SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DE 19947

March 27, 2006

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RE: McGuiness v. Board of Adjustment of the Town of Henlopen Acres
C.A. No. 05A-02-003-ESB

Date Submitted: December 8, 2005

Dear Counsel:

This is my decision on the Motion for Reargument filed by Stephen and Kathleen McGuiness (the "McGuinesses"). The McGuinesses have requested me to reconsider my decision affirming the Board of Adjustment's (the "Board") denial of their application for a building permit for a new home in the Town of Henlopen Acres (the "Town"). The McGuinesses' Motion for Reargument is denied for the reasons set forth herein.

STATEMENT OF FACTS

The McGuinesses submitted an application to the Town for a building permit for a new, two-story, 7,057 square-foot home.[1] The home includes a garage and four covered porches. The first and second floor porches at the rear of the house are enclosed with screens. The second floor porch at the front of the house is enclosed by half-walls. The first floor porch at the front of the house is supported by five columns, but is otherwise open (See Exhibits 1 and 2 attached hereto). The zoning

[1]The McGuinesses' original application was for 6,706 square-foot home. The McGuinesses subsequently revised their home plans, resulting in a revised application being submitted for a 7,057 square-foot home.

officer denied the application because the McGuinesses' home exceeded the zoning code's 6,000 square-foot limitation.[2] The McGuinesses appealed the zoning officer's decision to the Board, arguing that the zoning code was ambiguous and that the 6,000 square-foot limitation applied only to the "heated living space" of their home. The Board denied the McGuinesses' appeal, reasoning that the zoning code was not ambiguous and that the home exceeded the 6,000 square-foot limitation. The McGuinesses then filed an appeal with this Court.

The McGuinesses raised three arguments in their appeal. One, the McGuinesses argued that the Board committed an error of law by enforcing an ambiguous ordinance. I concluded that the ordinance was not ambiguous. Two, the McGuinesses argued that the Board's decision was not supported by substantial evidence in the record. I concluded that once the zoning officer determined that the McGuinesses' new home exceeded 6,000 square feet, that no other factual finding was necessary. Three, the McGuinesses argued that the Board committed an error of law by not providing a rationale for its decision prior to issuing its written decision. I concluded that the case involved a decision by a zoning officer that the McGuinesses' home exceeded the 6,000 square-foot limitation and, as such, the rationale for the Board's decision was self-evident. The McGuinesses' Motion for Reargument focuses on my conclusion that § 130-19F was not ambiguous.

STANDARD OF REVIEW

The standard for a Rule 59(e) motion for reargument is well-defined under Delaware law. A motion for reargument "will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed

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[2] § 130-19F. The maximum square footage of a dwelling unit shall not exceed the [sic] 6,000 square feet.

the outcome of the underlying decision." *Board of Managers of the Delaware Criminal Justice Information System v. Gannet Co.*, 2003 Del.Super. Lexis 27 at *4. A motion for reargument is not intended to rehash the arguments already decided by the court. *McElroy v. Shell Petroleum, Inc.*, Del.Supr., 618 A.2d 91 (table), No. 375, 1992, Moore, J. (Nov. 24, 1992)(order). Even though I do not believe that I misapprehended either the law or facts in my previous decision, I will briefly address the McGuinesses' arguments.

DISCUSSION

1. Dwelling Unit Definition

The McGuinesses argue that § 130-19F is ambiguous because "dwelling unit" is not a defined term and since it is not a defined term, it was impossible for them to know where their dwelling unit starts for the purpose of obtaining an exterior dimension. If a word in an ordinance is not further defined, then it is to be given its ordinary, common meaning. *Coastal Barge Corp. V. Coastal Zone Industrial Control Board*, 492 A.2d 1242, 1245 (Del. 1985). A "dwelling" is commonly understood to be a "house." *Webster's Second, New World Dictionary*, 436 (1982). The McGuinesses' garage and porches are parts of their house, just as their living room, kitchen and bedrooms are parts of their house. The McGuinesses' problem is not that they didn't know what to measure to calculate the square footage of their house. Their problem is that their house exceeds 6,000 square feet, leaving them to argue that some part of it should be excluded so that they can get under the limit. Thus, the McGuinesses argue that they cannot tell if "dwelling unit" includes or excludes their garage and porches. However, the reality is that the McGuinesses' garage and porches are, as a matter of undeniable fact, parts of their house that make it larger than it would be without them. Thus, there is simply no reason to exclude them from the 6,000 square-foot limit set forth in §130-19F.

2. Application Form

The McGuinesses argue that the Town's application form "points out the deficiency of the undefined term 'dwelling unit' for purposes of Section 130-19F." The McGuinesses note that the Town's application requests "dwelling" information, not "dwelling unit" information. They note further that the proposed construction section of the application, in an area captioned "Total Square Footage," seeks information on "Living space," "Garage and porches," and "Terraces/accessory uses." The McGuinesses go on to note that these calculations were: a) 5,947 for living space; b) 759 for garages and porches; and c)1,137 for terraces and accessory uses. Thus, according to the McGuinesses, the Town totaled the "living space" with "garage and porches" to arrive at 6,706 square feet. The McGuinesses then use the manner in which the Town labels and collects information to argue that since they don't dwell or live in the garage or porches, then these parts of their house should not count towards the 6,000 square-foot limit.[3] The trouble with this argument is that it doesn't reflect the plain language and obvious purpose of §130-19F. Obviously, if the Town had intended to exclude garages and porches from "dwelling unit," or to only count those areas of a dwelling unit where people actually dwell, then the Town would have done so. The fact that the McGuinesses do not "dwell" in these areas is irrelevant. The purpose of the ordinance is to limit the size of houses in the Town. To argue, as the McGuinesses do, that parts of their house, like the garage and porches, which increase the size of their house, should be excluded because they don't "dwell" in them is simply inconsistent with the plain language and purpose of §130-19F.

[3]I note that because three of the home's porches are enclosed by either screens or half-walls, the McGuinesses will probably be "dwelling" in them.

3. Floor Area Ratio

The McGuinesses argue that §130-19F is ambiguous because another section of the Town code, §130-19E,[4] establishes the "floor area ratio" as "all of that which is under roof, including garage and storage." The McGuinesses' rationale for this argument is that §130-19F does not specify if "dwelling unit" includes garages and storage or whether it includes the "exposed air space under roof, such as entrance ways, balconies or porches." The McGuinesses use this to claim that they meet the 6,000 square-foot limit by adding the total heated space of their house (5,097) to the garage (788) to come up with 5,885 square feet. The McGuinesses got under the limit by excluding their porches. They rationalize the exclusion of their porches by asking "why are porches, which do not share the same roof system as the living space, part of a dwelling unit unless so defined by the ordinance?" The McGuinesses sum up this argument by stating that the ambiguity of the term "dwelling unit" is that it does not include the "floor area ratio" which includes garage and storage under roof. One problem with this argument is that all of McGuinesses' porches are all under roofs, which together make up the roof system of their house. The second problem is that the "floor area ratio" for the McGuinesses' house, which includes the porches, is 7,057.[5] To the extent that the

[4] §130-19E states, "the floor area ratio shall not exceed 30% and include all that which is under roof, including garage and storage. The purpose of this ordinance, according to the Town, is to make sure that houses are not too large for the lots. The smallest lot in the Town is 10,000 square feet, which means that any dwelling unit built on it would have to be no more than 3,000 square feet, one-half of the maximum.

[5]

1st Floor	2769
2nd Floor	2328
Garage	788
First Floor Screened Porch	456
First Floor Entry Porch	479
Second Floor Screened Porch	69
Second Floor Roofed Balcony/Porch	168
	7,057

McGuinesses are arguing that their porches should be excluded, then I would note, as I have previously, that §130-19F does not, by its plain language, exclude porches. Moreover, as I have also noted before, the porches, like the garage, are integral parts of the McGuinesses' house that make it larger than it would be without them. It would be illogical to exclude a part of the McGuinesses' house that makes it larger than it would otherwise be from an ordinance whose purpose is to limit the size of houses.

I note that given the purposes of §§130-19E and F it is also only logical that the square footage of the McGuinesses' house be the same for both calculations. §130-19F is intended to limit the size of a house regardless of the size of the lot that it is to be built on. §130-19E is intended to limit the size of a house depending on the size of the lot that it is to be built on. Both sections are intended to limit the size of the same house. It simply seems illogical to argue, as the McGuinesses do, that the same house is 5,097 square feet under one section of the ordinance, but 7,057 under another section of the ordinance, when both sections address the size of the same house and are directed towards limiting the size of the same house.

4. <u>House Plans</u>

The McGuinesses argue that I, without reviewing their house plans, stated that all of their house is under one roof. They go on to state that their house plans consist of 7 to 10 roof systems. This means, according to the McGuinesses, that I overlooked significant evidence with respect to their house that may affect my decision. I certainly looked at the McGuinesses' house plans. The McGuinesses have simply missed the point of my comment about the roof. They have clearly submitted plans for a "dwelling unit." Everything that they would like to exclude, such as the garage

and porches, is an integral part of the dwelling unit that is under a roof that is a part of the roof system. The garage and porches are not free-standing structures separate from the "dwelling unit." Instead, they are integrated parts of the "dwelling unit." Moreover, they are all parts that make the "dwelling unit" bigger than it would otherwise be, which is why they are relevant and count towards the 6,000 square-foot limitation. The McGuinesses further miss my point by arguing that the "ambiguity of the ordinance is highlighted by the illogical possibility of including exposed to the element roof space as part of the dwelling unit, even though this space is not protected from the elements, such that it could be used for year-round dwelling." This is nothing more than the "it doesn't count if we don't dwell in it" argument. The problem with this argument is that it ignores the simple fact that non-dwellable space, such as a garage or a porch, is an actual part of the dwelling unit that makes the dwelling unit bigger, which is what §130-19F seeks to limit.

5. <u>Other Municipalities</u>

The McGuinesses argue that §130-19F is ambiguous because other municipalities have defined "dwelling unit." What other municipalities have done is certainly interesting, but in this case it does nothing to make "dwelling unit" ambiguous. The McGuinesses say the ambiguity is further highlighted by the fact that the terraces on their house were not included in the total square-foot limitation. The Town notes that terraces are not included because they are not connected to the "dwelling unit" by a roof and do not visually increase the size of the "dwelling unit." This is certainly a rational distinction. Moreover, the McGuinesses' revised house plans do not have any terraces.

6. <u>Confusion</u>

The McGuinesses lastly argue that several Board members and members of the public thought

that §130-19F was ambiguous. Again, this is interesting, but I didn't find it persuasive at all that some people were confused. I had no trouble at all in applying §130-19F to the McGuinesses' house plans and reaching the same conclusion that the zoning officer and the Board did.

This is an exceedingly simple case. The Town limits a "dwelling unit" to 6,000 square feet. The McGuinesses submitted plans for a "dwelling unit" that exceed 6,000 square feet. Thus, their application for a building permit was properly denied. The things that the McGuinesses would like to eliminate from the square-foot calculations, such as their garage and porches, are such integral parts of their "dwelling unit" that no one could reasonably conclude that they were not a part of it for the purposes of §130-19F.

CONCLUSION

The McGuinesses' Motion for Reargument is Denied.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley