

IN RE: PETITION FOR ZONING VARIANCE
 N/S Eastport Court, opposite
 c/1 of Marblehead Court
 (10 Eastport Court)
 8th Election District
 3rd Councilmanic District
 T.W.S., Inc.
 Petitioner

BEFORE THE
 DEPUTY ZONING COMMISSIONER
 OF BALTIMORE COUNTY
 Case No. 89-281-A

FINDINGS OF FACT & CONCLUSIONS OF LAW

The Petitioner herein requests a variance to permit a window to property line distance of 10 feet in lieu of the required 15 feet and a window to window distance of 30 feet, in lieu of the required 40 feet, and to amend the Final Development Plan of The Fields At Seminary, Lot #15, accordingly, as more particularly described in Petitioner's Exhibit 1.

The Petitioners, by Douglas C. Corbin, Vice President of T.W.S., Inc., and the Contract Purchaser, NV Homes, Inc., by Ross Walton, Division Manager and Vice President, and Bill DeMarco, appeared, testified and were represented by Robert J. Ryan, Esquire. Also appearing on behalf of the Petition was Sam Shockey with Development Engineering Consultants, Inc. There were no Protestants.

Testimony indicated that the subject property, known as 10 Eastport Court (Lot 15), zoned D.R. 2, is part of a 31-lot development known as the Fields of Seminary II. NV Homes has the contract to purchase all of the lots from T.W.S., Inc. Mr. Walton testified regarding NV Homes' experience in building homes in the Baltimore, Washington, Delaware, and McLean, Virginia areas, and in particular, their previous developments in Baltimore County. He further testified that after completing a marketing analysis of the area, it was determined that there was a need for larger, executive style homes in the area. As a result, NV Homes felt

this particular development should have homes such as the Potomac, the Kingsmill and the Harrison of their line. Copies of the floor plans for each style were presented and identified as Petitioner's Exhibits 2A through 2C. The size of each home will range from 2,500 sq.ft. to 4,000 sq.ft. on an average lot size of 1/4 acre. Mr. Walton testified that after numerous attempts to appropriately position these houses on each of the lots, it was determined that variances would be required for 9 of the 31 lots.

Testimony presented by Petitioner's witnesses indicated NV Homes firmly believes either no variances would be needed or a much smaller size variance would be required if no windows were placed in the sides of the houses. However, such a decision would not take into consideration the desires of potential homeowners. Testimony presented indicated that windows on the sides were preferable for various reasons, including cross-ventilation, additional lighting and aesthetic appeal. Petitioner further noted that many of the windows will be installed in such a way that adjoining properties will not have dwellings with windows located directly across from one another.

Counsel for Petitioner argued that the spirit and intent of the zoning regulations had been met by the proposed plans and that flexibility was needed due to the change in marketing demands and housing costs. Counsel further argued the property is subject to the regulations which went into effect in 1970 and that said regulations do not adequately reflect today's market and the increase in the cost of the property.

Petitioners argued that to deny the requested variances would create tremendous practical difficulty upon the Petitioners without bene-

fitting the community. Counsel indicated potential property owners and persons who might be adversely affected by the granting of the variances would be protected due to the fact that all parties will be advised of the variances prior to their purchase of any of the subject lots and therefore have the ability to determine whether or not such variance will adversely affect the enjoyment of their property. Petitioner contended the lots could not be resubdivided to reduce the number of lots by one or two to give additional acreage for each lot to meet setback requirements without a "two year" delay in development.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

In the opinion of the Deputy Zoning Commissioner, the variances requested herein are appropriate in some instances and excessive in others and therefore not in keeping with the spirit and intent of the zoning regulations. It is clear that N.V. Homes attempted to fit its homes on lots previously laid out by Petitioners. The variances for Lots 14, 15,

16 and 17 will be granted with restrictions as in those cases, it is felt the requests are reasonable and within the spirit and intent of the B.C.Z.R. The desirability of having windows on the sides of a home for the reasons earlier discussed are valid. Potential purchasers can choose for themselves as to whether the variance granted herein will adversely affect the enjoyment of their property. The variance requested for Lot 18, which is larger than that requested for Lots 14, 15, 16 and 17, creates more of a problem; however, to deny the request would result in either building a house on the lot that is not in keeping with the design and style of the adjoining Lots 1 through 26, or result in re-designing many of the lots in the subdivision which, as argued, would create a practical difficulty for the Petitioners. In light of the desire of a potential purchaser to have a compatible home with others in the neighborhood and the practical difficulty which could be created for Petitioners, the variances for Lot 18 will be granted with restrictions.

With respect to Lots 28, 29, 30 and 31, Petitioner could re-adjust lot lines to create three lots in lieu of the four proposed with adequate space to either meet the setback requirements or be more in keeping with the spirit and intent of the B.C.Z.R. The testimony presented by Petitioners in these instances was in support of a matter of convenience rather than of the necessity for the variances. In the opinion of the Deputy Zoning Commissioner, the variances requested were excessive. The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variances requested for Lots 28 through 31 must be denied.

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R.

and would not result in substantial detriment to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested for Lot 15 should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 21st day of March, 1989 that the Petition for Zoning Variance to permit a window to property line distance of 10 feet in lieu of the required 15 feet and a window to window distance of 30 feet in lieu of the required 40 feet, in accordance with Petitioner's Exhibit 1, and to amend the Final Development Plan of The Fields At Seminary, Lot #15 accordingly, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

- 1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- 2) Petitioner shall prepare a site plan of the 31-lot development known as The Fields at Seminary II of a minimum size as that submitted herein, identified as Petitioner's Exhibit 5, which shall reflect each variance granted for the development in a manner similar to that set forth in Petitioner's Exhibits 4A and 4B set forth on the plan the variances granted for each lot. Said plan shall be shown to and acknowledged as seen by each potential buyer of Lots 1 through 31 prior to the sale of any lot.
- 3) Petitioners shall cause the deeds for Lots 14 through 18 to specifically reference the zoning case applicable to each lot.
- 4) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

5) Petitioner and Contract Purchaser shall not request any further variances for Lot 15.

AMN:bjs

ANN M. NASTAROWICZ
 Deputy Zoning Commissioner
 for Baltimore County

Baltimore County
 Zoning Commissioner
 Office of Planning & Zoning
 Towson, Maryland 21284
 (301) 887-3353

J. Robert Haines
 Zoning Commissioner

March 3, 1989

Robert J. Ryan, Esquire
 4111 E. Joppa Road
 Baltimore, Maryland 21236

RE: PETITION FOR ZONING VARIANCE
 N/S Eastport Court opposite the c/1 of Marblehead Road
 (10 Eastport Court - Lot 15)
 8th Election District - 3rd Councilmanic District
 T.W.S., Inc. - Petitioner
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Dear Mr. Ryan:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 494-3391.

Very truly yours,

ANN M. NASTAROWICZ
 Deputy Zoning Commissioner
 for Baltimore County

AMN:bjs

cc: Ms. Mary Ginn
 505 Horncrest Road, Towson, Md. 21204

People's Counsel

File



