

Tax Map/Block/Parcel  
No. 47-16-240

Building Permit/Zoning  
Certificate No. 90-3462

Case 3461

**OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND**

**APPLICANT:** Dewco Homes Inc.  
P. O. Box 215  
Hampstead, Maryland 21074

**ATTORNEY:** James Willard Davis, Esquire  
237 East Main Street  
Westminster, Maryland 21157

**REQUEST:** A variance reducing one minimum required side yard of 20 feet to about 15 feet

**LOCATION:** 603 Vanessa Court in Election District 4; Dell Mont subdivision, Section 2, lot 19

**BASES:** Article 5C, Section 5C.5; Article 15, Section 15.5; Ordinance 1E. (The Carroll County Zoning Ordinance)

**HEARING HELD:** November 27, 1990

On November 27, 1990, the Board of Zoning Appeals heard testimony and received evidence concerning the request for a variance to reduce one minimum required side yard of 20 feet to about 15 feet at 603 Vanessa Court.

The Board visited the site on November 21, 1990, prior to the public hearing.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will authorize the request.

The pertinent findings determining the Board's decision include the following facts:

**FINDINGS OF FACT**

Mr. Wilhelm, President of Dewco Homes, Inc., established lot 19 in 1972 with the recordation of Section 2 of Dell Mont subdivision in the Carroll County Plat Records in book 11, page 7. The lot is of irregular configuration and fronts on Vanessa Court, which is a county owned cul-de-sac. The frontage of the lot is 44.79 feet with the side property lines radiating from the right-of-way line of the cul-de-sac, which is also the front property line of the lot. Thus, the width of the lot increases progressively from the frontage to past the mid-points of the

side property lines, where the lot width is measured. Thereafter the lines intersect two additional lines forming the boundary of the lot.

Mr. Wilhelm and others have used lot 19 for vehicular access to the adjoining property fronting on Carrollton Road since 1975. The adjoining property was formerly owned by his mother-in-law, and is now owned by his wife. The reason that lot 19 has been used for vehicular access is that the grade, or slope of the existing driveway serving the property from Carrollton Road is 30 to 40 percent, and cannot be used safely when driving conditions are slippery. Furthermore, the topography of that property would likely prevent establishment of a driveway in compliance with the county's maximum allowable grade of 17 percent.

The regulations governing subdivision of land for residential purposes have been amended from time to time since recordation of Section 2 of Dell Mont subdivision in 1972. In accordance with current regulations, a plan for a two lot subdivision, Plat of "Better Know" and Resubdivision of Lot 19, "Dell Mont", was developed and submitted for approval to the Carroll County Planning and Zoning Commission. Identification of the lot as 19A indicates resubdivision of the lot only, not creation of an additional lot.

Vehicular access to the two lots, lot 19A, and remaining 46.2 acres of the property is provided by a use-in-common driveway, 12 feet in width, located within a fee-simple strip of land, 20 feet in width, providing frontage for lot 2 to Vanessa Court. As depicted on the plan, Applicant's Exhibit 2, the fee-simple strip is part of lot 2. It is also identified as an easement for ingress and egress for lots 1, 2, 19A, and the remaining portion of the property--46.2 acres. Note 10 of the plan states:

A portion of this tract is located within the agricultural district established by the Carroll County Zoning Ordinance. The regulations for the agricultural district prohibit further subdivision of the area designated on this plat as "remaining portion" and the lots shown hereon, for the purpose of creating additional lots for residential use.

By establishing the use-in-common driveway to provide for vehicular access as noted above, construction of a dwelling on the lot also became possible.

Mr. Wilhelm originally planned to locate the dwelling over 100 feet from the front property line so that the setback from the side property line would be sufficient for the easement and also

comply with the minimum side yard requirement. However, the plan was not approved, and the proposed setback was reduced.

After excavating for construction of the dwelling, a problem was discovered and the setback from Vanessa Court was increased to 80 feet. Although the approved plot plan for the dwelling depicted a side yard of 70 feet, the dwelling was somehow constructed with the northerly corner of the dwelling 35.9 feet from the northerly side property line. Due to the orientation of the dwelling, the easterly corner appears to be about 50 feet from the side property line. Thus, the location of the majority of the dwelling is not a problem; only a small triangular area of a front corner is too close to the line. The problem was not discovered until the location survey confirmed that the side yard was insufficient to allow for the resubdivision and the minimum required side yard of 20 feet, a total of 40 feet. Correction of the problem on the premises would require relocation of the dwelling to a minimum distance of 40 feet from the northerly side property line.

In conjunction with processing the proposed subdivision plan, Mr. Wilhelm chose to construct the use-in-common driveway, rather than execute a public works agreement for its construction.

Presently, approval of the subdivision plat for the purpose of recording it in the county plat records is dependent upon authorization of the requested variance.

The owners of two lots confronting lot 19 and one nearby lot testified in opposition to the request. They contended that Mr. Wilhelm had advised them, prior to their purchase of the lots, that he would not build on lot 19. The Board believes that Mr. Wilhelm would only have made such a statement before revision of regulations now governing the proposed subdivision, or before he learned that he could establish an easement and a use-in-common driveway providing for vehicular access as now planned and also construct a dwelling on lot 19. In any event, the lot was created and recorded for development of a dwelling, regardless of whom the builder would be. Any expectation that a dwelling would never be constructed on the lot would have been unreasonable.

Although the opponents also expressed concerns regarding additional vehicular traffic using Vanessa Court, possible future development of the remaining portion of the adjoining property, and adverse affects of future development upon the values of their properties, no evidence was introduced to substantiate their opinions.

The additional vehicular traffic generated by the two proposed lots and the remaining portion of the adjoining property will not be significant, and will be characteristic of the existing residential traffic. Furthermore, Vanessa Court will remain a cul-de-sac. Future development of the remaining portion of the

adjoining property is not allowed by county regulations. The physical separation of the existing dwellings on lots 18 and 19 will remain the same, and there is no evidence that relaxation of the minimum side yard requirement for the front corner of the dwelling will adversely affect use of the adjacent residential properties or the values of those properties.

Accordingly, the Board finds that the opposition to the requested variance is without merit.

#### APPLICABLE LAW

Articles and Sections cited below are of Ordinance 1E.

The property and surrounding lots are zoned "R-40,000" Residence District as shown on zoning map 47B. The land use provisions of the district are stated in Article 5C. Section 5C.5 specifies that each side yard of a dwelling be a minimum of 20 feet.

Article 15, Exceptions and Modifications; Sections 15.0, Generally, and 15.5, Variance, read respectively in relevant part:

The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations:

The Board may authorize, upon appeal, in accordance with Section 17.2, variances from...yard regulations.... The Board may grant such variance only in cases where the strict compliance with the terms of this ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare.

Article 17, Board of Appeals; Section 17.2, General Powers, reads in relevant part:

The Board shall have the following powers:

(c) To authorize, upon appeals in special cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions, the enforcement of the provisions of this ordinance will result in unwarranted

hardship and injustice and which will most nearly accomplish the purpose and intent of the regulations of the Zoning Ordinance.

A variance is defined in Article 20, Section 20.39 as:

...a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship.

#### REASONING

Vehicular access from Carrollton Road for proposed lots 1 and 2, and the remaining portion of the land involved in the subdivision, in compliance with county standards, is precluded because of the topography of the property. Resubdivision of lot 19, providing fee-simple frontage for lot 2 on Vanessa Court and establishment of the use-in-common driveway, resolves the problem. However, after discovery that the front corner of the dwelling is less than 40 feet from the side property line, Mr. Wilhelm was faced with having to relocate the dwelling in order to proceed with the subdivision. Such relocation would not have to be readily noticeable from the adjacent properties or Vanessa Court for reason that only 4.1 additional feet would be sufficient to comply with the requirement. However, relocation would be very costly, with essentially no significant benefit to the adjacent property owners.

Therefore, the Board finds that denial of the variance--which would require the dwelling to be relocated in order to proceed with the subdivision--would constitute practical difficulty and unreasonable hardship in the use of the property, and justifies authorization of the variance.

#### CONCLUSION

The Board hereby authorizes the variance as requested,

Dec. 6, 1990  
Date

John Totura  
John Totura, Chairman