Tax Map/Block/Parcel No. 33-22-92

I ding Permit/Zoning Certificate No. 03-2603

Case 4825

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Patton Homes, Inc.(Cape Property)
10 Venture Way, Suite A
Sykesville, Maryland 21784

ATTORNEY: Clark R. Shaffer

REQUEST: An appeal of a letter from the Director of Planning, dated June 17, 2003, regarding the 12-month deferral on all residential development (Ordinance 03-11).

LOCATION: The site is located at the south side of Beckleysville Road, Hampstead, MD 21074 on property zoned "R-40,000 & C" Residential and Conservation Districts in Election District 8.

BASIS: Code of Public Local Laws and Ordinances, Chapter 223-186 A 1 and Article 66B, Section 4.07(d)1

HEARINGS HELD: August 26, 2003 and September 22, 2003

FINDINGS AND CONCLUSION

On August 26, 2003, and September 22, 2003, the Board of Zoning Appeals (the Board) convened to hear an appeal, of a letter from the Director of Planning, dated June 17, 2003, regarding the 12-month deferral on all residential development (Ordinance 03-11). Based on the testimony and evidence presented, the Board made the following findings and conclusion:

The facts are essentially not in dispute. The Appellant is in the process of obtaining the necessary approvals from the County for a residential development plan known as the "Cape Property" subdivision. The development is classified as a major subdivision under the applicable County subdivision regulations, and it will consist of 21 lots located on the south side of Beckleysville Road. A portion of the property is zoned "R-40,000" Residential and another section is "C" Conservation. On June 5, 2003, the County Commissioners adopted Ordinance 03-11, commonly referred to as the "deferral ordinance", which provides in relevant portion at Article I, § (i):

> ***The submittal, acceptance, review, processing and approval of all major residential subdivisions, minor residential subdivisions in any district except for the Agricultural District, and site plans for residential development as these terms are defined under the Code shall be deferred for a period of twelve (12) months after the effective date of this Ordinance except for those plans approved by the Planning and Zoning Commission prior to the effective date of this Ordinance.***

Although the Appellant was in the process of obtaining the necessary approvals of the plan from various county agencies, it had not received preliminary plan approval as of the effective date of the deferral Ordinance, which was June 10, 2003. No construction on the property had commenced. On June 17, 2003, Steven C. Horn, Director of the Carroll County Department of Planning sent a letter to the Appellant notifying the Appellant of the adoption of the deferral Ordinance, and informing the Appellant that its "property is subject to the deferral, and therefore, all processing of the plan would cease as of June 10, 2003." The Appellant filed the written appeal from the letter to the Board under § 4.07 (d)(1) of Article 66B of the Annotated Code of Maryland and § 223-186 A(1) of our Code of Public Local Laws and Ordinances. The Appellant characterized the letter from Director Horn as, "an order, requirement or determination made by an administrative officer" concerning a land use matter under Article 66B or the Zoning and/or subdivision regulations found in our Code of Public Local Laws and Ordinances.

We are thus called upon to conduct our own review of the matter appealed from, and in doing so exercise our own judgment under the aforementioned provisions of law. We may affirm, reverse, or modify in whole or in part, the order or decision under review. In addition, we may issue our own order or decision, as we have "all the powers of the administrative officer from whom the appeal is taken." Article 66B, § 4.07 (h). However, are not empowered to make land use policy or strike down or rewrite ordinances.

We find that the act which gave rise to the appeal was the adoption of the deferral Ordinance by the County Commissioners, rather than the notification letter sent by Director Horn to the Appellant. As the language of the deferral Ordinance is clear and unambiguous, it is apparent that Director Horn had no authority to continue processing the Appellant's plan after the adoption of the deferral Ordinance. Appellant's attempt to "de-link" the adoption of the deferral Ordinance and the letter sent by Director Horn for purposes of its appeal is illusory, as the granting of the appeal would effectively vitiate the deferral Ordinance. We find that the "decision" which is the subject of the appeal is not in fact a final decision, order, or determination. It is at most a recitation of facts regarding the adoption of the deferral Ordinance by the County Commissioners. The Planning Director, in the letter dated June 17, 2003, did not grant, deny, decide or order anything. The Appellant's plan would have been deferred even if the letter had not been sent. Consequently, we conclude that the letter was not an approval or decision appealable to this Board.

Turning to the other arguments raised by the Appellant, we find that although they are characterized as constitutional arguments against the application of the deferral Ordinance to the project, they are in fact directed at the deferral Ordinance itself. As stated earlier, we have no authority to strike or vacate the deferral Ordinance. We cannot uphold the appeal without disregarding the plain language of the Ordinance. If the deferral Ordinance is valid, then the action taken by Director Horn in this instance is valid. Appellant has presented no evidence to show that its residential development plan differs from others similarly situated such that Ordinance 03-11 is unconstitutional as applied to it. Furthermore, our jurisdiction does not include the authority to interpret and enforce contracts. Thus, we cannot entertain the Appellant's argument that the County is contractually bound to process the plan by virtue of the existence of concurrency management certificates. In addition, we have heard no evidence demonstrating any egregious misconduct on the part of Director Horn

or any other county official that was calculated to thwart this particular project. Thus, the estoppel argument is unsupported. As for the vested rights argument, for rights to "vest" in the zoning context, these must be, among other things, actual physical commencement of some significant and visible construction pursuant to a validly issued permit. It is undisputed that the subject property is raw land, and that no building permit has been issued or construction commenced on the ground. Accordingly, this argument must fail.

For the foregoing reasons the Appeal is denied.

Oct 15, 2003
Date

Jacob M. Yingling
Jacob M. Yingling, Chairman

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