

Tax Map/Block/Parcel
No. 33-11-278

Building Permit/Zoning
Certificate No. 96-1697

Case 4114

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPELLANT: Mr. Thomas A. Matthews
P.O. Box 2203
Westminster, Maryland 21158

ATTORNEY: David K. Bowersox, Esquire
Hoffman, Comfort, Galloway & Offutt
24 North Court Street
Westminster, Maryland 21157

REQUEST: An appeal of the Carroll County Planning Commission's April 2, 1996, decision denying approval of the preliminary subdivision plan for Ashland consisting of 5.5441 acres

LOCATION: South side of Dave Rill Road about 250 feet east of Moonlight Drive intersection in Election District 8

BASIS: Article 17, Section 17.4; Ordinance 1E

HEARING HELD: July 24, 1996

DECISION

On July 24, 1996, the hearing in the above captioned case was held. The appellant, Mr. Thomas C. Matthews, was present and was represented by David K. Bowersox, Esquire. The appellant sought review of the decision of the Carroll County Planning and Zoning Commission of April 2, 1996 denying approval of the preliminary plan for the Ashland subdivision. The subdivision is located on Dave Rill Road in the 8th Election District. The plan proposes the creation of four lots to be served by private well and septic systems.

The Planning Commission's record of the April 2, 1996, decision was received by this Board under cover letter from Philip J. Rovang, Secretary of the Planning Commission and Director of the Planning Department and is made a record of this proceeding. The Planning Commission's decision was to deny the preliminary plan based on the inadequacy of the public schools. At the close of the public hearing, the Board deliberated in private. The Board is remanding this case to the Planning Commission for its reconsideration of the matter in light of the guidelines the Planning Commission recently adopted for determining when to deny a plan (preliminary or final) when the adequacy of the schools is at issue.

FINDINGS AND CONCLUSION

The proposed plan meets the technical requirement for preliminary plan approval save for the adequacy of the middle school which is to serve the subdivision. The staff report submitted to the Planning Commission recommended approval of the plan with conditions (which were agreeable to the appellant). The Planning Commission did not approve the plan relying on the certificate of inadequacy of the middle school. There is only one middle school which serves this subdivision and the surrounding area.

The appellant argued that the approval of the preliminary plan will not result in any new lots, any new construction, any new enrollment in the school system and any new traffic. Approval will simply permit the applicant to pursue further engineering of the site. The Board recognizes that this argument can be applied to all preliminary plans. The Board specifically rejects this argument.¹ If accepted, the argument would not permit the Planning Commission to exercise its authority granted under Article 66B, Section 5.03(d)(2) of the Maryland Annotated Code to deny preliminary plans. The statute clearly affords the Planning Commission the discretion of approving or denying a preliminary or final subdivision plan if the public agency deems the subject public facility as inadequate depending on the totality of the factors the Planning Commission is required to consider. The argument would prevent the Planning Commission from exercising this discretionary authority. The middle school in question has an enrollment of 119% for 1996 and as such has been deemed inadequate by the Carroll County School Board.

The appellant argues that the school is in fact adequate since the Carroll County School Board does not consider the portable classrooms of the subject schools when assessing their adequacy. The Board does not accept this argument. The portable classrooms are intended to be temporary accommodations intended to assist and enable the School Board to have classrooms available when the school exceeds its physical capacity. The support facilities, e.g., gymnasium, cafeteria, septic, parking, were designed for the size of the school building actually constructed (bricks and mortar). They were not constructed or designed for a larger facility. While we accept that a four lot subdivision will not have a great impact on the school population, we will not substitute our judgment for

¹In so doing, the Board recognizes that it may have contributed to this line of thinking by its decision in Case 4088 which was admitted as Exhibit 4. The Board seeks to clarify the reason for this apparent inconsistency. When Case 4088 came before the Board, the Planning Commission did not have any established guidelines on how it was going to deal with preliminary plans when a public facility was certified as inadequate by an agency. The Board in determining whether to remand that case or reverse the decision of the Planning Commission, elected to reverse the Planning Commission's decision. The Board's statement in Case 4088, "approval of the revised preliminary subdivision plan has no immediate effect upon any public facility" was only intended to indicate that a less strict standard regarding adequate facilities ought to apply to such plans and nothing more.

that of the Planning Commission if its decision is not arbitrary or capricious.

The appellant alleges that the decision is in fact arbitrary, capricious as he was not afforded the due process of law by being unfairly singled out for others similarly situated. In support of this argument, the minutes of other Planning Commission meetings were introduced into evidence to show that other preliminary plans in the same school district were approved. We recently addressed this argument in Board of Zoning Appeals Case 4097. We stated there,

the appellant argues that it has not been offered due process of law in that it has been treated differently by the Planning Commission than others similarly situated. The appellant argues that Planning Commission's decisions were generally inconsistent, arbitrary and differed with the composition of which members were sitting on a particular hearing day. In support thereof, Exhibit #5, [Case 4097] the minutes for several Planning Commission meetings was introduced. This Board recognizes that when different commission members with different values may weigh evidence differently at a hearing and different results may be reached. While the resulting decisions may be inconsistent, and appear to be inequitable, they are not per se arbitrary. Each member of a body is required to weigh the evidence presented and to vote his or her conscience. In this regard, the Planning Commission's action does not appear to be arbitrary or capricious. In addition, we note that there are many elements which the Planning Commission is required to consider in its review of a proposed plan, and adequate public facilities is only one of them. Minutes of the Planning Commissions when offered to show similarities or differences with other subdivision plans offer little information to assist this Board with those elements.

We do not have all the factors the Planning Commission had before it when it considered the other plans. Our review is limited to determine whether the Planning Commission acted arbitrarily or capricious in this case. We find insufficient evidence that it did. At the time of the decision, there were no established criteria or guidelines for determining when to deny a plan when the adequacy of schools is in issue, the resulting decisions may appear inconsistent and arbitrary. This is particularly important when the reasons for the action is not clearly stated. We note that the Planning Commission has adopted adequate facilities guidelines for schools a few days before this hearing and commend the Commission for its action. This Board is of the opinion that the plan should be reviewed under the new guidelines.

In remanding this case to the Planning Commission for reconsideration, we

would hope that the Planning Commission would approve the plan. The degree² by which the middle school is deemed inadequate does not impress this Board to be so significant as warranting denial of the preliminary plan.

8/15/96

Date

Karl V. Reichlin

Karl V. Reichlin, Chairman

IM/bmh/c4114dec.bmh

²For 1997 the projected student enrollment for the middle school is 117% and the Planning Commission's guidelines (Planning Commission Exhibit 1) indicate that 115% and under as approvable preliminary plans.