

Tax Map/Block/Parcel
No. 38-21-192

Building Permit/Zoning
Certificate No. 97-0291

Case 4209

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPELLANT: Meadow Ridge Development Corporation
4750 Owings Mills Boulevard
Owings Mills, Maryland 21117

**ATTORNEY FOR
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**ATTORNEY FOR
PLANNING
COMMISSION:** Laurell E. Taylor, Esquire
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REQUEST: An appeal of the Carroll County Planning & Zoning Commission's decision of January 21, 1997, denying approval of the final subdivision plat for Meadow Ridge subdivision, Section Two, consisting of 7.668 acres

LOCATION: North of Uniontown Road at Rockland Road on property zoned "R-20,000" Residence District in Election District 7

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

On February 20, 1997, the Board of Zoning Appeals ("the Board") received an application for an appeal of the decision of the Planning Commission of January 21, 1997, denying approval of the final subdivision plat for Meadow Ridge subdivision, Section Two, consisting of 7.668 acres located north of Uniontown Road at Rockland Road on property zoned "R-20,000" Residence District in Election District 7. On February 24, 1997, the Board received the record of the Planning Commission regarding the decision. By letter dated May 22, 1997, and received the same date by the Board, the appellant sought to amend its appeal to include the Planning Commission's failure to reconsider the earlier decision at its meeting on April 15, 1997. On May 29, 1997, the Board held a hearing on the appeal during which the request was denied. The

hearing was continued to June 5, 1997. At the conclusion of the hearing the Board rendered its oral decision. The following are the Board's findings and conclusions. In accordance with the provisions of Section 17.4.10, the Board extended the time for issuing this decision.

The final subdivision plat of Meadow Ridge, Section Two, containing 27 lots, was before the Planning Commission for approval on January 21, 1997. Section One and Two of this subdivision are served by public water and sewer.¹ Section One of the subdivision which contained 50 lots was previously recorded on November 28, 1995. Although authorized, no new home construction has begun on Section One. Section One and Two are served by the Westminster Elementary School which has a local rated capacity of 600 full-time students. The September 1996 actual student enrollment was 762 full-time students or 127% of the local rated capacity. The proposed Cranberry Elementary School is the relief facility for Westminster Elementary School and is anticipated to be constructed by September of 1998. The School Board, based on the above information, certified that Westminster Elementary School is inadequate to serve the proposed subdivision. Based on the inadequate facility certification received from the Board of Education, final approval of the plat was denied by the Planning Commission giving rise to the instant appeal.

We begin our discussion with Section 5.03(d) (2) of Article 66B of the Annotated Code of Maryland where it provides in part:

- (2) The Commission may consider and may use the failure of any agency or agencies to certify the adequacy of any public facility or facilities to serve a proposed subdivision as a basis for disapproval of a preliminary or final subdivision plat. . .

By the use of the word "may", the legislature intended to afford the Planning Commission discretion in exercising its powers. In hearing the appeal from the Planning Commission, Section 4.07 (h) of Article 66B of the Annotated Code of Maryland affords the Board the same discretionary authority as that of the Planning Commission. It is upon the exercise of this discretion which the Board finds error and reverses the decision of the Planning Commission.

The Board finds based on Mr. Vernon Smith's testimony and the school board certification of in adequacy that Westminster Elementary School is in fact inadequate to serve the subdivision regardless of the arguments and protests of the appellant to the contrary. The decision of the Board of Education not to consider

¹Both sections of Meadow Ridge subdivision are owned by the appellant herein.

the relocatable classrooms in determining whether the local rated capacity of a school is within the discretion of the Board of Education and supported by the record.

Section 5.04 of Article 66B of the Annotated Code of Maryland authorizes the Planning Commission to,

. . . agree with the applicant [appellant] upon the use, height, area and bulk requirements or restrictions which are designed to promote the purposes of the zoning ordinance of the jurisdiction. Such requirements or restrictions shall be stated upon the plat prior to the approval and recording thereof and shall have the same force of law and be enforceable in the same manner and with the same sanctions and penalties and subject to the same power of amendment or appeal as those set out as part of the zoning ordinance or map of the jurisdiction.

The appellant, in prosecuting this appeal, set forth a proposal designed to address the overcrowded schools. The proposal simply stated is to restrict its ability to obtain building permits or transfer ownership of any of the lots on Section Two until the relief facility is under roof; and to restrict its ability to secure building permits or convey title to 21 lots of Section One until 90 days after the footers for the relief facility are poured as certified by the Board of Education. As such, the question before the Board is whether the appellant's proposal in this case to phase the building permit so as to correspond with the construction of the relief facility would in fact serve the purposes of the zoning ordinance. The Board finds that this proposal does, in fact, meet the requirements of Section 5.04 and Section 5.03. Accordingly, the Board hereby reverses the Planning Commission's decision and authorizes the applicant to proceed with the plat recordation subject to following conditions:

1. With Regard to the fifty (50) lots recorded and known as Meadow Ridge Section One, which plat is already recorded among the Land Records of Carroll County, the appellant shall cause an amended plat to be filed for the purpose of restricting development on 21 lots by adding a note to said plat, to be placed at a conspicuous place on the said plat as directed by the Department of Development Review, and to read as follows:

Lots² 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,

²The lot numbers entered herein can be changed by the appellant prior to recording the amended plat provided 21 lots are so encumbered.