretation. By contrast, Option 3 cannot work unless we add the phrase "cumulative total" or the like to the text of the ordinance. As a result, we are constrained to prefer Option 2. And, second, as the circuit court pointed out, reading the 50% Rule as a lot coverage rule makes it redundant to the actual lot coverage rule, which limits a property-owner to 15% lot coverage. MONT. CNTY. ZONING ORDINANCE, § 59-4.4.6.B.1. (stating in Table 4.4.6B that the "Coverage (max)"

[3] Most of the Board's arguments are directed at this "singular includes the plural" interpretive tool, including its arguments below and in this Court and the legislative history documents that it has supplied. While these arguments are useful in explaining why Option 1 is not appropriate—an argument nobody is advancing—they offer no help in picking between Options 2 and 3. Moreover, even if they did, that isn't the point of the interpretive technique. The purpose of "singular includes the plural" rules of construction, here and elsewhere, is to resolve ambiguities in statutes, not change the statutes' meaning. *See, e.g.*, SHAMBIE SINGER & NORMAN SINGER, 2A SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 47:34 (7th ed. 2010); *Diaz v. State*, 129 Md. App. 51, 84-85 (1999) (permitting flexible interpretation without changing statute's meaning). The rule of construction does not mean that singular and plural words are always interchangeable, just that where there is an intention for a statute to apply to a subject, irrespective of whether there is more than one, then the statute will apply. *See, e.g.*, 2A SUTHERLAND § 47:34.

for a "Lot" is "15%"). We will not read the 50% Rule to obviate the lot coverage rule.[4] Thus, the zoning ordinances, read in context, support our reading as well.

The best reading of the 50% Rule is Option 2—that the 50% Rule permits landowners to have two or more accessory buildings on their lot and it applies to each accessory building individually. If the Montgomery County Council wants the 50% Rule to apply to the cumulative total square footage when there are two or more accessory buildings on a lot then it will need to amend the language of the 50% Rule. We affirm the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; CASE REMANDED TO THE BOARD OF APPEALS FOR MONTGOMERY COUNTY TO ISSUE THE PERMITS; COSTS ASSESSED TO THE APPELLANT.

[4] The Board argued that Option 3 does not make the lot coverage rule redundant, but we disagree. The argument that the 50% Rule and the lot coverage rule can coexist ignores the fact that under the Board's interpretation a property-owner could be prevented from using the full 15% of their lot if they have a small home and are, as a result, limited to only a single 600 square foot accessory building. The Crewses face this very situation: under the lot coverage rule they could cover approximately 4,500 square feet of their lot, but under the Board's interpretation of the 50% Rule they would be limited to their 1,176 square foot home and a single 600 square foot accessory building—only 5.98% of their lot. In that situation, the lot coverage rule serves no purpose at all, because the 50% Rule is, in fact, dictating a much lower maximum lot coverage. We are not persuaded that this is a reasonable interpretation of the Zoning Ordinance and, therefore, we agree with the circuit court.