

## COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND

### RESOLUTION NO. 2011-67

WHEREAS, on March 9, 2011, the Zoning Officer notified the Board of County Commissioners (“Board”) that he would be examining and revising whether County Code provisions governing the adequacy of public road facilities are being correctly interpreted and applied in connection with several residential subdivisions in the White Plains area of the County on Billingsley Road, west of Middletown Road, including Bentwood, Brookwood II, Linden Grove I and II, Highgrove and Kingsview.

WHEREAS, the Zoning Officer conducted such a review and issued a determination on March 31, 2011, pursuant to §§ 297-429 and 297-257.C(2) of the County Code in which he identified a significant issue as to the application of road adequacy provisions. A copy of the determination is attached to this Resolution. The issue resulted from the County’s inability to obtain regulatory determinations by the Maryland Department of the Environment (“MDE”) and the United States Army Corp of Engineers (“ACOE”) relating to the construction of the Cross-County Connector. He determined that each of the residential subdivisions listed above had relied on the Cross-County Connector to some degree to satisfy road adequacy requirements.

WHEREAS, the Zoning Officer further determined that under § 297-257.C(2) of the County Code, in order to be considered in determining a residential subdivision’s compliance with road adequacy requirements, a county, state or municipal road must be (1) programmed for construction in the government’s capital improvements plan, and (2) scheduled to be completed at the time the proposed development will generate new trips. The Zoning Officer’s review disclosed that, in reviewing preliminary subdivision plans, final plats and building permit applications, the Department of Planning and Growth Management (the “Department”) had assumed that the applicable phases of the Cross-County Connector (Phase 5 and Phase 6) would be completed in the near future and thus determined that the roads should be considered under § 297-257.C.(2) in determining road adequacy. Recent developments in connection with the County’s attempts to obtain regulatory approval for the road had indicated, however, that the completion date is not imminent and that a carefully documented completion date should be established for use in the determination of road adequacy for the subdivisions that rely on Phase 5 and Phase 6 of the Cross-County Connector at the various stages that adequacy must exist: preliminary plan, final plat and zoning permit.

WHEREAS, in his March 31, 2011 determination, the Zoning Officer analyzed the status of regulatory approval proceedings before the ACOE, the MDE, and the Maryland Department of Natural Resources (“DNR”) and the time required for actual construction of Phase 5 and Phase 6 of the Cross-County Connector.

WHEREAS, on the basis of this analysis, the Zoning Officer determined that the Cross-County Connector Phase 5 and Phase 6 roads is scheduled for completion on January 1, 2014. This completion date was based on his conclusion that it will take (1) 12 to 18 months to obtain DNR, MDE and ACOE’s approvals, (2) four months for acquisition, and (3) 18 to 24 months for physical construction.

WHEREAS, the Zoning Officer determined that the January 1, 2014 date of completion must be applied for purposes of considering road adequacy in connection with all pending preliminary plan, final plat and building permit applications. Section 297-430.A of the County Code provides:

The Zoning Officer has the power to issue the following permits:

A. Zoning permits. No building or other structure shall be erected, nor shall any existing building or structure be moved, added to, enlarged or structurally altered and no excavation for any building or other structure shall begin until a zoning permit certifying compliance with these regulations has been issued.

Further, the Zoning Officer determined that, as a result of his determination as to the completion date of Phase 5 and Phase 6 of the Cross-County Connector, he could not certify that the construction of a building or structure is in compliance with road adequacy requirements in § 297-257 unless the applicant is able to demonstrate that road adequacy is satisfied without consideration of the Cross-County Connector.

WHEREAS, the Zoning Officer determined that development in these subdivisions prior to the completion of the Cross-County Connector and without adequate road facilities is contrary to the health, safety and welfare of County residents. Development in this area without adequate road facilities creates significant safety issues as well as having a significant adverse effect on the quality of life of existing residents, prospective residents as well as the general public utilizing vicinal roads.

WHEREAS, the Board has been advised that an individual, as the ultimate homeowner, purchased Lot 2M in the Highgrove subdivision for the construction of his family home and is unable to obtain a Zoning Permit under the Zoning Officer's March 31, 2011 determination;

WHEREAS, the Board has determined that this individual who purchased a lot as the ultimate homeowner will suffer substantial loss and hardship if he is not able to obtain a Zoning Permit;

WHEREFORE, it is hereby this 27<sup>th</sup> day of September, 2011, by the Board of County Commissioners RESOLVED that:

The Zoning Officer is directed not to apply his March 31, 2011 determination to the Zoning Permit applicant for Lot 2M in the Highgrove subdivision. The equitable owner of this property is an ultimate homeowner (not a builder or developer) who has held equitable title to the property since prior to April 30, 2011.

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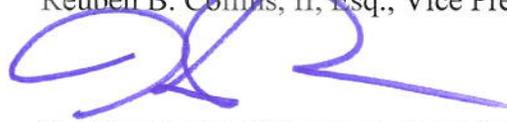
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