

IN THE MATTER OF	:	BEFORE THE
	:	
Karen Neufeld, <i>et al.</i>	:	HOWARD COUNTY
	:	
Appellants	:	BOARD OF APPEALS
	:	
v.	:	BA Case No. 776-D
	:	
HOWARD COUNTY DEPARTMENT	:	
OF PLANNING AND ZONING	:	
	:	
Appellee	:	
	:	

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The Howard County Board of Appeals (the “Board”) convened on May 27 and June 29, 2021 to hear and deliberate the administrative appeal of Karen Neufeld, David Peters, Peter Coddington, Lisa Coddington, Simona Loredana Suciu and Omar Palos Raymundo (collectively “Appellants”). The Appellants are appealing the portion of the Howard County Department of Planning and Zoning’s (“DPZ”) letter of decision dated September 21, 2020 that approved interested party Clarksville NL, LLC’s (“Clarksville”) waiver request from section 16.120(c)(2) of the Howard County Subdivision and Land Development Regulations (“WP-20-016”).¹ The approval authorizes Lots 7 through 12 of the Clarksville Crossing, Phase II, subdivision to share an access easement in lieu of providing public road frontage.

Due to the Covid-19 pandemic, the hearings were held remotely using the WebEx platform. Board members Neveen Kurtom, William Santos, Steven Hunt, and Amy Brooks were present at the first hearing on May 27, 2021. Board Member Gene Ryan was absent at the May 27, 2021 hearing. Chairperson Kurtom presided over the May 27,

¹ Appellants are not appealing DPZ’s approval of Clarksville’s waiver request related section 16.1205(a)(3) of the Howard County Subdivision and Land Development Regulations that authorized the removal of 13 specimen trees.

2021 hearing. Board members William Santos, Steven Hunt, Amy Brooks and Gene Ryan were present at the June 29, 2021 hearing. Board member Kurtom resigned her position prior to the June 29, 2021 hearing. Chairperson Santos presided over the June 29, 2021. Barry Sanders, Senior Assistant County Solicitor, served as legal advisor to the Board.

The Appellants certified that notice of the hearings complied with the requirements of the Howard County Code. The Board members indicated that they had viewed the subject property as required by the Zoning Regulations.

This case is a *de novo* appeal and is being conducted in accordance with Section 2.210(a) of the Board's Rules of Procedure, which places the burden of proof upon the Appellants to show that the action taken by DPZ was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the Howard County Subdivision and Land Development Regulations, the General Plan for Howard County, the General Plan of Highways, and the Petition, as submitted by the Appellants, were incorporated into the record by reference.

The Appellants were represented by counsel, Thomas M. Meachum, Esquire. Clarksville, an interested party, appeared at the hearings in opposition to the appeal and was represented by counsel, Christopher M. DeCarlo, Esquire.

The following persons testified on behalf of the Appellants: Paul Sill, Caroline Fitzgerald, Simona Suciu, Peter Coddington, David Zuchero, David Peters, and Karen Neufeld.

The following persons testified on behalf of Clarksville: Mickey Cornelius and John Carney.

The Appellants offered, and the Board accepted, the following documents into evidence:

1. Karin Neufeld e-mail of 9/16/19 that includes Brenda Luber's e-mail of same date, with Alternative Compliance Application
2. Judy Edwards' e-mail dated July 9, 2020 resubmittal request from DPZ dated 7/6/20
3. Brenda Luber's e-mail dated 9/21/20 with engineer resubmittal dated 8/18/20
4. Brenda Luber's e-mail dated 9/21/20 at 3:04pm with waiver decision letter.
5. Suciu photos
6. Coddington Photos
7. SDAT Record for Lot 19
8. Public Roadway Design Criteria

Clarksville offered, and the Board accepted, the following documents into evidence:

1. Existing shared driveways
2. McDaniel Property

Background

Clarksville Crossing, Phase 2, is the resubdivision of Clarksville Crossing, Lot 3, as shown on F-18-081 (the "Subject Property"). The Subject Property is a 20.85 acre residential lot located to the west side of Route 108 (Clarksville Pike) and to the east of Prestwick Drive in Howard County. The Subject Property contains numerous environmental features.

Clarksville filed WP-20-016 with DPZ requesting, in pertinent part, alternative compliance with respect to section 16.120(c)(2) of the Howard County Subdivision and Land Development Regulations (the "Subdivision Regulations") waiving the requirement

of minimum public road frontage for lots 7-12 of Clarksville Crossing, Phase 2. Section 16.120(c)(2) of the Subdivision Regulations provides that “all lots, preservation parcels, or bulk parcels for single-family detached dwellings shall have minimum lot frontages on approved streets within a public right-of-way ...” In lieu of public road frontage for lots 7-12 of Phase 2, Clarksville sought alternative compliance to allow public roadway access to Prestwick Drive through a 24’ private access easement on Greene Field Lot 19. The owner of Subject Property is also the owner of Greene Field Lot 19.

DPZ issued a letter of decision on September 21, 2020 approving Clarksville’s waiver request pursuant to Section 16.104(a)(1) of the Subdivision Regulations. (the “Decision Letter”). DPZ’s specific findings under Section 16.104(a)(1) are attached hereto as Exhibit A and incorporated herein by reference.

On October 16, 2020, Appellants, through counsel, filed an Administrative Appeal Petition to the Howard County Hearing Authority appealing DPZ’s Decision Letter. The Appellants are Howard County property owners that are challenging DPZ’s approval of the Waiver Petition as it relates to the section 16.120(c)(2) of the Subdivision Regulations. Pursuant to Section 16.302(a) of the Howard County Code, Appellants’ appeal of DPZ’s approval of the Waiver Petition was first heard by the Howard County Board of Appeals Hearing Examiner (the “Hearing Examiner”). Following an evidentiary hearing conducted on February 4, 2021, by an Order dated February 18, 2021, the Hearing Examiner denied Appellants’ appeal on the basis that they failed to meet their evidentiary burden of proving that DPZ’s decision was clearly erroneous,

arbitrary or capricious, and/or contrary to law. Appellant's timely noted an appeal to this Board.²

Discussion

Pursuant to Howard County Code Section 16.1215, appeals to the Board of Appeals of decisions made pursuant to the Director of Planning and Zoning's administrative decision-making authority shall be heard in accordance with the Board of Appeal's Rules of Procedures. Section 2.210(a) of the Board's Rules of Procedure provides that administrative appeals such as the instant appeal are *de novo* and the burden of proof is on the appellant to show that the action taken by the Administrative Agency was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law.

In the instant action, Appellants primarily focus their appeal case on two alleged issues with DPZ's decision letter. First, they assert that DPZ's use of the word "bisect" in relation to the environmental features on the Subject Property was clearly erroneous as they contend that the Subject Property is not literally bisected by the numerous environmental features. Second, they contend that DPZ failed to consider the effect that traffic, noise and lights potentially generated by the shared use in common private driveway would have on adjacent property owners. For the reasons detailed below, the Board finds Appellants failed to meet their burden of proof that DPZ's decision was clearly erroneous, arbitrary or capricious, and/or contrary to law.

² As indicated in foot note 1 *supra*, Appellants expressly limited their appeal to the Board to the portion of DPZ's Decision Letter granting a waiver from 16.120(c)(2) of the Subdivision Regulations. Appellants did not appeal the Hearing Examiner or DPZ's decision related to the approval of the removal of 13 specimen trees, which was also sought by Clarksville in WP-20-016.

Findings of Fact

Based upon the evidence presented at the hearings, the Board makes the following Findings of Fact:

1. Paul Sill, a civil engineer, testified that in his opinion the environmental features on the Subject Property identified by DPZ do not entirely bisect the Subject Property limiting access to Route 108. Mr. Sill testified that he located a narrow area along the Subject Property's southern boundary line where he believes either a public or private driveway could be constructed providing direct access to Route 108 for Lots 7-12. During cross examination, however, Mr. Sill admitted that he did not evaluate whether this theoretical access road could be practically constructed without disturbing environmental features on the Subject Property. Mr. Sill further admitted that specimen trees are an environmental feature and that he did not evaluate if the grading and construction of his proposed access would disturb the steep and medium slopes, the stream and related buffers, or if it would require the removal or disturbance of specimen trees. He also admitted that his proposed access road would cut across the previously recorded forest conservation area for both retention and planting on the Subject Property and would likely require the removal of the specimen trees in that area. Mr. Sill also acknowledged that he did not consider the limited access to Route 108 due to the 100-year flood plain, wetlands, and limited sight distance at his proposed Route 108 access point. Nor did he take into account whether Route 108 would require road widening to accommodate his proposed access.

2. Caroline Fitzgerald, a nearby property owner at 6591 Castle Bay Court, testified that she is concerned with safety on Prestwick Drive and the increased traffic

that will result from the private driveway. She stated that she walks her dog on Prestwick Drive. She also testified that she would be able to see the private driveway from the back of her property and that the noise, light and increased traffic would be detrimental to her welfare and injurious to her property.

3. Simona Suciu, an adjacent property owner at 6570 Prestwick Drive, testified that the private driveway across Lot 19 would create increased traffic on Prestwick Drive that would be dangerous for her and her children. She testified that she is concerned about flooding due to the construction of the private driveway. She also testified that the private driveway will negatively affect her view from her house. She testified that she will be able to hear the noise and see lights from the cars using the private driveway. She admitted that the easement for the private driveway was recorded prior to her purchase of her property.

4. Peter Coddington, nearby property owner at 6575 River Clyde Drive, testified that he has retina problems and that the lights from the vehicles using the private driveway will shine into his bedroom window. He also testified that noise from the vehicles will be heard on his property. He further testified that the private driveway access onto Prestwick Drive for Lots 7-12 will result in unsafe traffic conditions on Prestwick Drive. Mr. Coddington admitted through cross examination that he does not hold a professional degree or certification in traffic engineering and that he did not conduct a traffic study indicating that Prestwick Drive is unsafe to allow the additional trips generated by Lots 7-12. He further admitted that cars currently drive down Prestwick Drive and their lights shine onto his property. He also admitted that he has a

tree buffer around the perimeter of his property but stated that the branches are too high to prevent car headlights from shining onto his home.

5. David Zuchero, a nearby property owner at 6574 River Clyde Drive, testified that speeding is already problem on Prestwick Drive and that it would be unsafe to allow Lots 7-12 to access Prestwick Drive via the private driveway. He further testified that there is a lot of pedestrian traffic on Prestwick drive and no sidewalks. Mr. Zuchero admitted that he is not a traffic engineer but asserted that a Howard County speed study supported his testimony. On cross examination, Mr. Zuchero admitted that he did not have copy of the Howard County speed study he referred to and did not know when it was performed.

6. David Peters, a nearby property owner at 6540 Prestwick Drive, testified that he is concerned with traffic safety on Prestwick Drive and that access to Route 108 would be safer. He further testified that their currently exists a gravel access road on the Subject Property that leads out to Route 108. On cross examination, Mr. Petters admitted that he did not evaluate whether the necessary improvements to the alleged existing access road would be able to be accomplished without disturbing the environmental features on the Subject Property.

7. Karen Neufeld, a nearby property owner at 6540 Prestwick Drive, testified that she agreed with the testimony of her neighbors that the approval of the waiver will create too much additional traffic on Prestwick Drive and will be unsafe.

8. Mickey Cornelius, a certified professional traffic operations engineer, testified that he has performed many traffic studies in Howard County and in his career and that he is familiar with the Subject Property and the surrounding roadways. He

testified that the private access drive allows for safe egress and ingress onto Prestwick Drive. He stated that sight distance in both directions far exceeds the sight distance requirements. He further testified that any additional traffic onto Prestwick Drive would be negligible if noticeable at all. He testified that based on his review, the Lots would only generate an approximate additional six trips in the peak a.m. and p.m. hours. He further testified that the traffic generation would be significantly less during the non-peak hours.

9. John Carney testified that he is a civil engineer with years of experience in Howard County land use and subdivision matters and that he prepared the alternative compliance exhibit for WP-20-16. Mr. Carney testified in detail to the numerous environmental features located on the Subject Property restricting access for Lots 7-12 to Route 108. Mr. Carney further testified that Mr. Sill's proposed access to 108 could not be accomplished without significant disturbances to the environmental features on the Subject Property. This includes encroachment onto the steep and medium slopes, the stream buffers, the clearing of specimen trees, and cutting across and removing the previously recorded forest conservation area for retention and planting. Mr. Carney also identified the additional access restrictions to Route 108, including the 100 year flood plain and associated buffer, the wetlands and associated buffer, and the perennial stream and associated buffer. Mr. Carney also testified that allowing Lots 7-12 to use the private driveway onto Prestwick Drive was not unique as numerous lots in the area, and in the County, utilize private driveways for egress and ingress.

10. Mr. Carney further testified that the approved private driveway across Greene Field Lot 19 requires no disturbances to the environmental features on the Subject

Property. He further testified that the location of the driveway connection to Prestwick Drive will be at the current location of one of the existing driveway access points for Greene Field lot 19 and will be in accordance with Howard County and State driveway standards.

Conclusions of Law

Based upon the foregoing Findings of Fact, the Board concludes as follows:

The Appellants failed to meet their burden to prove that DPZ's decision was clearly erroneous, arbitrary and/or capricious, and/or contrary to law. The Appellants' primary argument focused on what they contend to be insufficient environmental features bisecting the Subject Property justifying the approval of the private driveway onto Prestwick Drive. The Board concludes based on the evidence provided, including the testimony and documentary exhibits, that the Subject Property is substantially burden by the environmental features DPZ identified in the Decision Letter and that those environmental features significantly restrict access to Route 108. Appellants' proposed theoretical access road to Route 108 could not be practically constructed without disturbing those environmental features. The Board agrees with DPZ that the environmental features in their totality intersect the Subject Property creating a practical difficulty in constructing an access route for Lots 7-12 to Route 108.

The Board further concludes that Appellants did not meet their burden in demonstrating that DPZ's finding that the allowance of the private driveway onto Prestwick Drive would not be detrimental to the public health, safety or welfare,

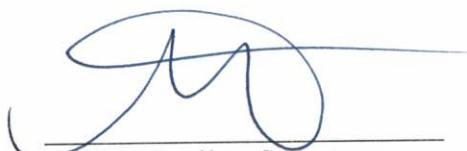
or injurious to other properties, was clearly erroneous, arbitrary and/or capricious, and or contrary to law. The Board acknowledges the safety concerns, as well as the potential for adverse effects from noise and headlights raised by neighboring property owners in their testimony. The evidence, however, indicates that the private driveway will not create dangerous traffic conditions on Prestwick Drive or cause detrimental light or noise unto neighboring properties. There is more than adequate sight distance to allow safe egress and ingress onto Prestwick Drive for Lots 7 -12. And the traffic generated from Lots 7 – 12 onto Prestwick Drive will be minimal. As indicated above, there would only be an approximate additional 6 trips generated in the peak hours. Given this, the Board concludes that DPZ's decision that the private driveway would not be detrimental to the public health, safety, or welfare, or injurious to other properties was not clearly erroneous, arbitrary or capricious.

ORDER

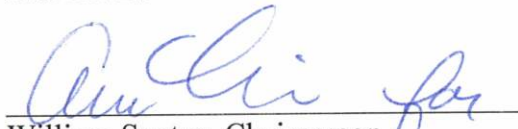
Based upon the foregoing, it is this 14th day of October, 2021, by the Howard County Board of Appeals, **ORDERED:**

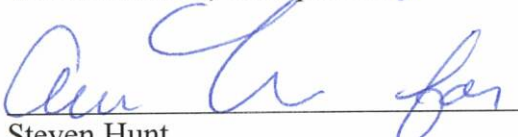
That the Petition of Appeal of Karen Neufeld, et al. in BA Case No. 776-D is hereby **DENIED**; and that the Department of Planning and Zoning's approval of WP-20-016 remains in full force and effect.


ATTEST:

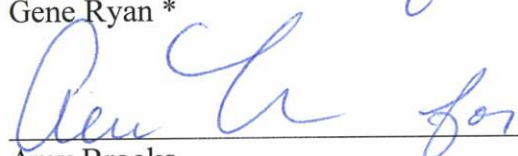

Ashley Aguilar, Secretary

HOWARD COUNTY BOARD OF APPEALS


William Santos, Chairperson


Steven Hunt



Gene Ryan *


Amy Brooks


PREPARED BY:

HOWARD COUNTY OFFICE OF LAW

Gary W. Kuc
County Solicitor


Barry M. Sanders
Senior Assistant County Solicitor

* I hereby certify that I reviewed all of the evidence submitted and listened to a recording of the May 27, 2021 hearing for which I was not present.


Gene Ryan



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

Amy Gowan, Director

FAX 410-313-3467

September 21, 2020

Mr. Mark Levy
Clarksville NL LLC
c/o H&H Rock Companies
6800 Deerpath Road, Suite 100
Elkridge, MD 21075

Dear Mr. Levy:

RE: WP-20-016, Clarksville Crossing, Phase 2

This letter is to inform you that your request for alternative compliance to the Howard County Subdivision and Land Development Regulations for the subject project was reviewed.

On September 17, 2020, and pursuant to Section 16.1216, the Director of the Department of Planning and Zoning, Director of the Recreation and Parks and Administrator of the Office of Community Sustainability considered and **approved** your request for a variance with respect to **Section 16.1205(a)(3)** of the Subdivision and Land Development Regulations to remove 13 of the 104 specimen trees identified on-site. Please see the attached Final Decision Action Report for more information.

On September 15, 2020, and pursuant to Section 16.104, the Director of the Department of Planning and Zoning, considered and **approved** your request for alternative compliance with respect to **Section 16.120(c)(2)** of the Subdivision and Land Development Regulations to allow Lots 7-12 of the Clarksville Crossing subdivision to share an access easement instead of providing public road frontage.

The Department of Planning and Zoning hereby determines that you have demonstrated to its satisfaction that strict enforcement of **Section 16.120(c)(2)** would result in an unreasonable hardship or practical difficulty. This determination is made with consideration of your alternative compliance application and the four (4) items you were required to address, pursuant to Section 16.104(a)(1):

1. Strict conformance with the requirements will deprive the applicant of rights commonly enjoyed by others in similar areas.

The subject property is restricted due to the location of the environmental features which bisect the property thus preventing 6 of the lots from obtaining access through Phase I onto Clarksville Pike. Given these existing physical site constraints, there is limited means of access to the rear portion of the parcel. In order to avoid impact to the existing environmental features, the applicant is proposing to provide access to these 6 lots via an access easement located on an adjacent lot which fronts onto Prestwick Drive. Adjacent Lot 19 must maintain a minimum lot size which does not allow removal of enough land area to provide fee simple pipestems for the Clarksville Crossing lots. Although this is a technical modification to the regulations, the appearance of the access drive through the easement to these homes



will appear as if the pipestems conformed to the regulations and met Prestwick Drive directly. Strict conformance with the requirements will deprive the applicant of development rights commonly enjoyed by others in similar areas whom use use-in-common driveways from ROW to access the development parcels and would have significant impact on the existing environmental features which bisect the site.

2. Uniqueness of the property or topographical conditions would result in practical difficulty; other than economic, or unreasonable hardship from strict adherence to the regulations.

The property contains a perennial stream, floodplain, wetlands and steep slopes. Public road access is limited to Clarksville Pike, however, environmental features bisect the parcel and it is not desirable to construct a public road across the unnamed tributary for access to the remaining developable area. Instead the petitioner proposes a private driveway through adjoining Lot 19 for ingress/egress to Prestwick Drive. Adjacent Lot 19 must maintain a minimum lot size which does not allow removal of enough land area to provide fee simple pipestems for the Clarksville Crossing lots. These conditions limit the developable area of the property and strict adherence to the regulations would create a practical difficulty for the owner to develop the site with single-family homes. The owner intends to fulfill the forest conservation requirements onsite by retaining existing forest and planting trees within public forest conservation easements.

3. The Variance will not confer to the applicant a special privilege that would be denied to other applicants.

Approval of this alternative compliance request will not confer to the applicant a special privilege that would be denied to other applicants. When the development of a site is restricted due to unique site conditions, alternative compliance requests have been approved to protect environmental features from impacts such as public roads or vehicular access easements. The use of the shared driveway will allow the lots to obtain vehicular access without traversing or impacting the environmental features bisecting this parcel. Furthermore, if the property had fee simple frontage on Prestwick Drive, the use of a shared driveway would be permitted by right and encouraged by the County because the cost, time and resources of maintaining a public road by the County is not practical for development of six or fewer lots on properties that do not have further subdivision potential.

4. The modification is not detrimental to the public health; safety or welfare, or injurious to other properties.

Approval of the alternative compliance request will be beneficial to the public interest since it will allow for the creation of a more uniform lot layout and will allow for the long-term protection of the environmental features and forest within public forest conservation easements. In addition, the shared driveway to be constructed on Lot 19 has been placed between the existing house and septic so that existing trees are preserved to provide a buffer for neighboring Lot 18. This shared driveway will coincide with the existing driveway onto Prestwick Drive to minimize impact to neighbors. Additionally, the use of a narrower shared driveway, instead of a public roadway, will create a smaller area of disturbance. The shared driveway is 24' wide with 16' of pavement. Whereas, a public roadway would require a 50' width and 22' of pavement, a 4' shoulder, 4' to the center of the roadside swale and then 4' to tie the swale back into the existing grade resulting in a disturbed width of 46'.

Director's Action: Approval of this Alternative Compliance is subject to the following conditions:

Conditions for approval of Section 16.120(c)(2):

1. A Plat of Revision for Lot 19 of the Greene Fields subdivision providing the shared access easement to serve Lots 7-12 must be recorded prior to the recordation of the final plat for Clarksville Crossing, Phase 2.
2. A use-in-common maintenance agreement for Lots 7-12 must be recorded with the Plat of Revision of Lot 19 of the Greene Fields subdivision.

Indicate this alternative compliance petition file number, request, section of the regulations, action, conditions of approval, and date on all related plats, and site development plans, and building permits. This alternative compliance approval will remain valid for one year from the date of this letter or as long as a subdivision or site development plan is being actively processed in accordance with the processing provisions of the Regulations.

If you have any questions, please contact Brenda Lubber at (410) 313-2350 or email at BLubber@howardcountymd.gov.

Sincerely,



Anthony Cataldo, AICP, Chief
Division of Land Development

AC/bl

cc: Research
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