Tax Map/Block/Parcel No. 39-14/15-211

Building Permit/Zoning Certificate No. 96-3876

Case 4189

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPELLANT: Willow Pond Development, LLC
c/o John T. Maguire, Esquire
189 East Main Street
Westminster, Maryland 21157

ATTORNEY: John T. Maguire, Esquire
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ATTORNEY FOR PLANNING COMMISSION: Laurell E. Taylor, Esquire
225 North Center Street, Room 303
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REQUEST: An appeal of the Carroll County Planning and Zoning Commission's decision December 17, 1996, denying approval of the final subdivision plat for "West Branch Section of Eden Farms", lots 186-210, to be recorded in the plat records of Carroll County

LOCATION: On both sides of Eden Farm Circle, about 550 feet north of Sunshine Way on property zoned "R-20,000" Residence District in Election District 7

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

On December 18, 1996, Willow Pond Development, LLC, filed an appeal of the December 17, 1996, denial by the Planning Commission of Carroll County of its final subdivision plan for "West Branch Section of Eden Farms". On January 29, 1997, the Board of Zoning Appeals (the Board) held a hearing on the matter. The appellant was represented by John T. Maguire, Esquire. Also in attendance was Laurell E. Taylor, Esquire, counsel for the Carroll County Planning Commission and the Carroll County Department of Planning.

Unable to complete the hearing on the 29th of January, the Board continued the matter to January 31, 1997. At the close of the hearing, the Board continued its deliberations to February 19,

1997.[1] Regrettably, during this time period Board member, friend and colleague James Zester passed away. The Board convened on February 19, 1997, with James Schumacher and Karl Reichlin. The Board thereafter denied the appeal by a 2-0 vote and sustained the Planning Commission's decision. In light of the particularly heavy workload during this time period, the Board extended the time for the issuance of this decision pursuant to section 17.4.10 of the Zoning Ordinance.

FINDINGS OF FACT

The following are the Board's findings of fact. West Branch Section of Eden Farms subdivision was before the Carroll County Planning Commission on December 17, 1996, for final subdivision approval. Eden Farms subdivision contains 101 lots of which 25 are shown on West Branch Section. The section comprises 12.065 acres. The last section of Eden Farms was recorded in February of 1995.

The proposed development is located in the Westminster Elementary, East Middle School and Westminster High School attendance areas. In 1996, Westminster Elementary School had an enrollment of 762 students or 127% of its local rated capacity. (Appellant's Exhibit 9). Enrollment is projected to increase to 879 by 2002. As such, the School Board certified that school facilities are inadequate to serve this subdivision. The Cranberry Elementary School is projected to open in September of 1998 and will offer relief for the inadequacy. The inadequacy of school facilities served as the basis of the Planning Commission denial.

The Board finds that Westminster Elementary is inadequate to serve this subdivision and affirms the decision of the Planning Commission of Carroll County. Additional findings will be noted when necessary.

DISCUSSION

The current owner acquired the property sometime after the last section was recorded and prior to the adoption of the Interim Development Control Ordinance (Ordinance #147). The appellant presented a litany of arguments in support of its request to overturn the Planning Commission's decision. While sympathetic to the appellant's position, the Board remains convinced that the Planning Commission's denial of the subdivision at this time to be correct and proper.

One of the main arguments presented is that the school facilities are in fact adequate to serve this subdivision. Evidence was presented that adjacent schools could provide relief for the overcrowding at the subject school, e.g. Runnymede

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[1] The case could not be continued to an earlier date due to prior commitments by the Board members.

Elementary School has an enrollment of 72% of its local rated capacity. Evidence was also presented that by "simply" adjusting irregular boundary line for this school district (see Appellant's Exhibit 12) William Winchester Elementary School, located within an adjacent school district, with an enrollment of 95% of local rated capacity, could offer relief. However, evidence was also presented that redistricting can be disruptive to small children and their families. The testimony established that redistricting occurs when major events occur, e.g. the opening of a new school. In fact, there is a redistricting planned for September 1998 school year with the scheduled opening of Cranberry Elementary School. At that time the matter will be addressed. The Board is convinced that the Board of Education is the proper body to make such decisions. In addition, the Planning Commission and this Board are without authority to change the district lines.

Another argument that the appellant raises is that relocatable classrooms are not considered by the Board of Education in determining the local rated capacity of a school and should be. This argument, simply stated, is that since the relocatable classrooms are purchased, in part, by impact fees, and the impact fees are only to be used for permanent improvements, then the relocatables should be considered as permanent structures and included in the local rated capacity of a school. This Board has heard and rejected this argument before. The relocatable classrooms are in fact structures that will last a number of years. However, the evidence before us is that it is not the **intent** of the Board of Education to keep the relocatable classrooms as permanent additions to the subject school. The Board of Education utilizes the portables as in interim measure to house students until demand for a new school building is sufficient and until it can be constructed. The portable classrooms afford the Board of Education the flexibility it needs to function. Use of the portable classrooms on a permanent basis defeats the legitimate purpose of the Board of Education.

The appellant also raises the argument that it is being treated differently from other developers similarly situated, and it will suffer great economic hardship as a result of the difference of treatment. The Board finds from the evidence presented that the appellant is in fact being treated fairly as all others similarly situated in the subdivision pipeline.

Frank Schaeffer and Philip Rovang described the subdivision process well.(For our purposes we need not go into every single detail of the two year process. Rather the key stages will be highlighted) The Owner/developer first receives preliminary plan approval for a subdivision. The larger subdivisions (as did the instant case) usually consist of several phases. With the preliminary plan approved the developer can proceed through the process. To proceed, the developer/owner complies with the

conditions imposed on the Preliminary Plan for the particular phase he or she seeks final plan approval. Preliminary Plans do not have an expiration date. When the developer is ready he or she submits the final plans for the phase in question. With the approval of the final subdivision plan the developer can proceed through the Public Works Agreement (PWA) process. The PWA process involves legal document preparation, posting of bonds and an adequate facilities certification. If all is in order, the final plat is approved and the document can be recorded. With the adoption of Ordinance 147 and the Interim Development Review Standards, the Planning Commission discovered that several plans had progressed through to the PWA process but were serviced by inadequate school facilities. The Developers therein had "posted the PWA Bonds". Faced with this twelfth hour obstacle, the Planning Commission elected to allow the plans in question to go to record but thereafter required the adequate certification be obtained before the commencement of the PWA process. The purpose of this decision was to prevent the expenditure by the developer of additional funds if the inadequacy of a public facility was going to be an obstacle. The notice would be received that much earlier. Plans with adequate facilities proceed to the PWA process. Plans with inadequate certification are referred to the Planning Commission for individual review. The Plans are reviewed and either allowed to proceed to the PWA process or are denied. If the Plan receives Planning Commission approval then it is allowed to proceed through the PWA process and thereafter be recorded.

The Plans referred to by the appellant that were allowed to proceed had gone through the PWA process and posted the requisite PWA bonds before the change in procedure. They were allowed to proceed because they were to far through the pipeline that to stop the process then would cause them extreme economic hardship, and be unfair since they had no prior knowledge. The appellant argues that it did not have notice also and that notices should have been sent to the affected subdivisions, i.e. all subdivisions which had preliminary plan approval. This is a unreasonable request. The appellant may have not had actual knowledge, however, the testimony indicated that the general public was well informed and therefore the appellants are charged with the knowledge. The applicant herein had ample opportunity to be forewarned (six months).

The Appellant herein is at the stage of seeking approval of a section of a plan which had received preliminary plan approval but which had a certification of inadequacy from the school board. Because there was an inadequate certification, the Plan was referred to the Planning Commission for its review. After its review the Planning Commission denied its approval giving rise to the instant appeal. The Appellant argues that it to had progressed through the pipeline to the point were it will suffer great economic hardship if it not allowed to proceed. In support, it presented evidence of construction of a storm water management pond serving the entire Eden Farms subdivision, and of the posting of

the grading bond. The Board is not persuaded by this argument and finds that the appellant was not treated any differently or unfairly. All developers who have received preliminary plan approval are in the same position. The Plans that were allowed to proceed had progressed further in the process than the current plan.

April 9, 1997
Date

James L. Schumacher, Chairman

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April 9, 1997