

Tax Map/Block/Parcel
No. 79-1/7-8/151

Building Permit/Zoning
Certificate No. 96-1069

Case 4097

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPELLANT: Shub Family Limited Partnership
c/o John T. Maguire, Esquire
189 East Main Street
Westminster, Maryland 21157

ATTORNEY: John T. Maguire, Esquire
189 East Main Street
Westminster, Maryland 21157

REQUEST: An appeal of the Carroll County Planning Commission's February 20, 1996, decision denying approval of the preliminary subdivision plan for Section Three of Jenna Estates consisting of 89.65 acres

LOCATION: North side of Arrington Road at Henryton Road intersection in Election District 5

BASIS: Article 17, Section 17.4; Zoning Ordinance 1E

HEARING HELD: June 28, 1996

FINDINGS AND CONCLUSION

On June 28, 1996, the hearing in the above captioned case was held. The appellant, Shub Family Limited Partnership, represented by John T. Maguire, sought review of the decision of the Planning Commission of Carroll County dated February 20, 1996, denying approval of the preliminary plan of Section Three of Jenna Estates. The appellant sought reversal of the decision and approval of the plan. The Planning Commission and Planning Department of Carroll County opposed the appeal and were represented by Laurell E. Taylor, Senior Assistant County Attorney.

The Planning Commission's record of the decision of February 20, 1996 was received by the Board of Zoning Appeals under a cover letter from Philip J. Rovang, Secretary of the Planning Commission and Director of Planning and is made a part of the record in the proceeding. The record and testimony presented indicated that the Planning Commission's denial was based on the certification that public facilities were inadequate to serve the proposed subdivision. The focal point of the certification was that both elementary and middle schools were certified as inadequate by Vernon Smith on behalf of the Carroll County Board of Education. In addition, Arrington Road was certified as inadequate by the Department of Public Works.

Mr. Vernon Smith testified that the proposed subdivision would be served by Carrolltowne Elementary and Sykesville Middle School. The schools had an enrollment of 130% and 133% of the local rated capacity respectively for 1995. The projected enrollment for 1996 was 141% and 133% of the local rated capacity respectively. The enrollment at the other elementary schools serving the district were also in excess of their respective rated local capacity. This information was before the Planning Commission when it considered the application (see the minutes of the Planning Commission's meeting introduced as Appellant's Exhibit #5). The minutes also reflect the motion to approve the plan failed by a 4-3 vote.

Section 5.03(d)(2) of Article 66B of the Annotated Code of Maryland authorizes the Planning Commission to consider the inadequacy of any public facility servicing a proposed subdivision as a basis for disapproval of a preliminary or final subdivision plat. The statute clearly affords the Planning Commission the discretion of denying a preliminary or final subdivision plan if the public agency deems the subject public facility as inadequate. As such, clearly, the schools in the instant case were inadequate and the denial even in the preliminary plan stage is lawful. (The consequences of such a denial are not the subject of this review nor within the jurisdiction of this Board). There may be times when the merits of application (whether preliminary or final) may warrant its approval in spite of a certification of inadequacy by an agency. This would not be arbitrary or capricious if the facts support the decision.

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, 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 recently noted in Board of Zoning Appeals Case 4088 that, absent some 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. 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.

The appellant also argue that several issues affecting its subdivision

have been resolved in its favor since the Planning Commission's decision of February 20, 1996. e.g. Arrington Road is now considered adequate as a result of recent or planned improvements. Linton Road Elementary School has received funding approval for construction. Oklahoma Middle School is nearing completion and is expected to open within the next school year.

The Board finds insufficient evidence that the appellant has been treated differently by the Planning Commission than others similarly situated. The minutes do not offer sufficient evidence that the Planning Commission's actions were arbitrary and would move to affirm the decision of the Planning Commission. However, with the different circumstances which now affect the subdivision, and the Planning Commission's having adopted adequate facilities guidelines for schools a few days before this hearing, the Board is remanding this matter to the Planning Commission for its reconsideration of the matter under these new guidelines and changes in circumstances.

The Board received a motion for reconsideration filed by the appellant after the close of the public hearing and before this written decision. The Board has considered the motion and will not grant the request. The Board is convinced that remand to the Planning Commission is the appropriate remedy in this case.

8/5/96

Date

Karl V. Reichlin
Karl V. Reichlin, Chairman