IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

THE JONES COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 28249
	)	
THE WILLIAMSON COUNTY BOARD OF ZONING APPEALS, and WILLIAMSON COUNTY,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

This case is before the Court upon the Jones Company's petition for writ of certiorari, requesting the Court to review the decision of the Board of Zoning Appeals in rejecting its application for a variance. Generally, under common law certiorari, the scope of review is limited to the record to determine as a matter of law whether there is any material evidence to support the agency's findings. Davidson v. Carr, 659 S.W. 2d, 361, 363 (Tenn. 1983). If the Court determines the agency's action was arbitrary or capricious, then its decision will be considered illegal or in excess of jurisdiction. McCallen v. City of Memphis, 786 S.W. 2d 633 at 638 (Tenn. 1990).

FACTS

This case involves a lot and house located in Ivy Glen Subdivision in Williamson County, Tennessee. The lot in question is identified as Lot 212.

When the Jones Company submitted the proposed plat plan, it showed the building envelope for Lot 212 as only having 12 feet five inches of rear setback. The subdivision plat containing Lot 212 was approved by the Williamson County Planning Commission on October

16, 1996. Ivy Glen Subdivision was approved as a final plat in 1998. In that year, Mr. and Mrs. Willer moved into Ivy Glen and occupied Lot 213.[1] The plot plan containing the 12 foot five inch rear set back is dated March 9, 1999. There is no evidence in the record that this plot plan was submitted with or at the same time as the building permit which was issued for Lot 212 on May 4, 1999.

The building permit on its face requires a thirty foot rear set back. The Jones Company began construction of the home on Lot 212 in May of 1999. The Willers immediately were concerned when they noticed the foundation on the home was aligned differently than all the other homes on their street and was much closer in distance to their home when compared to all the other homes in their subdivision. The Willers notified the Williamson County Planning Office who relayed their concerns to an agent of the Jones Company. The Jones Company continued to build without making any changes, and the Willers filed suit in June of 1999. In July 1999 the Board of Directors of the Ivy Glen Homeowners met to consider the construction of the home on Lot 212. At that meeting the Jones Company assured the Board that the construction on Lot 212 was in compliance with codes.

The present cause of action began when Mr. Willer requested an opinion from the Williamson County Planning Director, Joe Horne as to whether the rear and side setbacks were in compliance with the Williamson County Zoning Code. Mr. Horne determined that the rear setback of the house on Lot 212 was required to be thirty feet (instead of the twelve foot five inch setback in this case) pursuant to the zoning ordinance and the building permit issued to the Jones Company. Based upon this determination the Director of Codes issued a "stop work

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[1] The Willers are intervening respondents in this action pursuant to the stipulation filed April 22, 2002.

order" on June 15, 2001.

On July 5, 2001 the Jones Company filed a request for a variance of seventeen and one-half feet of rear yard setback. Its application was heard by the Williamson County Board of Zoning Appeals on November 21, 2001. At that hearing the Board of Zoning Appeals voted to deny the application for a variance.

DISCUSSION

In this case the Jones Company appeals from the Board of Zoning Appeals' decision to deny its request for a variance on Lot 212 in the Ivy Glen Subdivision. The authority to grant variances from a zoning ordinance is conferred on the Board by statute and by the Williamson County Zoning Ordinance. T.C.A. § 13-7-109; W.C.Z.O. § 9601. Both the Code and the Zoning Ordinance focus upon the topographic conditions of a specific piece of property which would create exceptional and undue hardship to the owner by the enforcement of the requirements of the zoning ordinance. Pursuant to § 9601 of the Williamson County Ordinances, the Zoning Board of Appeals shall not grant a variance unless it finds beyond a reasonable doubt that:

1. There are exceptional circumstances applying only to the property in question. By virtue of the unique conditions, it is impossible to place a use on the property that is permitted in the district.

2. Substantial property rights enjoyed by other property owners in the same district and vicinity cannot be enjoyed by the applicant.

3. The authorization of the variance will not be of substantial detriment to adjacent property.

In this case, there is nothing unusual about the topography or the condition of Lot 212. It is no different from any other lot in the Ivy Glen Subdivision.

The problem for the Jones Company is that it has constructed a large home on Lot 212, which is seventeen and a half feet in violation of the thirty foot required rear setback. The Jones Company contends Lot 212 was platted incorrectly and that it relied upon the approval of the plat by the County to its detriment.

It is true that the plat approved by the County contained an incorrect rear setback; however, the plat in question was created by the Jones Company. Article VI of the Williamson County Zoning Ordinances sets out the specific minimum rear setback, which is thirty feet for a lot the size of 212 (W.C.Z.O. VI-2) Unlike the ordinary citizen, the Jones Company should know the ordinance requirements where it intends to build; however, due process is not violated when a law is enforced against someone who is personally ignorant of the law. Nelson v. State, 1993 W.L. 473290, (Tenn. App., 1993); Moore v. Lawrence County, 230 S.W. 2d 666 (Tenn. 1950).

Perhaps more importantly, even if there was miscommunication or misunderstanding with regard to the plat plan; the building permit issued to the Jones Company, on its face, required a thirty foot rear yard setback. The Jones Company received its building permit in May of 1999 before construction commenced. The building permit contained language that:

> Application is hereby made for a permit to erect/alter a structure as described herein or shown in accompanying plans to be located as shown on the accompanying plot plan. It is understood and agreed by this applicant that any error, misstatement, or misrepresentation, either with or without intention on the part of this applicant, such as might or would operate to cause disapproval of this application, can constitute sufficient grounds for the revocation of such.

Thus, the very language of the building permit recognized that it could be revoked as a result of any error or misrepresentation on the part of the Jones Company.

It is difficult to understand why the Jones Company never sought or obtained a written opinion from the Planning Director concerning the apparent discrepancy in rear yard setback between the plot plan and the building permit. Almost immediately upon the commencement of construction, the Jones Company had notice of the Willer's complaint regarding setback; it was involved in a separate lawsuit with the Willers which resulted in a temporary injunction; and it had a meeting with the Board of Directors of the subdivision in July 1999 where it assured the Board it was in compliance with all zoning ordinances.

The Jones Company contends the facts of this fall within the parameters of Rebound v. Goodlettsville Board of Zoning Appeals, 1989 W.L. 150670 (Tenn. App., 1989). The Court finds the Jones Company's reliance upon this case is misplaced. Rebound dealt with the use of property rather than a bulk issue as the present case. More importantly, in Rebound, the petitioner had an ongoing dialogue with the city to determine the proper classification for its proposal. The city created the problem because it informed the petitioner it could use its group home for adults and in fact issued a building permit for that use, with which the petitioner complied. This is not the case with the Jones Company.

The Jones Company also asserts the doctrine of equitable estoppel against Williamson County. The doctrine of equitable estoppel generally does not apply to acts of public agencies except under very exceptional circumstances. Bledsoe County v. McReynolds, 703 S.W. 2d 123, 124 (Tenn. 1995). An exception to this rule exists where an innocent third party has been induced by and reasonably relied upon the unauthorized acts of a governmental entity, the

governmental entity may not rely on those acts to avoid its obligations. Ailor v. City of Maynardville, 1996 W.L. 722041, 2 (Tenn. App., 1996). The act by the public body must have been performed with the knowledge that it would be relied upon and the other party has acted in reliance without either knowledge of the true state of affairs or the means of learning the true state of affairs. Lebanon v. Baird, 756 S.W. 2d 236, 244 (Tenn. 1988).

The doctrine of equitable estoppel is unavailable to the Jones Company in this case since it was the Jones Company who created the error in the first place when it submitted its plat for approval. The county already had established through its zoning ordinance the specific rear setback requirement of thirty feet based upon the size of the lot in question. The fact that the planning commission failed to catch the mistake created by the Jones Company, is of no consequence under this theory.

Perhaps board member Crohan best summarized the situation when he stated:

Mr. Crohan:

> Mr. Chairman . . . the question that you asked at the start was if this was a vacant lot would we grant the variance. Is there any reason why we would grant a variance on a vacant lot, I think is the major question that we have to answer here. As far as the house being there, that problem is the problem of the person that built it. They created their own hardship in that situation.
>
> I am wrestling and trying to see any reason why we would grant a variance of this type on a vacant piece of land sitting there. I can see nothing in our ordinance that would give us the jurisdiction to grant a variance on that situation. Therefore I would have to say not in accordance with Section 6200 that I would have to make a motion to deny this variance because the hardship that they find themselves in now is self induced. (Bates # 155)

In essence Board Member Crohan was articulating the equitable maxim where one of two persons must suffer a loss, "He should suffer whose act occasioned the loss." Commercial Bank and Trust Company v. Southern Industrial Banking Corp., 66 S.W. 2d 209 (Tenn. 1932).

The Court finds there was no affirmative act by the County upon which the Jones Company could justifiably rely; and in fact it was the Jones Company whose act created the hardship upon which its request for a variance was based.

Finally, the Jones Company raises the issue that an ordinance requiring a thirty foot rear setback to Lot 212 and the board's failure to grant a variance amounts to an arbitrary or capricious act for which there is no rational basis. The Court finds that there is a rational basis for the imposition of a thirty foot rear setback. It is applied equally to all lots of similar size in this subdivision for the mutual benefit of all the property owners. The fact that there is a designated open space directly behind Lot 212 is irrelevant. Not only do adjacent neighbors have an interest in maintaining the integrity of the open space, all of the property owners in Ivy Glen have a common interest in maintaining the open space from encroachment. This issue is without merit.

CONCLUSION

The Court finds there is material and substantial evidence to support the decision of the Board of Zoning Appeals and for the reasons set forth above finds that the petition for writ of certiorari should be dismissed. Costs are taxed to the Jones Company. Counsel for Williamson County is directed to prepare an order in accordance with this memorandum. This memorandum shall not be spread upon the minutes of the court nor shall it be recited verbatim.

R.E. LEE DAVIES
CHANCELLOR

cc: Shayna R. Abrams, Attorney
George A. Dean, Attorney
Gary C. Shockley, Attorney