

IN RE: PETITION FOR ZONING VARIANCE N/S Seminary Avenue, 360' W of the c/1 of Marblehead Road (8508 Marblehead Road) 8th Election District 3rd Councilmanic District T.W.S., Inc. Petitioner

BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 89-288-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a variance to permit a window to tract boundary distance of 22 feet in lieu of the required 35 feet, a distance between buildings of 20 feet in lieu of the required 30 feet, and to amend the Final Development Plan of The Fields At Seminary, Lot #31, 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 Shockley with Development Engineering Consultants, Inc. There were no Protestants.

Testimony indicated that the subject property, known as 8508 Marblehead Road (Lot 31), 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 benefiting 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. 29 (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 16, 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.

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 31 should be denied.

ORDER RECEIVED FOR FILING

Date 3/29/89 By Robert J. Ryan

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PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 89-288-A #166

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1801.2.c.1., 1801.2.c.2.a., 504 (VB5.b. CMDR). To permit a window to tract boundary distance of 22 ft. in lieu of the required 35 ft. for Lot #31, and to permit a distance between buildings of 20 ft. in lieu of the required 30 ft. and to amend the Final Development Plan of The Fields at Seminary II, Lot #31 to allow same.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. Reduction in size of standard units impractical for builder.
2. Smaller units would be inconsistent with other units in subdivision.
3. Smaller units would be incompatible with the concept and intent of development in the immediate and surrounding neighborhoods.

LOT #31 #8508 MARBELHEAD ROAD Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:	Legal Owner(s):
(Type or Print Name)	T.W.S., INC. (Type or Print Name)
Signature	Signature DOUGLAS C. CORBIN, V.P. DATE 3/29/89
Address	(Type or Print Name)
City and State	Signature
Attorney for Petitioner:	4111 E. JOPPA ROAD (301) 256-1000 Address Phone No.
(Type or Print Name)	BALTIMORE, MARYLAND 21236 City and State
Signature	Name, address and phone number of legal owner's representative to be contacted
Address	STEVEN L. FALER REVENUE DIVISION BALTIMORE COUNTY
City and State	6603 YORK ROAD BALTIMORE, MD. 21212 (301) 377-2600 Address Phone No.
Attorney's Telephone No.:	

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 19____, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____, 19____, at _____ o'clock _____ M.

ESTIMATED LENGTH OF HEARING (1/2 HR) + 1HR. AVAILABLE FOR HEARING MON./TUES./WED. - NEXT TWO MONTHS. ALL OTHER - NEXT TWO MONTHS. REVIEWED BY: J. Robert Haines DATE 3-29-89

Development Engineering Consultants, Inc. #166 Site Engineers & Surveyors

DESCRIPTION TO ACCOMPANY PETITION FOR VARIANCE REQUEST

OUTLINE DESCRIPTION OF LOT NO. 31 OF THE FIELDS AT SEMINARY II, ALSO BEING KNOWN AS #8508 MARBELHEAD ROAD. LOCATED IN THE 8TH ELECTION DISTRICT OF BALTIMORE COUNTY, MARYLAND.

Beginning for the same at a point on the northern-most right-of-way line of Seminary Avenue; said point being distant 360 ± feet westerly from the centerline of Marbelhead Road right-of-way, thence running for the following 4 courses and distances viz: (1) North 80 degrees 06 minutes 47 seconds West, 95.00 feet; (2) North 10 degrees 32 minutes 50 seconds East, 125.01 feet; (3) South 80 degrees 06 minutes 47 seconds East, 93.56 feet; (4) South 09 degrees 53 minutes 13 seconds West, 125.00 feet to the point of beginning.

Containing 0.27 acres of land more or less. Being the same parcel as shown on a plat entitled "The Fields at Seminary II", to be recorded.

88-102 10-07-88

6603 York Road Baltimore, Maryland 21212 (301) 377-2600

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 24 day of March, 1989 that the Petition for Zoning Variance to permit a window to tract boundary distance of 22 feet in lieu of the required 35 feet, a distance between buildings of 20 feet in lieu of the required 30 feet, in accordance with Petitioner's Exhibit 1, and to amend the Final Development Plan of The Fields At Seminary, Lot #31 to allow same, is hereby DENIED.

ANN M. MASTAROWICZ Deputy Zoning Commissioner for Baltimore County

ORDER RECEIVED FOR FILING

Date 3/29/89 By Robert J. Ryan

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 (301) 887-3353 J. Robert Haines Zoning Commissioner

T.W.S., Inc. 4111 E. Joppa Road Baltimore, Maryland 21236 ATTN: DOUGLAS C. CORBIN

RE: Petition for Zoning Variances CASE NUMBER: 89-288-A

Gentlemen: Please be advised that \$19.91 is due for advertising and posting of the above referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign & post set(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before your hearing is scheduled to begin.

Please note that should you fail to return the sign & post set(s), an above fee for each such

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT No. 005704

DATE 3-25-89 ACCOUNT R-01-615-CCO AMOUNT \$ 19.91

RECEIVED T.W.S. Inc. FOR Advertising & Posting (89-288-A)

VALIDATION OR SIGNATURE OF CASHIER

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 8th
 Posted for: Variances
 Petitioner: T.W.S. INC
 Location of property: N.S. of Seminary Ave 360' W of the
c/l of Marbelhead Road Lot #31
 Location of signs: North on N. of Seminary Ave on
front of lot #31
 Remarks:
 Posted by: J. Robert Haines Date of return: Jan 13-89
 Number of Signs: _____

Baltimore County
 Zoning Commissioner
 Office of Planning & Zoning
 Towson, Maryland 21204
 (301) 887-3333
 J. Robert Haines
 Zoning Commissioner

DEC 19 1988

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

PETITION FOR ZONING VARIANCE
 Case Number: 89-288-A
 N/S Seminary Avenue - 360' W c/l Marbelhead Road
 8508 Marbelhead Rd. (Lot 31)
 8th Election District - 3rd Councilmanic
 Petitioner(s): T.W.S., Inc.
 HEARING SCHEDULED: WEDNESDAY, JANUARY 25, 1989 at 9:30 a.m.

Variance to permit a window to tract boundary distance of 22 ft. in lieu of the required 35 ft. for Lot #31 and to permit a distance between buildings of 20 ft. in lieu of the required 30 ft. and to amend the Final Development Plan of the Fields at Seminary. Lot #31 to allow same.

In the event this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit and received in this office by the date of the hearing set above or presented at the hearing.

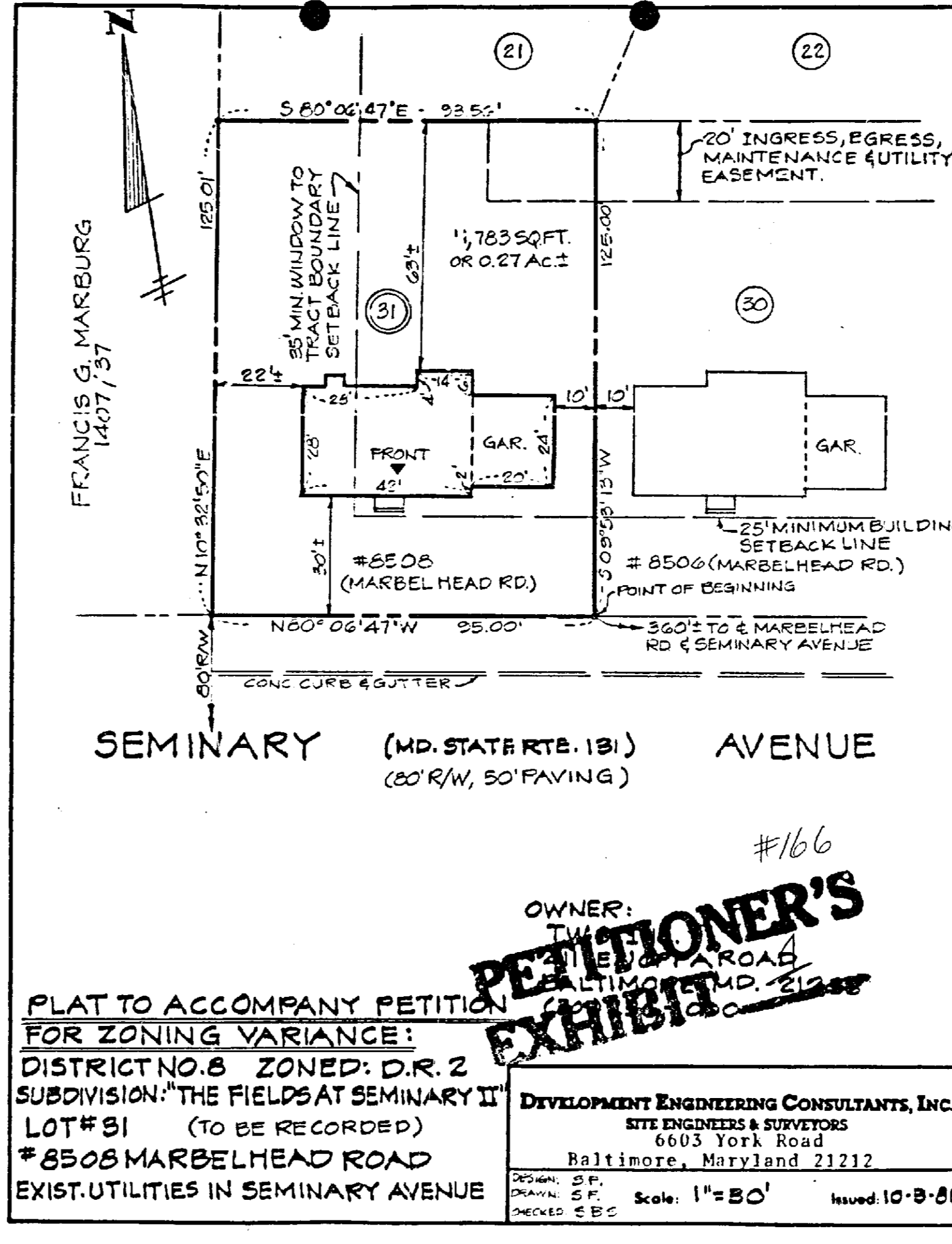
J. ROBERT HAINES
 Zoning Commissioner of
 Baltimore County

CERTIFICATE OF PUBLICATION

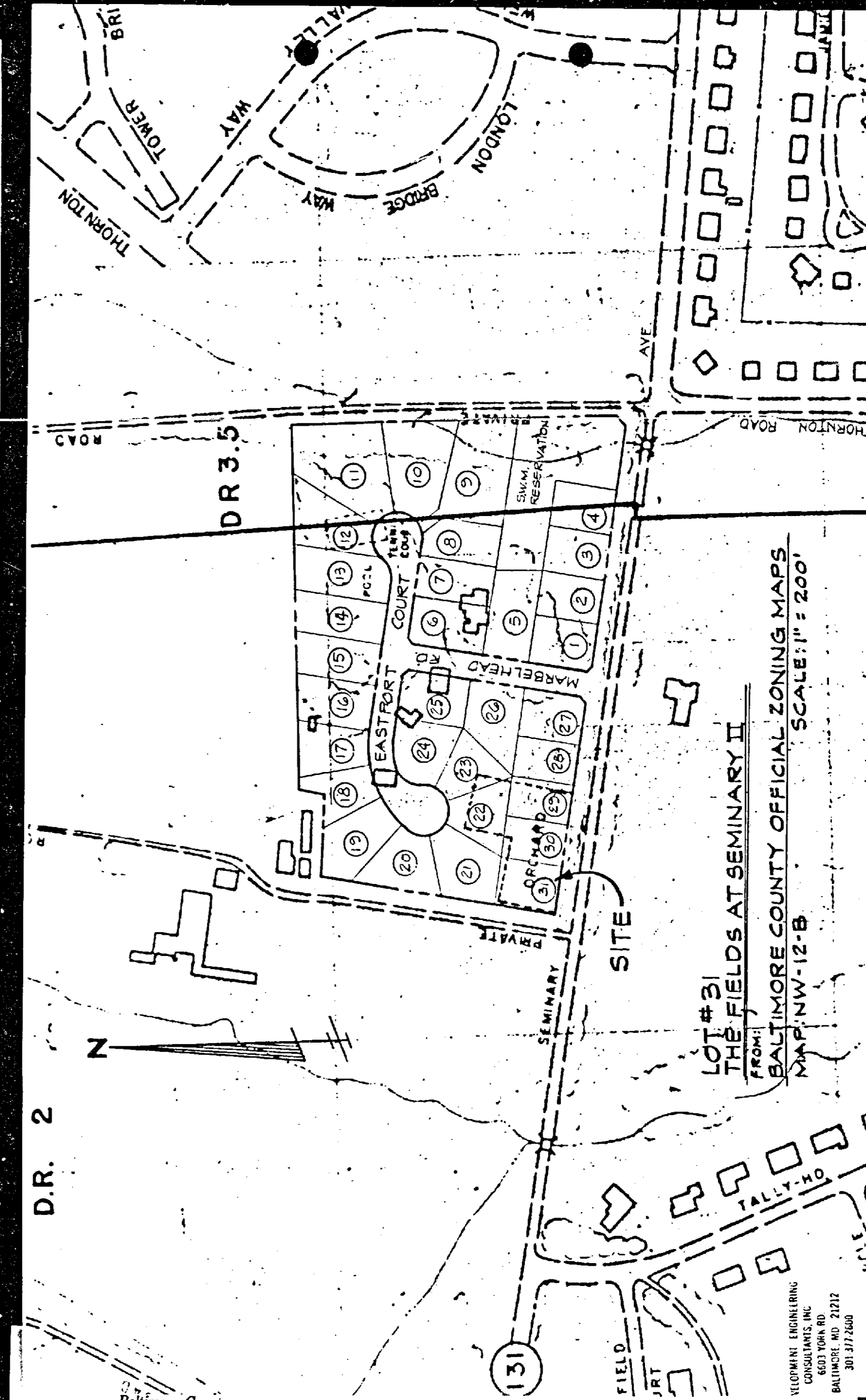
TOWSON, MD. January 5, 1989
 THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Jan 5, 1989.

THE JEFFERSONIAN
 TOWSON TIMES,
 S. Lake Orlan
 Publisher

PO 07845
 reg M 25154
 case # 89-288-A
 price \$104.81



OWNER: T.W.S. INC
 PETITIONER'S EXHIBIT
 DEVELOPMENT ENGINEERING CONSULTANTS, INC.
 SITE ENGINEERS & SURVEYORS
 6003 York Road
 Baltimore, Maryland 21212
 Scale: 1" = 50'
 Issued 10-9-88



Baltimore County
 Zoning Commissioner
 Office of Planning & Zoning
 Towson, Maryland 21204
 (301) 887-3333
 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 Seminary Avenue, 360' W of the c/l of Marbelhead Road
 (8508 Marbelhead Road - Lot 31)
 8th Election District - 3rd Councilmanic District
 T.W.S., Inc. - Petitioner
 Case No. 89-288-A

Dear Mr. Ryan:
 Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been denied 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

cc: Ms. Mary Ginn
 606 Horncrest Road, Towson, Md. 21204
 People's Counsel
 File

89-288-A

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
 111 W. Chesapeake Avenue
 Towson, Maryland 21204

Your petition has been received and accepted for filing this 2nd day of November, 1988.

J. Robert Haines
 ZONING COMMISSIONER

Petitioner: T.W.S., Inc.
 Received by: James E. Dyer
 Chairman, Zoning Plans
 Advisory Committee
 Attorney: _____

Baltimore County
 Fire Department
 Towson, Maryland 21204-2586
 494-6300
 Paul H. Reincke
 Chief

December 2, 1988

J. Robert Haines, Zoning Commissioner
 Office of Planning & Zoning
 Baltimore County Office Building
 Towson, Maryland 21204

Re: Property Owner: T. W. S., Inc.
 Location: N/S Seminary Avenue, 360' W of c/l Marbelhead Rd.
 8508 Marbelhead Road
 Item No.: 166
 Zoning Agenda: Meeting of 11/1/88

Gentlemen:
 Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Paul H. Reincke NOTED & APPROVED: J. Robert Haines
 Planning Group Chairman, Zoning Plans
 Special Inspection Division Advisory Committee

/s/

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

January 17, 1989

Douglas C. Corbin, Vice President
 T.W.S., Inc.
 4111 East Joppa Road
 Baltimore, Maryland 21236

RE: Item No. 166, Case No. 89-288-A
 Petitioner: T.W.S., Inc.
 Petition for Zoning Variance

Dear Mr. Corbin:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,
 James E. Dyer/dl
 JAMES E. DYER
 Chairman
 Zoning Plans Advisory Committee

JED:dt
 Enclosures
 cc: Steven L. Fader
 Development Engineering Consultants, Inc.
 6603 York Road
 Baltimore, MD 21212