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Richard Roeser Professional Builder v. Anne Arundel County: **Purchase of Property with Zoning Restriction is Not a Self-Created Hardship**

By: Allisan Pyer

The Court of Appeals of Maryland held purchasing property with knowledge of land restrictions is not a self-created hardship. *Richard Roeser Prof'l Builder, Inc. v. Anne Arundel County*, 368 Md. 294, 295, 793 A.2d 545, 546 (2002). Moreover, the court concluded the landowner did nothing to create a hardship situation other than to purchase the property. *Id.*

Richard Roeser Professional Builder, Inc. ("Roeser") purchased two lots near Annapolis in Anne Arundel County, Maryland. One lot was located in a critical area and "buffer" zone as it was adjacent to wetlands. Roeser was aware of the zoning restrictions when he purchased the property. Variances from the critical area along with a change in Anne Arundel County zoning provisions were required for Roeser to build a house of the desired size on the property. Variance is defined as a change in a portion of a zoning requirement without changing the entire zoning requirement. Two types of variances exist: use and area variances. Roeser required an area variance, which is a variance from area, height, density, setback, or sideline restrictions. Accordingly, Roeser applied to the Anne Arundel County

Board of Appeals ("Board") for the variances. The Board denied Roeser's variance request because it found Roeser's need for a variance had been self-created. The Board came to this determination because when Roeser purchased the land both the seller and buyer were aware of potential development issues.

Roeser appealed to the Circuit Court for Anne Arundel County. The circuit court reversed because it was unconvinced the hardship described by the Board was self-created. The court found "hardships of this type are normally those which are created by the owners of the property and not by the property itself." The court went on to explain that the topography and placement of the property was not self-inflicted or a self-created hardship; thus no evidence existed to support the Board's finding that Roeser had created the hardship. The court determined the Board's decision was not fairly debatable based on evidence the Board had before it. Therefore, the decision was arbitrary and capricious and the Board erred as a matter of law.

The Court of Special Appeals of Maryland reversed. The court determined when a person purchases property with the intention

of applying to the Board of Appeals for a variance of existing land restrictions, he cannot later contend these restrictions cause pecuniary hardship that entitle him to special privileges.

Roeser presented the following questions to the Court of Appeals of Maryland: 1) Did the Circuit Court correctly determine the Board's decision to deny critical area variances was based on application of an erroneous legal standard, which has been specifically overruled by the Court of Appeals, and was reversible error as a matter of law? 2) Did the Circuit Court correctly determine the Board's finding of self-created hardship was reversible error as a matter of law? 3) Did the court of special appeals' err as a matter of law in reversing the circuit court and ruling the acquisition of title to land knowing a critical area buffer variance will be applied for constituted a self-created hardship?

The Court of Appeals of Maryland answered affirmatively to the second and third questions. The court began its analysis by examining the general rule "that one who purchases property with actual or constructive knowledge of zoning ordinance restrictions is barred from securing a variance." *Id.* at

303, 793 A.2d at 551. The court concluded the general rule has either been abandoned or made obsolete by modification in most jurisdictions. *Id.*

The general rule had two major faults. *Id.* First, hardship caused by the restriction cannot be measured either in terms of the property's cost or differences in the property's value with or without the variance. *Id.* Therefore, no danger exists that a knowledgeable purchaser could create evidence of hardship by paying an excessive price for the property. *Id.* Second, the general rule failed because the prior owner would have been entitled to a variance and the right is not lost to a purchaser simply because he bought the property with knowledge of the regulation. *Id.*

The modern rule provides that a purchase with knowledge of a restriction does not preclude the granting of a variance and is considered a nondeterminative factor in consideration of a variance. *Id.* at 303, 793 A.2d at 551. The court, quoting from *The Law of Zoning and Planning*, determined it should not be within the discretion of a board of appeals to deny a variance solely because a purchaser bought the property with knowledge of zoning restrictions. *Id.* The court further noted, quoting from *In re Gregor*, the right to develop a nonconforming lot runs with the land, and a purchaser's knowledge of zoning restrictions alone is not sufficient to preclude the grant of a variance unless the purchaser gave

rise to the hardship. *Id.* at 304, 793 A.2d at 552 (citing *In re Gregor*, 156 Pa. Commw. 418, 426, 627 A.2d 308, 312 (1993)).

In its analysis, the court relied on previous decisions concerning variances, making specific reference to a rule laid out by the Supreme Court of New Jersey. The rule provides "[w]here an original owner would be entitled to a variance under a specific set of facts, any successor in title is ordinarily also entitled to such a variance, providing that no owner in the chain of title since the adoption of the zoning restrictions has done anything to create the condition for which relief by variance is sought." *Id.*

The Court of Appeals of Maryland determined the variance sought in the present case was an area variance and not a use variance. *Id.* at 318, 793 A.2d at 560. The court recognized the Maryland Declaration of Rights and the Fifth Amendment of the United States Constitution guarantee certain rights to property owners. *Id.* The court further stated property owners begin with the unrestricted right to use their land as they choose and under the common law those rights are only limited by restrictions against creating nuisances. *Id.* at 318, 793 A.2d at 560.

Maryland law states that when property is transferred, the property takes with it all the encumbrances and burdens that do and may potentially attach to the property. *Id.* The property also takes with it

all the benefits and rights of property ownership when transferred. *Id.* at 318, 793 A.2d at 561.

The decision by the Court of Appeals of Maryland will allow buyers to purchase property without fear of later not being provided the same opportunities as the prior owner to apply for variances. The court's decision gives the same rights to the present owner to apply for variances as the prior owner. This case will encourage builders like Roeser to purchase property for development and increase development in Maryland.