

Tax Map/Block/Parcel
No. 70-23-46

Building Permit/Zoning
Certificate No. 06-1806

Case 5244

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

APPELLANT: S. Patrick Costello
c/o Harrison Farm, LLC
3230 Bethany Lane, Suite 1
Ellicott City, MD 21042

ATTORNEY: Clark R. Shaffer
Anthony P. Palaigos, Co-Counsel

REQUEST: An appeal of the Planning Commission's decision to deny the preliminary plan of a subdivision (Eagles Crest).

LOCATION: The site is located at the N/E corner of the intersection of MD Rt. 27 and Watersville Road, Mt. Airy, on property zoned "R-40,000" Residential District in Election District 13.

BASIS: Code of Public Local Laws and Ordinances, Section 223-186 A (1)

HEARING HELD: August 29 & October 3, 2006

FINDINGS AND CONCLUSION

On August 29, & October 3, 2006, the Board of Zoning Appeals (the Board) convened to hear an appeal of the Planning Commission's decision to deny the preliminary plan of a subdivision (Eagles Crest). The Board made the following findings and conclusion:

The subject property consists of 83.36 acres of land zoned R-40,000 (Residential) on the east side of Ridge Road north of Watersville Road near the Town of Mt. Airy. Fifty-one residential lots are proposed. The lots will be served by individual wells and septic systems. The development will be served by three internal public streets and two use-in-common driveways. Access to the development will be from Boteler Road. The plan features a parcel of open space which includes a barn and outbuildings which is proposed to be deeded to a homeowner's association. It has been alleged by neighbors of the property that a family cemetery exists somewhere on the property although the Appellant has been unable to locate it.

The proposed development abuts another parcel owned by the Appellant, although no plan to develop that parcel has been approved. There were negotiations between the Appellant and representatives of the Town of Mt. Airy regarding annexation of the subject property which were unsuccessful. The preliminary plan was turned down by the Carroll County Planning and Zoning Commission (Planning Commission) on May 16, 2006 for the following reasons cited by the Planning Commission:

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1. The objections of the Town of Mt. Airy to the proposed neighboring development.
2. A reliance on use-in-common driveways in the subdivision.
3. The vesting of responsibility for maintenance of the open space in a homeowners' association.
4. The lack of a contingency plan to deal with a possible family cemetery plot on the property to be developed.
5. A lack of designated open space for the neighborhood.

The Board is charged, under Article 66B §4.07 (d) (1), with hearing appeals “where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative officer in the enforcement of this article or any ordinance adopted under this article...” In so doing, the Board is called upon to conduct its own review and exercise its own judgment. Nevertheless, the Board is not prohibited from giving consideration to the views expressed by the Planning Commission, particularly where those views relate to judgments that the expertise of the Planning Commission members renders them especially qualified to make.

The Board concurs with the Planning Commission's objections to the preliminary plan. Specifically, the plan includes an uncharacteristically long permanent cul de sac road (Brookfield Way), which is 1,500 feet long. Then an additional 800 foot use-in-common driveway (Angela Drive) to serve six additional homes extends from Brookfield Way. Ashbrook Drive, another proposed private drive, ends at Lot 47. The Board finds that the Planning Commission carefully exercised its authority in this matter to properly arrange streets in relation to each other. The use of the private drives and cul de sacs obviously eliminates the possibility of road connectivity within the subdivision. The result could be traffic congestion and difficult intersections for motorists and pedestrians. Also, the Board concurs that there is a lack of open space in the proposed development. The proposed open space is largely unusable due to environmental conditions. It was not unreasonable for the Planning Commission to expect the Appellant to provide accessible, useable and well designed open space that could serve as recreational areas for the community. In addition, given the nature of the proposed open space, which includes wetlands, a barn, and several outbuildings, the Planning Commission was not in error when it concluded that the open space maintenance responsibilities to be imposed on a homeowner's association could prove unworkable and excessively burdensome to the association. The Board shares the Planning Commission's concerns regarding the lack of a contingency plan for a possible family plot on the property. The laws of Maryland mandate that cemeteries be protected throughout the process of the development of property. While the Appellant has taken some steps to search for a cemetery which several neighbors believe exists on the property, he presented no plan of action in the event a cemetery was later found. It was not an error on the part of the Planning Commission to expect a contingency plan for such an event.

Finally, it was not an error on the part of the Planning Commission to solicit and consider the comments of the Town of Mt. Airy regarding this proposed development. The Board sees nothing wrong or improper in considering the impacts that a development would have on a neighboring town's roads and other infrastructure. This will only assist the County in its efforts

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to facilitate regional planning by taking in to account the Town's ability to accommodate the effects of a 51 lot subdivision that is proposed on or near the Town's doorstep.

For the foregoing reasons, the Board will not interfere with the discretion of the Planning Commission regarding this subdivision. Accordingly, the decision of the Planning Commission to deny the plan is affirmed.

Nov. 1, 2006

Date

Jacob M. Yingling
Jacob M. Yingling, Chairman

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

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BASIS: Code of Public Local Laws and Ordinances, Section 223-186 A (1)

HEARING HELD: February 26, 2008

FINDINGS AND CONCLUSION

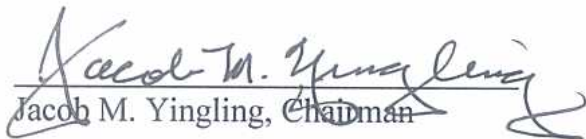
In November 2006, the Board of Zoning Appeals ("the Board") in Case No. 5244 upheld a determination by the Carroll County Planning and Zoning Commission in which the preliminary plan for a 51 lot subdivision known as Eagles Crest was denied. The Appellant filed an appeal to the Circuit Court for Carroll County. On January 9, 2008, the Honorable Thomas F. Stansfield reversed the Board's decision, and remanded the case to the Board with the instruction that the preliminary plan was approved and the Board was to consider the imposition of "conditions for approval" of the plan.

On February 26, 2008, the Board convened to consider the remand. The Board was presented with a Major Subdivision Report dated February 26, 2008 prepared by County staff, which is affixed hereto as "Exhibit 1". The Report recommends that 14 conditions be imposed on the approved preliminary plan. The recommendations were agreed to by the Appellant and the Planning Department.

The Board found that the recommendations set forth in the Major Subdivision Report constituted reasonable conditions on the preliminary plan which will adequately protect the health, safety and welfare of the public. Accordingly, the Board approved the imposition of the conditions and incorporated them by reference in this decision as Exhibit "1".

Date

3/19/08


Jacob M. Yingling, Chairman

MAJOR SUBDIVISION REPORT
to the
Carroll County Board of Zoning Appeals
(sitting as the Carroll County Planning and Zoning Commission)
February 26, 2008



SUBJECT: P-02-043, Eagles Crest
LOCATION: East side of Ridge Road (MD Route 27), north of Watersville Road; 13th Election District
OWNER: Harrison Farm, LLC; 3230 Bethany Lane, Suite 1; Ellicott City, MD 21042
DEVELOPER: Same
ENGINEER: Vanmar Associates, Inc.; 310 South Main Street; P.O. Box 328; Mount Airy, MD 21771
ZONING: R-40,000
AREA: 83.36 Acres
NO. OF LOTS: 51
FIRE DISTRICT: Mount Airy
DRAINAGE BASIN: South Branch Patapsco River

❖ **Action Required:**

Approval of the Preliminary Plan of Subdivision pursuant to Chapter 103, *Development and Subdivision of Land*, of the Code of Public Local Laws and Ordinances of Carroll County and in accordance with the Opinion and Order of the Circuit Court in Case No. 06-C-06-46730.

❖ **Existing Conditions:**

The subject property is zoned R-40,000 and is currently improved with several agricultural outbuildings. The remainder is comprised primarily of agricultural fields and wetlands.

❖ **Project History:**

The Preliminary Plan of Subdivision was subject to Citizen Involvement during regularly held meetings of the Subdivision Advisory Committee on October 28, 2002, and December 29, 2003. During these reviews, numerous citizens were present to voice concerns with the proposed development. Comments were numerous and primarily based on increased traffic volume, school overcrowding, emergency services, groundwater consumption and stormwater runoff. The Bureau of Development Review has also received written comments.

❖ **Preliminary Plan Review:**

The developer proposes to create 51 residential lots. Access to the site will be from Boteler Road, via a proposed public road, known as Valley View Way. A second access to the site will be provided by the extension of Leishear Road, a proposed public road within the neighboring Ridgewood Estates subdivision, which obtained Preliminary Plan approval on November 20, 2007. An additional public road, Brookfield Way, is proposed within the project. In addition to the aforementioned public roads, two use-in-common driveways, Ashbrook and Angela Drives, are also proposed. Brookfield Way is a cul-de-sac road which is proposed to be constructed to the maximum length of 1500 feet, with an 800 foot use-in-common driveway extending from the terminus of the public road.

Lots 1-4, 26 and 49-51 will have direct access to Valley View Way. Lots 5-11 and 18-25 will have direct access to Brookfield Way. Leishear Road will serve Lots 27-42 and 48. Angela Drive will serve Lots 12-17 and Ashbrook Drive will serve Lots 43-47.

The plan shows the creation of five outparcels. Parcel A is an open space parcel that is intended to be conveyed to the County. Parcels B & C are road dedication parcels that will be conveyed to the County for the future widening of Boteler Road. The two remaining outparcels are halves of a previously created access strip to the site that are intended to be consolidated with adjoining lots along Boteler Road.

All lots will be served by private well and septic systems.

The plan addresses the requirements of Chapter 191, Storm Water Management, of the Code. Individual drywells will be used.

Staff originally recommended that sidewalks be required on both sides of any public roadways within the project; however, with the Ridgewood Estates subdivision providing walking trails, staff recommends that walking trails be provided.

❖ **Chapter 103 Recommendation:**

The County staff recommends approval of the preliminary plan subject to the following conditions:

1. That any changes to the preliminary plan as submitted and approved herein shall be resubmitted to the Commission for further review and approval.
2. The Owner/Developer shall enter into a Public Works Agreement with Carroll County to guarantee completion of the proposed improvements.
3. The Owner/Developer shall enter into a Declaration of Maintenance Obligations with Carroll County to address maintenance responsibilities relating to the use-in-common drives, known as "Angela Drive" and "Ashbrook Drive."
4. That a "Stormwater Management Easement and Maintenance Agreement" be granted to the County Commissioners of Carroll County by a deed to be recorded simultaneously with the recordation of the subdivision plat.
5. That the six foot wide walking trail as shown on the attachment be constructed as part of the Public Works Agreement.
6. That all lots be restricted from direct access onto Ridge (MD Route 27) and Boteler Roads.
7. That all 51 lots of the project shall be recorded in one phase with the issuance of building permits to which the project is entitled limited to a maximum of 25 per fiscal year.
8. That Parcels B & C be granted to the County Commissioners of Carroll County by a deed to be recorded simultaneously with the recordation of the subdivision plat.
9. That the areas shown to be added to adjoining lots be conveyed to said lots by deed to be recorded simultaneously with the recordation of the subdivision plat.
10. That the open space parcel be conveyed to the County Commissioners of Carroll County upon completion of the walking trail and removal of the existing structures, if removal of existing structures is required by the County.
11. That a Floodplain Easement be granted to the County Commissioners of Carroll County by a deed to be recorded simultaneously with the recordation of the subdivision plat.
12. That a Water Resource Protection Easement be granted to the County Commissioners of Carroll County by a deed to be recorded simultaneously with the recordation of the subdivision plat.
13. That a Forest Conservation Easement be granted to the County Commissioners of Carroll County by a deed to be recorded simultaneously with the recordation of the subdivision plat.
14. That the final construction plans include the construction of the temporary cul-de-sac into the adjoining Ridgewood Estates subdivision and the record plats indicate the same.