Tax Map/Block/Parcel No. 70 -12 -166

Building Permit/Zoning Certificate No. 03-3304

Case 4867

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT:	Steven and Gail Dobay 6300 Ridge Road Mt. Airy, Maryland 21771
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 on Windmere Way, near Mt. Airy, on property zoned "R-40,000" Residential District in Election District 13.
BASIS:	Code of Public Local Laws and Ordinances, Chapter 223-186 A (1) and Article 66B, § 4.07 (d) 1
HEARING HELD:	January 6, 2004

FINDINGS AND CONCLUSION

On January 6, 2004, 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 our review of the Appeal documents, file contents, and arguments of counsel pertaining to a Motion to Dismiss filed by the Department of Planning, the Board made the following findings and conclusion:

The facts are essentially not in dispute. The property is the subject of a residential development plan known as "Fair Winds Estates, Lot 1". The development is classified as major subdivision under the applicable County subdivision regulations and will consist of 4 lots on Windmere Way near Mt. Airy. The property is zoned "R-40,000" Residential District. 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 for any plan as of the effective date of the deferral Ordinance, which was June 10, 2003. 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 within 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. 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). In addition, our Zoning Ordinance at Chapter 223-188 D of the Code of Public Local Laws and Ordinances requires us to "review the application or appeal for completeness, (and) … reject those applications which are not complete, and reject those that do not seek relief available by law."

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 23, 2003, did not grant, deny, decide or order anything. The Appellant's plans would have been deferred even if the letter had not been sent. We are not empowered to make our own land use policy or strike down County Ordinances. Consequently, we conclude that the letter was not an approval or decision appealable to this Board.

For the foregoing reasons the Motion to Dismiss is granted.

Jan 21, 2004
Date

Jacob M. Yingling, Chairman

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