

Tax Map/Block/Parcel  
No. 74-15-59

Building Permit/Zoning  
Certificate No. 96-3155

Case 4158

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND

**APPELLANT:** Howard H. Patton  
10 Venture Way  
Sykesville, Maryland 21784

**ATTORNIES:** Clark R. Shaffer, Esquire  
6 North Court Street  
Westminster, Maryland 21157

and

Michael Snyder, Esquire  
400 Allegheny Avenue  
Towson, Maryland 21204

**ATTORNIES  
FOR PLANNING  
COMMISSION:**

Laurell E. Taylor, Esquire  
and  
Timothy C. Burke, Esquire  
225 North Center Street  
Westminster, Maryland 21157

**REQUEST:** An appeal of the Carroll County Planning and Zoning Commission's August 20, 1996, decision denying approval of the final subdivision plat for Lots 20, 21 and Parcel A of Nell's Acres subdivision to be recorded in the plat records of Carroll County

**LOCATION:** South side of Liberty Road (Md. Rt. 26) about 2,000 feet east of Sunset Drive intersection on property zoned "R-40,000" Residence District in Election District 5

**BASIS:** Article 27, Section 17.2(a); Ordinance 1E (The Carroll County Zoning Ordinance)

**STATEMENT OF THE CASE**

On September 18, 1996, an appeal of the Planning Commission's decision of August 20, 1996, denying the appellant's request for final approval of a minor subdivision consisting of two lots and one parcel of Phase One of Nell's Acres was filed with this Board.

Nell's Acres subdivision had received preliminary plan

approval. The preliminary plan reflected 21 building lots and five parcels on the 37+ acre site. Final plats for the subdivision were before the Planning Commission on July 16, 1996 for approval. The public school certification submitted reflected that the elementary and middle schools were inadequate to serve the subdivision. Confronted with eminent deferment of the subdivision due to the certification of inadequacy, the appellant sought to modify the request at the July 16, 1996, hearing. The modification sought was approval of only Lots 20, 21 and Parcel A of the original plan. The appellant indicated that three commercial uses would occupy the three-lot subdivision, and he argued that the uses proposed would not have any effect on the schools.

The requests for the modification and for the full final approval were not granted. Thereafter, the appellant revised the plan so as to separate the proposal into two phases. Phase One was the instant proposed subdivision. Phase Two, consisting of the residential lots, would come at a future date when schools were deemed adequate. In the interim, the appellant also applied to this Board for the conditional use approvals for the day care center, medical center and the retirement homes. We granted the requests in Board of Zoning Appeals Case Nos. 4129, 4130 and 4150.

Armed with approvals of the conditional uses, the appellant appeared before the Planning Commission on August 20, 1996, seeking approval for the "minor subdivision", i.e. Phase One of Nell's Acres. The Planning Commission deferred the approval of the revised plan due to the original certification that schools were inadequate and that the conditional uses proposed were inconsistent with the Master Plan giving rise to the instant appeal.

#### FINDINGS AND CONCLUSIONS

On November 26, 1996, the Board held a hearing on the appeal. The appeal was opposed by the Planning Commission. The appellant argues that the proposed conditional uses are by definition consistent with the Master Plan and the Commission's denial based on the alleged inconsistency with the Master Plan was improper. We agree. The conditional use is a part of the comprehensive zoning plan. As such, it is presumed to be a valid permissible use. The conditional use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption.

The appellant also argues that the uses proposed have no demand on public schools. Therefore, the inadequacy or adequacy of the public schools is not to be considered in this subdivision. In support of this argument, the appellant presents that any effect the proposed uses may have on the schools may be addressed by restrictions to which he is agreeable. We agree again.

The proposed uses for the minor subdivision are a day care center, a medical center and a retirement community. The applicant is willing to restrict his use of the land to the enumerated uses. The Board finds that the three uses have no or little effect on the school system.

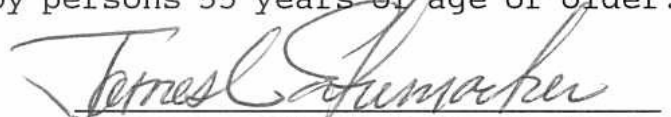
Section 503(d)(2) of Article 66B of the Annotated Code of Maryland states that: "The commission may consider and may use the failure of any agency or agencies to certify the adequacy of any public facility or facilities to serve a proposed subdivision as a basis for disapproval of a preliminary or final subdivision plat." (Emphasis added). Since the proposed subdivision will not require public schools, the inadequacy of the schools cannot serve as the basis of the disapproval of the plat.

Based on the above findings and conclusions, we are reversing the Planning Commission's decision of August 20, 1996, and remanding the case to the Planning Commission to have the subdivision plat executed by the proper individuals consistent with this decision.

Pursuant to Section 5.04 of Article 66B, the Board shall require that two notations be included on the plat.

- (1) No single family dwelling is permitted on lots 20, 21 and Parcel A.
- (2) Parcel A is further restricted to a retirement community occupied exclusively by persons 55 years of age or older.

January 3, 1997  
Date

  
James L. Schumacher, Chairman

IM/bmh/c4158dec.bmh  
December 31, 1996