

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

Building Permit/Zoning  
Certificate No. 95-3812

Case 4072

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND

- APPELLANT:** Security Development Corporation  
P.O. Box 417  
Ellicott City, 21041
- APPEAL:** An appeal of the denial of consideration by the Carroll County Planning Commission October 17, 1995, of Applicants's site plan for Phase 1<sup>1</sup>, Section 4B of Carrolltowne Planned Unit Development subdivision for development of Parcel "A" into multi-family residential units pursuant to the approved Planned Unit Development of 20.408 acres
- LOCATION:** North of Kali Drive, East of Ridge Road in Election District 5
- BASIS:** Article 17, Sections 17.2(a) and 17.4; Ordinance 1E (The Carroll County Zoning Ordinance)
- HEARING HELD:** February 1, 1996; **DELIBERATIONS CONTINUED:** February 9, 1996

On February 1, 1996, the Board of Zoning Appeals (Board) heard testimony and received evidence concerning the appeal of the denial of consideration by the Carroll County Planning Commission (Commission) October 17, 1995, of the site plan for Section 4B of Carrolltowne Planned Unit Development subdivision for development of Parcel "A" into multi-family residential units pursuant to the approved Planned Unit Development of 20.408 acres located north of Kali Drive, east of Ridge Road in Election District 5.

At the conclusion of the hearing, the Board entered deliberations of the Case, but did not reach a decision. A motion that had been presented was tabled and the hearing was adjourned. On February 9, 1996, the Board met publicly to deliberate further. Following deliberations, Vice Chairman Schumacher motioned to affirm the appeal, subject to remanding the site development plan to the Commission for review, and further providing that an amended subdivision plat be submitted and reviewed by the Commission simultaneously with the site development plan. Mr. Raver seconded the motion and Chairman Reichlin concurred.

Articles and Sections cited below are of Ordinance 1E.

In accordance with the provisions of Article 17, Section 17.6.6 and 17.7

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<sup>1</sup>Phase 1 was cited in error. The correct citation is Section 4B of Carrolltowne Planned Unit Development.

and the Board's longstanding policy of visiting sites prior to public hearing, the Board visited the site January 17, 1996. The purpose of the visit was for the Board to view the site and adjacent properties so that the Board would be reasonably familiar with the properties to assist in the Board's appraisal of testimony and evidence, either pro or con, presented during the public hearing.

The Notice of Appeal, testimony and evidence comprising the record of this case are hereby included by reference in this decision.

The pertinent findings include the following facts:

#### FINDINGS OF FACT

The appellant filed the Notice of Appeal timely November 16, 1995.

The 20.408 acre site is zoned "R-10,000" Residence District as depicted on zoning map 74A, and is part of 155 acres of Carrolltowne Planned Unit Development. Section 14.8 governs planned unit developments. Single and two-family dwellings, town houses and garden apartments are allowed, subject to applicable requirements.

In 1972, the Commission designated the property suitable for a planned unit development and conditionally approved the preliminary site development plan November 11, 1975. The plan was amended and approved April 19, 1977.

The 1975 plan provided for a total of 751 dwellings (Appellant's Exhibit 6). Sixty percent, or 450 dwellings, were classified as multi-family dwellings by definition within Article 20. Of these, 318 were town houses and 132 were garden apartments. Sectional development of single and two-family dwellings followed recording of subdivision plats. Development of multi-family dwellings was pursued in 1983-1985. Thirty-two town houses were constructed in Section 3A following approval a revised site development plan for forty town houses and recording of the respective subdivision plat in plat book 26, page 197. (Appellant's Exhibits 5 and 11.)

On March 19, 1991, the Commission conditionally approved the preliminary subdivision plan for Section 4A of Carrolltowne P.U.D. (planned unit development) consisting of 81 lots and one parcel (Appellant's Exhibit 7). The parcel is the remaining 20.408 acres of the planned unit development and is identified as Parcel A on the recorded plat. Condition 12 of the Commission's March 27, 1991, authorization letter (Appellant's Exhibit 9) states:

Any further subdivision of the remaining tract shall require a preliminary plan for the balance of the property be prepared in accordance with all state and local regulations for review by the Carroll County Planning Commission.

Condition 23 from the same letter reads:

That the area shown as Section 4B be platted with a note stating that "No building permit or zoning certificate shall be issued for parcel until such time as a site development plan has been approved by the Carroll County Planning and Zoning Commission.["]

The plat, Appellant's Exhibit 1, depicting the 20.408 acre tract as Parcel A and a relatively large realigned stormwater management drainage and utility easement, was prepared, approved by the Commission for recording, and recorded in the land records of Carroll County with the note stating:

PROPOSED FUTURE LOTS OF CARROLLTOWNE SECTION 4B. NOT FOR RESIDENTIAL USE UNTIL SUBMITTED TO AND APPROVED BY THE CARROLL COUNTY PLANNING AND ZONING COMMISSION.

Although the wording of the note was changed in preparing the plat, the change did not alter the intent of the Commissions's condition of authorization.

The site development plan for Section 4B is the first detailed site development plan for the 20.408 acres submitted to the Commission for review. The plan depicts twenty-two apartment buildings with eight to sixteen apartments in each building for a total 254 three bedroom apartments.

The density factor listed in Section 14.8(e) for three bedroom multi-family or apartment dwellings is 1.5 dwelling units. Therefore, the 254 three bedroom apartments equal 381 dwelling units (254 apartments multiplied by 1.5 units equals 381 dwelling units). The number of apartments and density are less than originally approved. The site development plan indicates three phases of construction for completion of Section 4B.

On August 15, 1995, staff of the Bureau of Development Review presented the proposed site development plan to the Commission, noting, among many items, that the developer requested resubdivision of Parcel A and that Parcel A was included on plat recorded in Plat Book 37, page 20. Following discussion, the Commission deferred action on the plans, pending receipt of addition information.

On September 19, 1995, the proposed site development plan, which was also processed by the Bureau of Development Review as a preliminary subdivision plan for division of the parcel into two parcels, was presented to the Commission. The purpose of the proposed subdivision was to allow transfer of ownership. After considering the plans, the Commission requested the staff to provide additional information and deferred acting on the plans.

By letter dated October 12, 1995, the owner and developer withdrew the request for subdivision of Parcel A of Section 4A, identified as Section 4B (Appellant's Exhibit 14).

On October 17, 1995, the proposed site plan was again presented to the Commission. During the lengthy review it was noted that Parcel 4A was not recorded in the plat records for purposes of development, the owner and developer had withdrawn the request for subdivision of Parcel A, and that an amended

subdivision plat designating the purpose of Parcel 4B to be for residential development would be necessary in order for the Commission to review the site development plan.

APPLICABLE LAW

Section 17.2, General Powers, reads in relevant part:

The Board shall have the following powers:

- (a) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this ordinance or of any ordinance adopted pursuant thereto.

In exercising the above-mentioned powers, the Board may, in conformity with the provisions of law and this ordinance and amendments thereto, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made.

Section 17.4.2 reads in relevant part:

An appeal from an order, requirement, determination or a decision of an administrative official enforcing the provisions of Article 66B, or this Ordinance shall be filed within thirty (30) days from the date of the action appealed.

Article 66B of the Annotated Code of Maryland, Section 4.07 (d) specifies in part:

The board of appeals shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this article or of any ordinance adopted pursuant thereto.

The Board is also governed by decisions of the courts. The decision of the Court of Special Appeals of Maryland in *The Wharf at Handy's Point, Inc. v. Department of Natural Resources, et al.*, 92 Md. App. 659 (1992) confirmed that planning commissions of nonchartered counties constitute "an administrative official" as cited in the statute.

REASONING

The county's zoning ordinance and subdivision regulations are adopted pursuant to Article 66B of the Annotated Code of Maryland.

The zoning ordinance and subdivision regulations are employed by the Commission in regulating land use within the county. Final approval of site development plans and subdivision plats rests with the Commission.

With the Commission's review and conditional authorization of the preliminary subdivision plan of Section 4A, including Parcel A, in March of 1991, there was no reason to believe that development of Section 4B would not require subdivision of the parcel. Regardless of that insight, the Commission sought, among many things, to insure that the land would not be developed without an amended subdivision plat being recorded in the plat records, as well as Commission review and approval of the requisite development plans [Section 14.8(h)].

In considering conditions 12 and 23 of the Commission's letter authorizing the preliminary subdivision plan for Section 4A (Appellant's Exhibit 9), the Board finds that the conditions require submission and review of both a revised subdivision plat (condition 12) and a site development plan (condition 23) for development of any portion, or the entirety, of Parcel A.

Although the appellant requests this Board to approve the site development plan, the Board is convinced that the site development plan and revised subdivision plat should reviewed simultaneously by the planning commission.

CONCLUSION

Based on the findings of fact, applicable law, and reasoning expressed above, the appeal of the denial of consideration by the Carroll County Planning Commission October 17, 1995, of the site plan for Section 4B of Carrolltowne Planned Unit Development subdivision for development of Parcel "A" into multi-family residential units pursuant to the approved Planned Unit Development of 20.408 acres located north of Kali Drive, east of Ridge Road in Election District 5 is hereby affirmed, subject to remanding the applicant's site plan to the Commission for review, and further providing that an amended subdivision plat be submitted and reviewed by the Commission simultaneously with the site plan.

3/4/96

Date

Karl V. Reichlin

Karl V. Reichlin, Chairman