

Tax Map/Block/Parcel
No. 46-11-6

Building Permit/Zoning
Certificate No. 04-1390

Case 4940

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

APPLICANT: Sterling Land Company VIII, LLC
P.O. Box 264
Finksburg, MD 21048

ATTORNEY: John T. Maguire

REQUEST: An appeal of a letter from the Director of Planning, dated April 1, 2004, denying a request for an extension of Concurrency milestones on Berberi Hills, Section Two.

LOCATION: The site is located at Gorsuch Road at Tannery Road, Westminster, on property zoned "C" Conservation District in Election District 7.

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

HEARING HELD: June 24, 2004

FINDINGS AND CONCLUSION

On June 24, 2004, the Board of Zoning Appeals (the Board) convened to hear an appeal of a letter from the Director of Planning, dated April 1, 2004, denying a request for an extension of Concurrency milestones on Berberi Hills, Section Two. Based on our review of the Appeal documents, file contents, and argument 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 Appellant's twenty-four (24) lot major residential subdivision is known as "Berberi Hills" and is located at Gorsuch and Tannery Roads in Westminster. The property is zoned "C" Conservation. The Appellant is the holder of a concurrency management certificate issued by the County under its Concurrency Management and Adequate Public Facilities Ordinance (Chapter 167 of the Code of Public Local Laws and Ordinances). On March 4, 2004, the Appellants requested a 40-week extension of time to meet proposed milestones set forth in the concurrency management certificate. It was denied by the Director of the Department of Planning in a letter dated April 1, 2004. The Appeal to the Board was filed on or about April 29, 2004.

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On or about April 22, 2004, the County Commissioners adopted Ordinance 04-13, which repealed Chapter 167 of the Code of Public Local Laws in its entirety. It was replaced by Chapter 71, which is a new section governing the adequacy of public facilities. In Chapter 71-3(1), the new Ordinance provides that it is applicable to "major residential subdivisions". There is no appeal for milestones provided for in the newly adopted law.

Chapter 223-188D of the Code of Public Local Laws and Ordinances requires the Board 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." The language of Chapter 71-3(1) is clear and unambiguous, and it explicitly repealed Chapter 167, which is relied upon by Appellants. We cannot ignore the plain language of the new Ordinance, and find that Appellant must be governed by and follow the procedures set forth in it. We cannot grant the relief requested under the repealed ordinance, and we are not empowered to make our own land use policy or strike down County zoning ordinances. Accordingly, we conclude that we are not legally empowered to grant the relief requested, and the Appeal is dismissed.

Date

7/21/04


Jacob M. Yingling, Chairman