

Tax Map/Block/Parcel
No. 68-02-84

Building Permit/Zoning
Certificate No. 04-1050

Case 4937

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

APPLICANT: Neuman Homes Development, LLC
P.O. Box 580
Stevenson, MD 21153

ATTORNEY: Clark R. Shaffer

REQUEST: An appeal of a Decision of the Carroll County Planning Commission denying the preliminary plan for the Marabrooke Farm subdivision (10 lots), dated March 30, 2004, due to school enrollment projections.

LOCATION: The site is located on the southwest side of Bartholow Road, Sykesville, on property zoned "A & C" Agricultural and Conservation Districts in Election District 14.

BASIS: Code of Public Local Laws and Ordinances, Chapter 223-186

HEARING HELD: May 26, 2004

FINDINGS AND CONCLUSION

On May 26, 2004, the Board of Zoning Appeals (the Board) convened to hear an appeal of a Decision of the Carroll County Planning Commission denying the preliminary plan for the Marabrooke Farm subdivision (10 lots), dated March 30, 2004.

The Appellant is in the process of seeking preliminary plan approval for a residential development plan known as the Marabrooke Farm subdivision. The development is classified as a major subdivision under the applicable County subdivision regulations, and is to consist of 10 lots located on the south side of Bartholow Road, east of Klee Mill Road. A portion of the property is zoned "A" Agricultural and the other section is "C" Conservation.

The Planning Commission denied the preliminary plan after they concluded that school enrollment projections for the two schools that would serve the proposed subdivision exceeded their capacity on March 16, 2004. The Appellant has alleged that the decision of the Planning Commission was in error and has presented us with this appeal.

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Based upon the evidence presented, the Board makes the following findings. A concurrency management certificate was issued to the Appellant in July of 2002 for the project. The certificate was issued despite the fact that the Available Threshold Capacity Certificate for Schools, which is a form completed by the Carroll County Board of Education, indicated that the Linton Springs Elementary School and the Sykesville Middle School were projected to be overcrowded such that they exceeded 120% of the state rated capacity during the then current 6 year Capital Improvement Program. In short, the concurrency management should never have been issued due to this school inadequacy.

Complicating matters further is the existence of Resolution 539-02, which was adopted by the Board of County Commissioners on June 27, 2002. This Resolution, which was enacted pursuant to the County's concurrency management law, effectively "capped" the issuance of building permits in the area served by Sykesville Middle School from Fiscal years 2005 to 2008, when it was projected that a new school would be built. In issuing the concurrency management certificate, this Resolution was simply ignored.

In short, we find that Resolution 539-02, was a validly enacted building cap issued by the County Commissioners, who are the ultimate authority under the concurrency management process. The cap is binding in this case, and we have no authority to ignore it. The concurrency management certificate should never have been issued, and violated the Concurrency Management Ordinance. See Carroll County Code of Public Local Laws, Chapter 167-6 (B). For the foregoing reasons, we find no error in the Planning Commission's decision in this matter, and the appeal is denied.

Date

6/16/04


Jacob M. Yingling, Chairman