

**Tax Map/Block/Parcel**  
No. 74-13-681

**Building Permit/Zoning**  
Certificate No. 04-3140

Case 4980

**OFFICIAL DECISION**  
**BOARD OF ZONING APPEALS**  
**CARROLL COUNTY, MARYLAND**

**APPLICANT:** Carrolltowne 4B, LLC, et. al.  
c/o SDC Group, Inc.  
P.O. Box 417  
Ellicott City, MD 21041-0417

**ATTORNEY:** J. Brooks Leahy  
**CO-COUNSEL:** Benjamin Rosenberg

**REQUEST:** An appeal of a Planning Commission decision denying the site plan for the Carrolltowne 4-B Apartment Complex.

**LOCATION:** The site is located on Kali Drive, off Ridge Road, Eldersburg, on property zoned "R-10,000" Residential District in Election District 5.

**BASIS:** Code of Public Local Laws and Ordinances, Chapter 223-186 A (3) and 223-186 B

**HEARING HELD:** October 26, 2004\*

**FINDINGS AND CONCLUSION**

On October 26, 2004, the Board of Zoning Appeals (the Board) convened to hear an appeal of a Planning Commission decision denying the site plan for the Carrolltowne 4-B Apartment Complex. Based on the testimony and evidence presented, the Board made the following findings:

The Appeal concerns a 20-acre parcel (+-) of land zoned "R-10,000" located on Kali Drive of Ridge Road in Eldersburg. The parcel is the final undeveloped parcel in the "Carrolltowne" planned unit development. The Appellant is proposing a 254-unit "town home" style apartment complex. The Carroll County Planning and Zoning Commission rejected the Plan on March 28, 1996, and the Board of Zoning Appeals denied an appeal of the Planning Commission's action on May 27, 1997. The matter was appealed to the Circuit Court for Carroll County. On April 19, 1999, the Honorable Luke Burns issued an Order in that case reversing the Board of Zoning Appeals and ordering "that the Carroll County Planning and Zoning Commission and the Carroll County

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Board of Zoning Appeals take whatever steps may be necessary to authorize the recording of the record plats for the final phase of the Carrolltowne Planned Unit Development forthwith without any limitation on building permits as may have been adopted by the Board of Zoning Appeals, the Planning Commission or the County Commissioners subsequent to October 17, 1995..." The site plan was not submitted to the County. Instead, the Appellant successfully sought a rezoning of the property by the Carroll County Commissioners to "B-G" General Business, to accommodate a commercial use. However, unbeknownst to the Appellant, their rezoning was part of a series of rezonings that were found to be illegal by the Court of Special Appeals on August 7, 2003, in Case No. 1989. In May 2004, the Appellant submitted a plan for development of the parcel as a Planned Business Center, at which time they were informed by County staff that the zoning for the parcel reverted to "R-10,000" after the Court of Special Appeals ruling in Case No. 1989. The Appellant promptly submitted the final site plan and record plat for the 254-unit apartment complex to the County. The plan was placed on the Planning Commission's agenda on August 27, 2004, at which time the Planning Commission again rejected the Plan. This Appeal followed.

The Board is now presented with the site plan that is nearly identical to the plan proposed over 9 years ago. In 1999, the Carroll County Circuit Court ordered the Planning and Zoning Commission and the Board to approve the plan and take whatever steps may be necessary to authorize the recording of the record plats for the final phase of the Carrolltowne Planned Unit Development forthwith..." However, no final record plats were forthcoming. Now, five years later, the plan is finally submitted. At the time of the Circuit Court's Order of 1999, the County Commissioners had in place a law specifying that "(a) site plan shall become void 18 months after the date of approval unless a building permit or a zoning certificate has been issued for the project." (Carroll County Public Local Laws and Ordinances, Chapters 103-196, formerly codified at 223-286). Judge Burns' Order of April 19, 1999, constituted an approval of the plan, which was not submitted by the Appellant to the County within the 18 months mandated by the law. There was no exemption from this requirement in Judge Burns' Order, as he clearly could not have envisioned that fully five years would elapse before the plan would be submitted to the County for signatures. The purpose of such "sunset provisions" is obvious and laudable. They protect the County and the public from dormant plans, which suddenly emerge without regard to the adequacy of the public infrastructure. Since the 18-month period after Judge Burns' approval of the plan in 1999, the County has determined that there are no available allocations of water capacity in the area of the proposed development. In addition, the Board of County Commissioners in 2004 effectively capped building in the subject area due to the lack of available water. Also, new County Ordinances regulating storm water management and forest conservation have been enacted. In short, the Appellant "sat on its rights" with regard to the

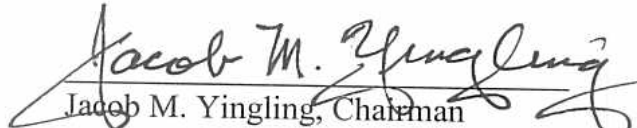
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development for so long that the regulatory regime and the County infrastructure have changed drastically. Had the Appellant acted on Judge Burns' Order promptly, the development would most likely be finished. However, this did not happen. Under these circumstances and after the passage of such a length of time, which could not have been envisioned by the Circuit Court, we find no error on the part of the Planning and Zoning Commission in denying the Plan. The Appeal is denied.

11-30-04  
Date

  
Jacob M. Yingling, Chairman

\*Due to the holiday, the time period for issuing a written decision in this case was extended by the Board in accordance with Carroll County Public Local Laws and Ordinances, Chapter 223-188 to November 30, 2004.