

Tax Map/Block/Parcel  
No. 39,14/15,211

Building Permit/Zoning  
Certificate No. 97-1684

Case 4243

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND

**APPELLANT:** Willow Pond Development, LLC  
c/o John T. Maguire, Esquire  
189 East Main Street  
Westminster, Maryland 21157

**ATTORNEY:** John T. Maguire, Esquire  
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**ATTORNEY FOR  
PLANNING  
COMMISSION:** Laurell E. Taylor, Esquire  
225 North Center Street, Room 303  
Westminster, Maryland 21157

**REQUEST:** An appeal of the Carroll County Planning and Zoning Commission's refusal to reconsider its previous denial of the final subdivision plat for "West Branch Section of Eden Farms" (Lots 186-210) consisting of 7.0770 acres

**LOCATION:** On both sides of Eden Farm Circle, about 550 feet north of Sunshine Way on property zoned "R-20,000" Residence District in Election District 7

**BASIS:** Article 17, Section 17.2(a); Ordinance 1E (The Carroll County Zoning Ordinance)

On June 17, 1997, the Board of Zoning Appeals (Board), received the appeal of the Carroll County Planning and Zoning Commission's, (Commission) decision refusing to reconsider its decision of December 17, 1997, denying approval of the final subdivision plat for Eden Farms West Branch Section. The issue of whether to reconsider the matter was before the Commission on June 17, 1997, the same day the appeal was filed.

On July 3, 1997, Philip Rovang, Secretary to the Commission, forwarded to the Board the complete record of the action of the Commission's decision regarding the subdivision. On July 14, 1997, the Commission filed Motion to Dismiss the Appeal on the basis that the Commission's refusal to reconsider its earlier decision did not constitute an appealable action under Article 66B, Section 4.07 (d). The Appellant filed its response to the motion on July 21, 1997. On July 25, 1997, the Board held a hearing on the Motion to Dismiss. The Board refused to grant the Motion to Dismiss and heard the appeal. Thereafter it rendered its oral decision. The

following are the Board's findings and conclusions.

The events that took place before the Commission on July 17, 1997, are not in dispute by either party and are clearly stated in the unofficial minutes of the meeting transmitted by Mr. Rovang to the Board. The Appellant submitted a request to the Commission for reconsideration of the Commission's disapproval of the Final Subdivision Plat of the West Branch Section of Eden Farms rendered on December 17, 1996. The Commission's December 17, 1996 decision had been appealed to this Board Case and assigned case number 4189. By decision dated April 9, 1997, we affirmed the Commission's decision. The Appellant filed an appeal of that decision to the Circuit Court of Carroll County (C-97-25690). As of the date of this hearing the Civil Case 97-25690 was still pending before the Court. Nevertheless, the matter of the reconsideration, at the request of the appellant, was placed on the agenda for the June 17, 1997, meeting of the Commission. At the meeting, Mr. Maguire presented a brief history of the project and the current proposal. After some discussion, "there was no sentiment among the Commission members able to make a vote for reconsideration to do so." The proposal was not considered and this appeal was noted.

At the request of the parties this case was consolidated with the Board's Case 4189, the case underlying this appeal. The facts, findings and conclusions of case 4189 are incorporated herein. The Appellant, under the proposal presented by the Appellant for the Commission for reconsideration, would consent to restricting the transfer of any of the lots recorded and the issuance of any building permits for the lots recorded until January 1, 1999, or ninety (90) days after the first footer for the Cranberry Station Elementary School is poured, whichever is later to occur.

Section 3 Rule 3.9 of the Administrative Rules of the Commission provides:

**Application denied.** If an application is not approved, the Commission may normally not vote on the application again for one year or unless the following occur:

- a). The applicant submits evidence in writing to the Secretary asking that it be reheard and listing material changes to the application that address the stated reasons for denial,
- b). One of the members who voted against the application moves to rehear the application and the Commission approves the motion, and
- c). The public has been notified by way of the

agenda publication that the Commission will hear the request at a subsequent meeting.

Section 6 Rule 6.1 provides:

**Amendments.** These rules will be reviewed annually and may be amended at any time by and affirmative vote of four members.

(Emphasis supplied).

The Commission argues that this Board lacks the authority to entertain this appeal. The Commission has adhered to its rules. The Commission argues that the Appellant simply failed to meet the criteria for reconsideration. The "inaction" of the Commission was not an appealable issue. We can not agree for the following reasons.

The Commission does not argue that it did not have the authority to hear the proposal and to grant or deny it, rather, the contrary is true. Under the rules adopted by the Commission, the appellant failed to meet its criteria for reconsideration. The effect of which was a denial of the proposal.

This Board is authorized 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 Article 66B or of any ordinance adopted pursuant thereto. See Section 4.07(d) of Article 66B of the Annotated Code of Maryland. In exercising this authority, this Board "has all the powers of the officer from whom the appeal is taken". (See Section 4.07(h) of Article 66B of the Annotated Code of Maryland.) Since the Commission had the authority to hear the proposal, and since the Commission promulgated the rule which when applied resulted in a denial, the Board finds the Commission's action to be a 'decision' within the meaning of the statute. Therefore the decision is appealable.

We find further support in reaching this conclusion in the Commission's own rule. The rule appear to be provide two vehicles for the applicant to secure reconsideration. The first means of securing reconsideration is found in the first part of the Commission's rule 3.9. The Commission's rule states, "If the application is not approved, the Commission may normally not vote on the application again for one year or unless . . ." Because of the use of the word "normally", the implication is there is a normal and a less than normal way where an applicant secures reconsideration of a decision. The second means of securing review is described by the words that follow the "or" in the body of the rule above and requires the three criteria enumerated. The Board finds this case to be ripe for consideration under the first portion of the rule.

With the setting set, we examine the events that took place. The Commission heard and discussed the merits of the proposal at the meeting. The Appellant's proposal contained material changes to the

application that clearly addressed the stated reasons for denial. Since the original denial of the Appellant's application, we heard and decided Meadow Ridge Development Corporation, (Meadow Ridge) BZA Case 4209. Meadow Ridge was factually similar to the instant case. Meadow Ridge involved the same schools and was denied for identical reasons. The appellant in Meadow Ridge presented a similar proposal to the case at bar which we found acceptable. It would be arbitrary and capricious for this developer to be treated differently. We find that the failure to "rehear" the application and the failure to accept the proposal to be error. Accordingly, the Board hereby affirms the appeal filed, and authorizes the Appellant to proceed with the plat recordation subject to following condition:

The said plat shall contain the following note in addition to all other required, placed in a conspicuous place as directed by the Bureau of Development Review, reading as follows:

None of the lots shown on this plat shall be eligible for a building permit until 90 days after the first footer for the Cranberry Station Elementary School, or whatever name is chosen for the new Westminster area elementary school, is poured (as certified by the Carroll County Board of Education) or until January 1, 1999, whichever is later to occur.

The owner of the lots shall not enter into a contract of sale nor convey any of the lots shown on this plat until the date 90 days after first footer for the Cranberry Station Elementary School, or whatever name is chosen for the new Westminster area elementary school, is poured (as certified by the Carroll County Board of Education) or until January 1, 1999, whichever is later to occur.

The Board directs the Bureau of Development Review to process the subdivisions upon receipt of the plats so noted. When the plat are ready for final signature approval, they shall be submitted to the Chairman of this Board for execution or the Secretary of the Planning Commission.

August 25, 1997

Date

  
James L. Schumacher, Chairman

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