

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL DIVISION – LAND USE APPEAL

IN RE: APPEAL OF SPRINGFIELD TWP. :
FROM DECISION OF SPRINGFIELD TWP. : 2423 CD 2008
ZONING HEARING BOARD DATED :
NOVEMBER 1, 2007 : CCP No. 07-29832
:

OPINION

O’NEILL, J.

FEBRUARY 23, 2009

John Berman and Stephen Iula (“Appellants”) appeal to the Commonwealth Court from this Court’s Order dated November 14, 2008, affirming the November 1, 2007 Decision by the Springfield Township Zoning Hearing Board (the “ZHB”). For the reasons set forth below, the November 14, 2008 Court Order should be affirmed.

FACTS AND PROCEDURAL HISTORY

On March 9, 2007, Applicant, 9425 Stenton Partners (“Stenton”), purchased real property located in Springfield Township at 9425 Stenton Avenue (the “Property”). There were two (2) buildings on the Property at the time of purchase: the “main house,” which has nine offices, and the “carriage house,” which has six offices, for a total of fifteen (15) offices. Additionally, the main building has thirteen (13) apartments on the upper floor.¹ The combined square footage of both houses is approximately 30,802. The Property is zoned as B-Residential, which allows for a single or twin family dwelling of approximately 8,000 square feet. The Property thus was non-conforming at the time it was purchased.

Most of the surrounding properties are residential, both single and twin homes. The

¹ Back in 1976, the Property was used as a restaurant. It was later used as a physical fitness center, and finally transformed into offices and apartments. Daniel J. Helwig, a principal of Stenton, managed the Property for the immediate prior owner.

Property is old and in “tired” shape.² There are heating issues due to a troublesome boiler. There also is a termite problem. In addition, there are serious issues concerning the Property that appear to be in violation of the American Disabilities Act.

Stenton, in its desire to renovate the Property, drew up a plan to construct thirty-five (35) luxury condominiums over three floors, together with underground parking. Stenton mailed out letters of inquiry to the surrounding neighbors, explaining its intent to renovate. Stenton then met with the Township’s Planning Commission, where the plan was reviewed by the Commission and several neighbors. Some neighbors expressed concerns on certain issues, including composition of the building and exterior lighting. Stenton held a scheduled meeting with the neighbors on August 30, 2007. After listening to these concerns, Stenton submitted to them an alternate proposal for twenty-eight (28) condominiums over three floors, together with an underground level that could be used as a garage or an office for one of the residents. Stenton met again with neighbors on September 17, 2007. According to Stenton, the neighbors still wanted fewer condominium units.

In pursuing its original plan of thirty-five (35) condominium units, Stenton made a formal request for the following use and dimension variances from the Springfield Township Zoning Ordinance (the “STZO”): (a) to permit it to construct a multiple-dwelling within a B-residential district; (b) to reduce the minimum lot size from 8,000 square feet to an average of 2,492 square feet; (c) to reduce the minimum lot width from 60 to 50.67 feet; (d) to extend the present nonconforming use from eleven (11) units to thirty (30) condominium units; and (e) to allow the placement of three 20 by 54 feet garages ten feet behind the main structure. At the lengthy September 24, 2007 hearing before the ZHB, Stenton was questioned at length by various parties, including Interveners, John Berman and Stephen Iula (Appellants herein), who are

² The Property was constructed around 1909.

neighboring landowners. On October 15, 2007, the ZHB ruled to grant the variance requests, but *reduced* the number of permitted condominium units from thirty-five (35) to thirty (30). The ZHB formally ratified its Decision on November 1, 2007.

Springfield Township (the "Township") filed an appeal of the ZHB's decision on December 3, 2007. The Township alleged that the ZHB erred as a matter of law in finding that Stenton had produced sufficient evidence to demonstrate entitlement to either use or dimensional variances and by concluding that Stenton had established legal entitlement to such relief. A lengthy hearing on the appeal occurred before this Court on September 12, 2008. On November 14, 2008, this Court affirmed the ZHB's Decision.

On December 12, 2008, Appellants filed the instant appeal to the Commonwealth Court. On December 15, 2008, this Court directed Appellants to file a Concise Statement of Errors Complained of on Appeal (the "Concise Statement") within twenty-one (21) days. Appellants filed their timely Concise Statement on December 29, 2008.

ISSUES

In their Concise Statement, Appellants raise the following allegations of error against this Court:

1. Whether this Court erred in finding that the ZHB correctly found that Stenton had produced sufficient evidence to justify a variance from the "use requirements" established under the STZO?
2. Whether this Court erred in finding that the ZHB correctly found that Stenton had produced sufficient evidence to justify dimensional variances from the requirements of the STZO, to permit a lot size of fewer than 8,000 square feet per family dwelling, lot width of fewer than 60 feet, a reduction of the side-yard setbacks, and the construction of garage stalls closer to the front building line than 10 feet behind the main structure?
3. Whether this Court erred in finding that the dimensional variances granted by the ZHB were the minimum variances that would afford relief and would represent the least possible modification of the above referenced dimensional requirements

of the STZO?³

4. Whether this Court erred in finding that the ZHB correctly found that Stenton had produced sufficient evidence to justify a special exception to expand its non-conforming use, in violation of the STZO?⁴

DISCUSSION

The “Commonwealth Court’s scope of review in zoning cases where the trial court did not take additional evidence is limited to determining whether the zoning hearing board committed error of law or manifest abuse of discretion.” Issacs v. Wilkes-Barre City Zoning Hearing Bd, 612 A.2d 559 (Pa. Cmwlth. 1992). In such cases, the zoning hearing board is the fact-finder who judges the credibility of witnesses and weight afforded to their testimony, and the appellate court may not substitute its interpretation of the evidence for that of the board’s. Tennyson v. Zoning Hearing Bd. of West Bradford Tp., 952 A.2d 739 (Pa. Cmwlth. 2008); In re LVGC Partners, LP, 950 A.2d 353 (Pa. Cmwlth. 2008); Walck v. Lower Towamensing Tp. Zoning Hearing Board, 942 A.2d 200 (Pa. Cmwlth. 2008). In the instant case, the ZHB issued lengthy Findings of Fact what is discussed below in more detail.

I. The ZHB did not err as a matter of law in granting Stenton a use variance with respect to the Property.

Appellants argue that a use variance should not have been granted to Stenton because no hardship existed with respect to unique physical characteristics of the Property, and no finding was made that the property could not be developed in accordance with the present use requirements of the B-residential zoning district. The establishing of “unnecessary hardship” is a prerequisite to the granting of a use variance. Unnecessary hardship can be established by making *one* of three showings: (1) the physical characteristics of the property are such that the

³ This Court will discuss this issue in its discussion of dimensional variances.

⁴ The ZHB never reached the issue of “special exception” and this matter was not argued before this Court. Therefore, this Court need not address this issue.

property cannot be used for the permitted purpose; (2) the property can be performed for a permitted use only by a prohibitive expense; *or* (3) the property has no value for any purpose permitted under the zoning ordinance. Solebury Tp. v. Solebury Tp. Zoning Hearing Board, 914 A.2d 972 (Pa. Cmwlth. 2007).

In the instant case, the ZHB took evidence relating to the peculiar physical characteristics of the Property. One of Stenton's partners, Dan Helwig, a licensed real estate broker, testified (credibly, according to the ZHB) at the ZHB hearing that the shape of the Property was "highly unusual" and irregular, with a triangular shape as opposed to a rectangular shape like most of the surrounding lots. N.T. 9/24/07 at 42. Additionally the current state of the buildings are in deterioration and would need substantial repairs to bring the state of the buildings into conformance with governmental regulations in order to continue the present (nonconforming) use of the property. The cost of such repairs on Stenton would be excessive. This would create an undue hardship upon Stenton, and thus a use variance was properly granted. Id. at 83-88.

It should be noted that the present use of the lot, *as purchased by Stenton*, is nonconforming because it consists of fifteen (15) commercial offices along with the thirteen (13) apartment units. Also found by the ZHB was the fact that Stenton's proposed use of the Property would actually bring the Property *more into compliance* with the spirit, intent and plan of the STZO because it would make the property strictly residential, as opposed to its present nonconforming use of mixed commercial and residential. The proposed use would put the Property more in line with the surrounding residential neighborhoods. Id. at 19-20, 40). Stenton Avenue is a multi-laned highway which is not feasible for the sale of single family homes. Id. at 57. If the permitted use of a property is not feasible, then variance relief may be proper. Somers v. Stroud Tp. Zoning Hearing Bd., 913 A.2d 306 (Pa. Cmwlth. 2006).

Finally, Stenton's plans for renovation of the building calls for an exterior of stone and stucco, which would be similar to traditional buildings in the area. Parking around the building would be available in an area *already covered by asphalt* as well as three (3) parking sheds similar in nature to "horse farm sheds." These sheds would be placed at the rear of the property to minimize any impact of headlights spilling into adjacent homes. N.T. 9/24/07 at 79-81. Another finding made the ZHB, based upon witness testimony presented at the hearing, was that overall traffic flow in the area would not be adversely affected by the proposed use. Id. at 128-132.

II. The ZHB did not err as a matter of law in granting Stenton dimensional variances with respect to the Property.

The requirements for the granting of a dimensional variance are less strict than those for a use variance. Hertzberg v. Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (Pa. 1998). "To justify the grant of a dimensional variance, courts may consider multiple factors, including the economic detriment to the applicant if the variance is denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood." Id. at 50; Somers 913 A.2d at 311-312. As discussed *supra*, the ZHB found that the Property is of a highly unusual shape and size. This would severely limit its ability to comply with the dimensional requirements of the STZO for an area zoned for single and twin residential homes.

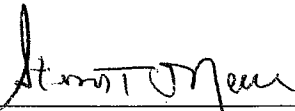
It must again be noted that the property *as it presently stands* is nonconforming with respect to dimensional zoning requirements. For Stenton to bring the property into compliance with the applicable dimensional zoning code would create a financial hardship. Furthermore, the ZHB found, upon the credible testimony of witnesses at the hearing, that the dimensional variances requested are minor in nature and would not adversely affect the surrounding property.

Finally, the ZHB did not simply "rubber stamp" Stenton's plan. It carefully reviewed same against the relevant provisions of the STZO. In its efforts to deviate from the STZO as little as possible, notwithstanding the unusual nature of the Property, it *reduced* Stenton's proposed plan from thirty-five (35) to thirty (30) condominium units.

CONCLUSION

Based on the foregoing, this Court respectfully requests that the Commonwealth Court affirm the Court Order dated November 14, 2008, which affirmed the November 1, 2007 Decision of the Zoning Hearing Board of Springfield Township granting Stenton the above identified use and dimensional variances with respect to the Property.

BY THE COURT:



STEVEN T. O'NEILL J.

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