

two buildings on the property: a main house containing nine offices, and thirteen apartments; and a carriage house containing six offices. The combined square footage of both houses is 30,802. The property is zoned as B-Residential, which permits a single or twin family dwelling of 8,000 square feet.

Stenton drew up a renovation plan which included constructing 35 luxury condominiums, with underground parking. Stenton made a formal request for use and dimensional variances from the Springfield Township Zoning Ordinance (Ordinance). On September 24, 2007, a Board meeting was held, and on October 15, 2007, the Board granted Stenton's variance requests, and limited the number of units to 30. The Board formally ratified its decision on November 1, 2007.

On December 3, 2007, Springfield Township (Township) appealed the decision of the Board to the trial court. On February 14, 2008, a stipulation was entered allowing Stenton, and neighbors, John Berman and Stephen Iula (collectively Berman) to intervene. The trial court held a hearing on September 12, 2008, and on November 14, 2008, the trial court affirmed the Board's decision. On December 12, 2008, Berman appealed to this Court.¹

Berman argues that Stenton did not prove an unnecessary hardship as required by Section 910.2(a) of the Pennsylvania Municipalities Planning Code (MPC),² or the elements required for granting a variance under Section 910.2(a) of the MPC and Section 114-165 of the Ordinance. We disagree.

When considering a use variance,

¹ Where the parties present no additional evidence after the Board's decision, this Court's review is limited to determining whether the Board committed an abuse of discretion or an error of law. *Taliaferro v. Darby Twp. Zoning Hearing Bd.*, 873 A.2d 807 (Pa. Cmwlth. 2005).

² Act of July 31, 1968, P.L. 805, *as amended*, added by Section 89 of the Act of December 21, 1988, P.L. 1329, 53 P.S. § 10910.2(a).

unnecessary hardship may be shown by demonstrating either that physical characteristics of the property are such that the property could not be used for the permitted purpose or could only be conformed to such purpose at a prohibitive expense, or that the characteristics of the area are such that the lot has either no value or only a distress value for any permitted purpose.

1700 Columbus Assocs., LLC v. City of Phila., Zoning Bd. of Adjustment, 976 A.2d 1257, 1262-63 (Pa. Cmwlth. 2009) (citing *Mitchell v. Zoning Hearing Bd. of Borough of Mount Penn*, 838 A.2d 819, 828 (Pa. Cmwlth. 2003)).

In the instant case, Daniel J. Helwig, a licensed realtor, and partner in Stenton, testified that the configuration of the lot would make it extremely difficult to build single family dwellings, and that due to the deteriorating condition of the building, i.e., heating problems, plumbing problems, failure to meet ADA standards, it would not be economically feasible to continue the existing non-conforming use. Reproduced Record (R.R.) at 216a-222a, 240a-241a. Thus, Stenton has proven that denial of the use variance would impose an unnecessary hardship.

Section 910.2(a) of the MPC provides in pertinent part:

The board may grant a variance, provided that all of the following findings are made where relevant in a given case:

- (1) That there are unique physical circumstances or conditions, including irregularity . . . of lot size or shape . . . or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is

therefore necessary to enable the reasonable use of the property.

(3) That such unnecessary hardship has not been created by the appellant.

(4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

Section 114-165(a) of the Ordinance provides the standards and criteria for granting a variance, i.e., it is consistent with the comprehensive plan of the township, it is consistent with the character and type of development, it is suitable with respect to traffic and highways, it has limited access points, it is reasonable in terms of the extension of public services, conditions are imposed to ensure the intent of the ordinance is complied with, and it is not detrimental to safety, health, morals or general welfare. Section 114-165(b) of the Ordinance provides that when relevant, the Board must also find other factors before approving a variance, i.e., unique circumstances or conditions exist, it is necessary for reasonable use of the property, the unnecessary hardship is not self induced, and the variance will be the minimum variance that will afford relief.

Stenton has presented testimony to show that it is entitled to the variance under Section 910.2(a) of the MPC. First, as stated above, Helwig testified that the triangular shape of the lot would make it extremely difficult to build single family dwellings. (R.R. at 240a-241a). Second, George Schaefer (Schaefer), a licensed architect, testified that because of the age and the deterioration of the property, the

buildings cannot continue to be used in their current nonconformity. (R.R. at 281a-286a, 304a-305a). Third, Schaefer also testified that Stenton bought the property/buildings in its current condition and did not contribute in any way to the unnecessary hardship. (R.R. at 297a). Fourth, the variance will actually make the property more conforming than its prior use and thus, will not alter the essential character of the neighborhood. And, fifth, given the limitation of the number of units imposed by the Board, the variance represents the minimum variance that will afford relief. Thus, Stenton has proven the 5 elements required under Section 910.2(a) of the MPC.

Regarding the additional elements required under the Ordinance, Frank Tavani, an expert in traffic engineering and planning, testified that granting the variances would create a reduction in traffic, as well as a reduction in parked cars on the property. (R.R. at 326a-331a, 333a). Thus, Stenton has proven the requisite elements under the Ordinance as well. Accordingly, the Board did not err in granting a use variance to permit a multi-family use in a B-Residential zoning district.

Berman next argues that the relaxed standard for unnecessary hardships regarding dimensional variances should not be applied here, as this is more comparable to a rezoning than a variance. We disagree.

In the case of *Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh*, 554 Pa. 249, 721 A.2d 43 (1998), the Pennsylvania Supreme Court held that “the quantum of proof required to establish an unnecessary hardship is indeed lesser when a dimensional variance, as opposed to a use variance, is sought.” *Hertzberg* at 258-59, 721 A.2d at 48. The Court continued to discuss the establishment of an unnecessary hardship and further held:

To justify the grant of a dimensional variance, courts may consider multiple factors, including the economic detriment

to the applicant if the variance was 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. To hold otherwise would prohibit the rehabilitation of neighborhoods by precluding an applicant who wishes to renovate a building in a blighted area from obtaining the necessary variances.

Hertzberg at 264, 721 A.2d at 50.

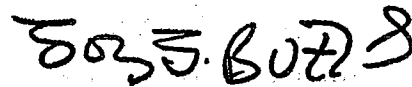
In the instant case, Stenton has shown economic detriment if the variance is denied, i.e., the extraordinary repairs required if the building were to remain as is, rather than razing the building, and the financial hardship of repairing the heating, electrical, plumbing, as well as repairing the exterior. Stenton has also shown that granting the variance would make the property more conforming than the current non-conforming use of the property, i.e., the property would be used for residential purposes only keeping with the residential nature of the surrounding neighborhood.

Moreover, the underlying reason the Court in *Hertzberg* declared the use of a lesser standard for dimensional variances was to promote the rehabilitation of blighted properties. Using a less stringent standard to permit the razing of a deteriorated building and constructing a new building more in compliance with the existing neighborhood is exactly what the Court was trying to encourage. Thus, the Board did not err in granting Stenton's dimensional variance requests.

Lastly, Berman argues that there was no evidence that the current use of the property was a legal non-conforming use, i.e., no evidence was presented that the use was permitted by a previous ordinance in effect at the time of the initial use. Berman further contends that the Board granted a special exception expanding the non-conforming use to a wholly residential use with no analysis of the law regarding non-conforming use.

While this Court agrees that there was a lack of evidence and a lack of legal analysis regarding the non-conforming use request, the request for special exception was an alternative request in case the use variance was denied. When the use variance was granted, the special exception became moot. Thus, the Board granting the special exception constituted harmless error in light of the fact that the issue was moot.

For all of the above reasons, the order of the trial court is affirmed.



JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Appeal of Springfield
Township from decision of
Springfield Township Zoning
Hearing Board Dated
November 1, 2007

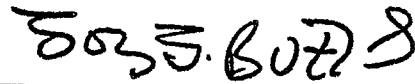
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Appeal of: John Berman and
Stephen Iula

No. 2423 C.D. 2008

ORDER

AND NOW, this 27th day of October, 2009, the November 14, 2008
order of the Montgomery County Court of Common Pleas is affirmed.



JOHNNY J. BUTLER, Judge

Certified from the Record

OCT 27 2009

and Order Exit