

Tax Map/Block/Parcel  
No. 73-17-74

Building Permit/Zoning  
Certificate No. 97-1172

Case 4223

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND

**APPELLANT:** Blevins-Hill, Inc.  
4219 Hanover Pike  
Manchester, Maryland 21102

**ATTORNEY:** David K. Bowersox, Esquire  
24 North Court Street  
Westminster, Maryland 21157

**ATTORNEY FOR  
PLANNING  
COMMISSION:** Laurell E. Taylor, Esquire  
225 North Center Street  
Westminster, Maryland 21157

**REQUEST:** An appeal of the Carroll County Planning and  
Zoning Commission's decision denying the final  
subdivision plat for "Eldersburg Estates", Section  
6, consisting of 10.1113± acres

**LOCATION:** South side of Macbeth Way about 1,000 feet east of  
Maryland State Route 32 on property zoned "R-  
10,000" Residence District in Election District 5

**BASIS:** Article 17, Sections 17.2 and 17.4; Ordinance 1E  
(The Carroll County Zoning Ordinance)

On September 23, 1997 the Board of Zoning Appeals for Carroll County (hereinafter the Board) heard the appeal of the Carroll County Planning and Zoning Commission's (hereinafter the Commission) decision denying the final subdivision plat for "Eldersburg Estates Section 6" containing 24 lots. The appeal was filed on May 9, 1997, by Blevins-Hill Inc., owner and developer.

The preliminary plan approval for the subdivision was granted in 1979. The adequate Facilities Certifications were sent to the various agencies. They were returned on November 4, 1996. Only one Certificate was returned with a rating of inadequate, i.e., the Board of Education for Carroll County indicated that the elementary school and the high school which serve the subject subdivision were inadequate. The final subdivision plat was before the Commission on April 15, 1997, due to the Commission's policy requiring any final subdivision plat which has an inadequate public facilities certification to be brought before the Commission for a determination whether the plan should be allowed to proceed to recordation once all conditions of approval have been met. To date, neither the record plats nor the legal documents package have

been submitted.

The record reflects that this matter was originally on the Commission's agenda on March 18, 1997 for the same issue, and was continued to the April 15, 1997, meeting. In the April 15 meeting the Appellant argued unsuccessfully to the Commission that §5.04 of Article 66B of the Annotated Code of Md. requiring approval or denial of a subdivision plat within thirty days of its submission applied in this case. The Commission disagreed and refused the applicants request to issue a certificate of approval. In the April 15th meeting the Commission denied approval of the final subdivision plat for the subject section based on the certification by the Board of Education of the inadequacy of the subject schools. The Appellant seeks review of both decisions.

§5.04 of Article 66B of the Annotated Code of Md. provides in part:

The planning commission shall approve or disapprove a final plat, if all subdivision regulations have been complied with, within thirty (30) days after the submission thereof to it; otherwise such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the commission on demand. . . .

The record and testimony reflect clearly that the time frame of §5.04 had not been triggered. The Board finds, based on the testimony of Mr. Frank Shaffer that while the plat was before the Commission on the March 18th meeting, there were other requirements necessary and required before the plat could be approved, e.g., the final plat and the legal document had not been submitted. The procedure adopted by the Commission of requiring any final subdivision plat which has an inadequate public facilities Certification to be brought before the Commission for a determination whether the plan should be allowed to proceed to recordation once all conditions of approval have been met, clearly is only an attempt by the Commission to review the plats at an earlier stage than before the adoption of the Interim Development Control Ordinance. The Board concludes that the Commission properly denied the Appellant's request for "a certificate" based on the application of §5.04 of Art. 66B of the Annotated Code of Md.

With regard to the other reason for the Commission's denial to proceed with recordation, i.e., the certification of inadequacy from the Board of Education, this Board notes the following. The schools that serve this subdivision are Carrolltowne Elementary School, Oklahoma Road Middle School, and Liberty High School. The elementary and high schools received a certificate of inadequacy.

With the construction of Linton Springs Elementary school by September of 1999, the elementary school inadequacy will be resolved. The planned relief facility for the high school is expected to be ready for occupancy in September of the year 2001. Currently, the local rated capacity for Liberty High School is 1170. The enrollment for September 1996 was 1366. By the year 2000 the student enrollment is expected to be 1843 or 158% of the local rated capacity. The Board finds that the high school is inadequate to serve the subdivision.

However, the Board's analysis can not stop here. The overall Eldersburg Estates subdivision contains 210 lots, of which 124 have been recorded. This subdivision is interlinked with an adjoining development known as Benjamin's Claim by interlinking streets and shared stormwater management facilities. This subdivision is a multi-phase development which had been developing at a reasonable rate. When viewed as such, the Board finds that the Commission erred in not allowing this section to move forward. By approving this section, the developer can continue the construction of the total development of which this section is an integral part. The roads contemplated for construction in this section will facilitate movement of traffic in the area by accessing the adjoining developments.

The Board hereby sustains the appeal and directs the Bureau of Development Review to process the subdivision upon receipt of the plat. When the plat is ready for final signature approval, they shall be submitted to the Chairman of this Board for execution or the secretary of the Planning Commission.

October 27, 1997

Date

Karl Reichlin

Karl Reichlin, Acting Chairman

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