

Tax Map/Block/Parcel  
No. 78/7,8,13,14/30

Building Permit/Zoning  
Certificate No. 97-0470

Case 4211

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND

**APPELLANT:** Land First Limited Partnership  
Donald R. Kamtman, et al  
c/o David K. Bowersox  
Hoffman, Comfort, Galloway & Offutt, LLP  
24 North Court Street  
Westminster, Maryland 21157

**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 & Zoning  
Commission's decision of February 18, 1997,  
denying approval of the final subdivision plat for  
Patapsco Valley Overlook, Section One, consisting  
of 69.1220 acres

**LOCATION:** East of Gaither Road about 300 feet north of  
Patapsco Drive on property zoned "R-20,000"  
Residence District and "C" Conservation District  
in Election District 5

**BASES:** Article 17, Section 17.2(a) and 17.4; Ordinance 1E  
(The Carroll County Zoning Ordinance)

On March 13, 1997, the Board of Zoning Appeals (Board), received the appeal of the Carroll County Planning and Zoning Commission's, (Commission) decision of February 18, 1997, denying approval of the final subdivision plat for Patapsco Valley Overlook, Section One. The subdivision consists of 69.1220 acres and is located east of Gaither Road about 300 feet north of Patapsco Drive on property zoned "R-20,000" and "C" Conservation in Election District 5. The appeal was filed by Land First Limited Partnership, Donald R. Kamtman, et al (Appellants).

On April 2, 1997, Philip Rovang, Secretary to the Commission, forwarded to the Board the complete record of the decision of the

Commission's decision regarding the subdivision. On May 30, 1997, the Board held a hearing on the subject appeal. The appeal was continued to June 24, 1997 and then again to June 26, 1997 at which time the Board rendered its oral decision. The time for issuing the written decision was extended (Article 17, Section 17.4.10). The following are the Board's findings and conclusions.

The final subdivision plat for Patapsco Valley Overlook, Section One, containing 50 lots, was before the Commission in accordance with the Commission's policy requiring any final plat which received inadequate public facilities certification to be brought before the Commission before approval can be obtained.<sup>1</sup>

The subject subdivision is served by Piney Ridge Elementary School, Sykesville Middle School and Liberty High School. All schools serving the development received inadequate certifications by the Board of Education. The elementary and middle school inadequacies were resolved prior to the hearing with the opening of the Oklahoma Middle School and the construction of the Linton Springs Elementary School. At issue is Liberty High School. Liberty High School has a local rated capacity of 1,170 full-time students. The 1996 actual enrollment was 1,366 or 117% of the local rated capacity. By the year 2002, enrollment is projected to increase to 2066 or 177% of the local rated capacity. The site currently holds eight portable or relocatable classrooms. The Board of Education indicates that the site can hold an additional two relocatable classrooms. The relief facility for the high school is currently planned, and under the best case scenario, is projected to be ready for occupancy by the year 2000. It was also noted that the location of the relief facility is still somewhat at issue. Regardless, the relief facility is projected to provide only partial relief and an additional relief facility, which is currently not part of the Capital Improvement Budget, is required. The Commission, after lengthy deliberations, voted to deny the final plat due to lack of adequate facilities. On appeal, the Appellants in support of their appeal, present several arguments, all of which the Board finds insufficient to overcome the dismal High School situation in the school district serving the subdivision.

The Appellants first argue that the "Cohort Survival" method used by the Board of Education to project student enrollment at a

---

<sup>1</sup>The Board understands the policy and practice of the Commission to be that subdivisions with preliminary plan approval but which receive a certification of inadequacy at the time of the submission of the final plats are referred to the Commission for an individual review and determination. Subdivisions with preliminary plan approval and adequate certification are allowed to proceed to recordation, upon compliance with all conditions, without coming before the Commission.

particular school does not reflect the actual effect of a particular subdivision on a school system. The Appellants sought to introduce evidence, by way of an informal study and testimony, that the proposed subdivision will have little effect on the High School since the homes which the Appellant would be constructing would not attract families with high school aged children, (See appellants exhibit 9). The Board finds the testimony and study to be unpersuasive. The uncontroverted testimony was that the Cohort Survival method was highly reliable and accurate in projecting the student enrollment. While there may be other methods to projecting student enrollment, the Board finds that the methodology used by the Board of Education to project student enrollment to be more than adequate.

The appellants argue that the School Board does not use the relocatable classrooms in accessing its local rated capacity and that the use of such relocatable classrooms would increase the rated capacity of the school. The Board has rejected this argument in the past. The Board of Education's policy is that use of portable or relocatable classrooms is a temporary stopgap measure. They are used to accommodate increased enrollment until a relief facility is constructed. To include the relocatable classrooms in determining local rated capacity would undermine the ability of the Board of Education to temporarily house students pending construction of a relief facility. Relocatable classrooms are temporary structures not intended to be permanently affixed to the school. In addition, 24 portable classrooms would be needed to house projected enrollment by the year 2000. As noted earlier, the site can only accommodate a total of 10 relocatable classrooms.

The Appellants also present the argument that the proposed subdivision would in fact solve an existing or potential health risk by bringing public water and sewer to the area. The Appellants produced extensive testimony that the lots in the immediate area are substandard by current health department regulations. Most lots are 20,000 square feet in area, one half of the size the current requirements. As a result, there is inadequate separation between wells and septic fields. There was testimony that there were water problems at the Gaither Manor apartments. There was testimony that septic fields that were failing in the School House Road. The appellants argue that all of these ills would be cured by the Appellants' subdivision because it would bring in public water and sewer. (As a condition of subdivision the Appellants would also construct a pumping station for the sewage). However, there was also rebuttal testimony by Mr. Charles Zeleski, Director of the Environmental Health Department, that the situation in the immediate area was not a health risk. The Board believes that the Appellants genuinely believe that there is a health risk in the area and that they have a solution. Even if the Board accepts the Appellants' position that a health problem

exists,<sup>2</sup> we can not ignore the dismal High School situation and approve a potential solution to one problem which exacerbates another. Finally, the Appellants offer to address the school inadequacies by the imposition of certain conditions on their subdivision. The conditions are detailed in their Exhibit 26. The Board finds the proposal unacceptable due to the degree of inadequacy of the high school and the extensive time for the projected relief facility's construction.

The evidence before the Board was compelling and overwhelming. Liberty High School is overcrowded. The student population for the High School is projected to increase to intolerable levels. There is no relief for the overcrowding in the near future. The Board can find no error in the Commission's decision denying approval to this subdivision. The Commission's decision of February 18, 1997, denying approval of the final subdivision plat for Patapsco Valley Overlook, Section One Absent is hereby affirmed.

8/18/97

Date

IM/bmh/c4211dec.bmh  
August 11, 1997



James L. Schumacher, Chairman

---

<sup>2</sup>The Board does not find that there is a health problem in the area. Septic fields have a limited life expectancy and replacement or repair is a normal occurrence. In addition, the proper agency to determine whether a health risk exists is the Carroll County Health Department which is specifically declined to do so.