

MM- East Brunswick
(Show case Properties)

6/9/75

Opinion

Pgs. 6

MM0000270

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2256-73
A-2634-73
A-2733-73

SHOWCASE PROPERTIES, INC.,
a New Jersey Corporation,

Plaintiff-Appellant,

v.

THE STATE OF NEW JERSEY, et als.,

Defendants-Respondents.

SHOWCASE PROPERTIES, INC.,

Plaintiff-Appellant.

v.

BOARD OF ADJUSTMENT OF THE
TOWNSHIP OF EAST BRUNSWICK,
etal.

Defendants-Respondents.

Argued April 21, 1975 -- Decided **JUN 9 - 1975**

Before Judges Collester, Lora and Handler.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County.

Mr. Peter J. Schwartz argued for plaintiff-appellant (Mr. Elias L. Schneider, attorney).

Mr. Bertram E. Busch argued for defendants-cross-appellants Norman A. Barth and the Township of East Brunswick.

Mr. Samuel H. Davis argued for defendant-respondent Zoning Board of Adjustment of the Township of East Brunswick.

Mr. Steven T. Kessel argued for Intervenor-cross-appellant Community Coalition Civic Association (Wilentz, Goldman & Spitzer, attorneys; Mr. Francis X. Journick of counsel).

PER CURIAM

Plaintiff, Showcase Properties, Inc., pursuant to N.J.S.A. 40:55-39(d), applied for a variance from the East Brunswick Zoning Board of Adjustment to build 416 garden apartments and 25 townhouses on a 37 acre portion of a 50 acre tract of land. The property is described as irregular in shape and bounded generally on the north by Milltown Road, on the east by Ryders Lane, on the south by the Prideswood and the Peachtree residential developments, and on the west by the Country Swim Club, the New Jersey Turnpike and Millers

Lane, which is the municipal boundary line between East Brunswick and Milltown. The westerly portion of the property is in the M-1 zone, which is 1,000 feet to the east of and parallel to the Turnpike and encompasses about 75% of the premises. The balance of the property to the east is in the R-3 zone. The land is vacant and wooded or semi-wooded. Topographically, the tract is bisected by pipelines and easements. The area to the south, running toward neighboring developed residential areas, is basically level with a gradual slope away from the pipeline easement. To the north of the pipeline easement, however, the land is uneven.

The Board of Adjustment, after numerous hearings, recommended that the variance be granted to permit the construction of 250 multiple dwelling units including townhouses on one portion of the land. The Board, by a resolution of May 21, 1973, concluded that with respect to the premises north of the Transco pipeline, about 26 acres, the positive and negative statutory criteria of N.J.S.A. 40:55-39(d) were met at least in terms of permitting the construction of 250 multi-family units. This was, it should be noted, consistent with a recommendation of the East Brunswick Master Plan of 1970. As to special reasons, the Board found the area to be particularly suited

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for the proposed use and not for the permitted uses and that there would be practical difficulty in developing the land for single family residences because of the topography and poor drainage. It also concluded that the negative criteria of the statute would be satisfied.

On June 25, 1973, the East Brunswick Township Council denied the application for the variance in its entirety. The plaintiff then filed an action in lieu of prerogative writs attacking both the determination by the Board of Adjustment and the denial by the Township Council. The zoning ordinance was also challenged on constitutional grounds as applied to the property in question. This action was consolidated with a pending Chancery Division suit. After reviewing the record and taking additional testimony with respect to the question of constitutionality, the court below reversed the Township Council and upheld the action by the Zoning Board. It was also determined that the ordinance was not unconstitutional.

The court below stressed the evidence of statistics derived from the Middlesex County Master Plan showing population projections. The court concluded that there is a substantial need for multi-family units in East Brunswick. It found that other multi-family zones in the Township are filled or developed and that housing

needs for multi-family housing within the Township is an "additional special factor cumulative with the other special factors found supporting the reasonableness and validity of the Board of Adjustment's decision." Consequently, the court ruled that the action by the Township Council was unreasonable and its decision invalid and it sustained and reinstated the decision of the Board of Adjustment.

We reverse. From this extensive record, it is clear that the critical and pivotal issue in this case is whether it was demonstrated that there exists in East Brunswick Township a public need for multi-family housing of the type proposed by the applicant and whether that need should be met by permitting, by way of a variance, the proposed housing to be constructed on the subject premises. While such a public need was characterized by the lower court as an "additional special factor cumulative with other special factors," we are satisfied that the other so-called special factors considered by the Board of Adjustment and the lower court as constituting "special reasons" under N.J.S.A. 40:55-39(d) do not satisfy singly or cumulatively that affirmative criterion of the statute. In this respect, we are in accord with the findings and conclusions of the Township Council in rejecting those considerations as establishing sufficient special reasons for the variance. Cf. So. Bur. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151, 181, fn. 12 (1975).

The Township Council did not give dispositive or determinative weight to the Master Plan population projections or the testimony as to the need for additional housing rental units. The Council determined that plaintiff failed to demonstrate convincingly there was a sufficient need for additional multi-family housing in East Brunswick to justify approval of the application. The evidence also failed to demonstrate that the Township had not, or was not, providing its fair share of balanced, adequate housing taking into account zoning patterns, population trends and regional and community growth. Cf. So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, supra at 188.

Our reversal of the opinion below is predicated substantially upon the reasons set forth in the resolution of the Township Council. While the applicant's presentation might suggest a viable approach for future legislative action on the part of the municipality, it did not satisfy the Township Council that its proposal should be achieved by a use variance. Cf. Schoelpple v. Woodbridge Township, 60 N.J. Super. 146 (App. Div. 1960). The record, in our view, supports that decision.

Reversed.

A TRUE COPY.

Elizabeth W. Langlin

Clerk