

While the petitioner did not allege an increase in respondent's income or an increase in her expenses as grounds for an increase in the support order, evidence to that effect was introduced at the hearing. We, therefore, feel it appropriate to consider these additional matters.

The respondent has conceded that his income increased from \$217.00 per week to \$250.00 per week since the entry of the last order. However, he also testified that as a result of his promotion, which generated the income increase, he had been transferred to the Stanford, Connecticut area, where living expenses are substantially higher than in Franklin County. His uncontradicted testimony established that his current living expenses coupled with his weekly payment of \$70.00 pursuant to the 1976 order left him with a regular and recurring weekly deficit. Under these circumstances, we conclude that the respondent's increased weekly employment income does not justify an increase in the current order.

The petitioner testified that certain of her living expenses had increased by certain specified dollar amounts. However, no evidence was introduced either as to total living expenses of the family unit or total living expenses allocated to the children (with, in either case, appropriate credit being given for the period of time when Brenda would be receiving necessities such as food, shelter, etc. at college). It further appears that petitioner's father is living with petitioner and is not contributing to the family living expense. The living expenses properly allocated to the petitioner and her father may not be considered in determining the proper support to be required of the respondent. We, therefore, conclude the petitioner has failed to sustain her burden of proving a need for an increase in the current order predicated upon an increase in living expenses.

ORDER OF COURT

NOW, this 18th day of October, 1978, IT IS ORDERED AND DECREED THAT:

1. Insofar as the Order of Court entered in the above captioned matter applies to Brenda Kay McCoy, it shall terminate on the Monday immediately following January 28, 1979, unless in the interim evidence is introduced to establish that she remains entitled to continued parental support as a matter of law for reasons other than willingness and ability to attend college.

2. If the order of September 29, 1976 is terminated as to Brenda Kay McCoy as herein above set forth, then said order shall also be modified to provide:

October , 1978, it appearing to the Court that C. Kenneth McCoy, Jr., respondent, owes a duty of support to his child, and has a net weekly take-home pay of approximately \$250.00 and that affiant has a net weekly earning capacity of approximately \$70.00;

It is ordered that respondent pay the costs of these proceedings and continue his bond in the amount of \$3,000.00 to guarantee faithful compliance with this order and commencing Monday, February 5, 1979, pay to JoAnn McCoy via the Collection Office of this Court the sum of \$50.00 plus \$.50 service charge and a like sum of \$50.50 each Monday thereafter until further Order of the Court for the support of Bryan Keith McCoy, born March 6, 1963.

The petition to modify the Order of September 29, 1976 is denied and the Order shall remain in effect until modified as hereinabove set forth.

Costs of these proceedings to be paid by the respondent.

M REALTY & LEASING COMPANY V. ZONING HEARING BOARD OF WAYNESBORO, ET AL., C.P. Franklin County Branch, Misc. Doc. Vol. X, page 158

Zoning - Nonconforming Use - Abandonment of Nonconforming Use

1. The subjective intent of an owner is important in determining the legal character of contiguous parcels, but it is not the sole criteria.
2. If the objective manifestations of the owner's intent are opposed to his expressed intent at the zoning hearing, the board itself must evaluate the evidence and determine the owner's actual intent.
3. Evidence that lots are conveyed in one deed but separately surveyed and referred to in the deed and treated separately by the taxing authorities is sufficient to support a zoning board's conclusion that the lots are separate tracts of land.

David C. Cleaver, Esq., Attorney for Appellant, M. Realty & Leasing Company

Stephen E. Patterson, Esq., Attorney for Appellee, Zoning Hearing Board of Waynesboro

D. L. Reichard, II, Esq. and Thomas D. Singer, Esq., Attorneys for Intervenor, the Borough of Waynesboro

LEGAL NOTICES, cont.

NOTICE IS HEREBY GIVEN THAT Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 20th day of July, 1978, for the purposes of obtaining a Certificate of Incorporation of a business corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933, as amended. The name of the corporation is GRAPHICS UNLIMITED, INC., 131 South Second Street, Chambersburg, Pennsylvania 17201. The purpose for which it has been organized is that the corporation shall have unlimited power to engage in and to do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Pennsylvania Business Corporation Law of 1933, as amended.

WINGERD AND LONG
Attorneys for Applicant

(11-24)

Classified Ads

OFFICES FOR RENT

Newly Remodeled Offices
Across from Fr. Co. Courthouse

Five 2-Rm. Suites Avail. Now
All on 2nd flr.

Util. incl. central air, carpet,
fluorescent light

Call 264-3574 or write
TOWNE INVESTMENT CO.

P. O. Box 437
Chambersburg, Pa. 17201

(11-24, 12-1)

ANNOUNCEMENT

The Federal Judicial Nominating Commission of Pennsylvania is taking applications from those interested in being nominated for one of the newly created judgeships in the Middle District of the United States District Court in Pennsylvania. Application forms can be secured by writing to:

Evans Rose, Jr., Esquire
Federal Judicial Nominating Commission
9th Floor, Oliver Building
Pittsburgh, PA 15222

The deadline for filing the completed questionnaires is December 15, 1978. Personal interviews will be scheduled thereafter,

W. EDWARD SELL
Commission Chairperson

OPINION AND ORDER

EPPINGER, P.J., October 16, 1978:

M. Realty and Leasing Company (M) owns lots Nos. 600, 604, and 608 South Potomac Street, Waynesboro, Pennsylvania. Lot No. 604 is unimproved and has a frontage of 100 feet on the street. Lot No. 600, 85 feet frontage, and Lot No. 608, 107.76 feet frontage, both are improved with single family dwellings. Lot 604 is filled to street grade, 600 and 608 are both characterized by steep banks sloping downward away from the street.

M was notified by the Waynesboro Zoning Enforcement Officer that it was violating the Waynesboro Zoning Ordinance, Ordinance No. 576, by putting used cars on the lots. The lots are zoned R-O¹. The matter came before the Waynesboro Zoning Hearing Board (board) which, after hearing, concluded that M was violating the ordinance and sustained the zoning officer's decision. M filed this appeal.

The court heard no new evidence so we are limited to examining the board's decision for any abuse of discretion or mistake of law. *Soble Construction Company v. Zoning Hearing Board of East Stroudsburg*, 16 Pa. Cmwlth. 599, 329 A.2d 912 (1974), *Warminster Township v. Kessler*, 16 Pa. Cmwlth. 67, 329 A.2d 316 (1974).

A matter not raised before the board may not be considered on appeal to the court. *Commonwealth v. National Federation of the Blind*, Pa. 370 A.2d 732 (1977). Therefore, we cannot consider the contention made by M that the zoning ordinance is unconstitutional in some respect because that was not raised before the board.

The propositions that M made to the board were (1) that used cars were offered for sale on at least one of the lots before the zoning ordinance became effective, and (2) that the owner always considered the three lots to be one tract and that therefore use of one as a used car sales lot should permit the use of all for that purpose as the expansion of a nonconforming use.

The zoning hearing officer contended that if the right to use the property, or any part of it, as a used car lot ever existed, that right has been lost because the use has been abandoned.

¹ Generally the R-O area may be used for residences and offices, with some exceptions that do not include a used car lot.

A nonconforming use - Generally, where property is being used for a particular purpose which does not comply with the terms of a zoning ordinance at the time the ordinance goes into effect that use may continue as a nonconforming use. *Silver v. Zoning Board of Adjustment*, 435 Pa. 99, 255 A.2d 506 (1969). The ordinance itself, in Article 1, Section 4, paragraph 3-A, provides:

Where at the effective date of the adoption or amendment of this ordinance, lawful use of the land exists that is made no longer permissible under the terms of this ordinance as enacted or amended, such use may be continued so long as it remains otherwise lawful, . . .

Expansion of a nonconforming use - M purchased the three lots in a single deed on December 30, 1961. When the original ordinance took effect on January 3, 1966, lot 604 was being used for the sale of used cars and qualified for the nonconforming use exception. Melvin Brown, a principal in M testified that he never intended to treat the three lots as separate parcels and that therefore the use on lot 604 could be expanded to lots 600 and 608 and not violate the ordinance.

The subjective intent of an owner is important in determining the legal character of contiguous parcels, *Ginter's Appeal*, 42 D. & C. 657 (1967). It is important, but there seems to be no authority that it is the sole criteria. So we conclude that if the objective manifestations of the owner's intent are opposed to his expressed intent at the hearing, the board itself must evaluate the evidence and determine the owner's actual intent.

There was evidence that when you look at the lots, you can tell they are distinct lots. Nos. 600 and 608 have been used for residential purposes, 604 as a used car lot. The three lots are separately referred to in the deed to M and were separately surveyed to transfer them. They are treated separately by the taxing authorities. This evidence, we conclude, is sufficient to support the board's conclusion that they are three separate tracts of land.

M says, however, that even if the lots are separate, selling used cars on Nos. 600 and 608 does not violate the ordinance since the owner is merely engaged in an expansion of the nonconforming use existing on No. 604. While expansion of nonconforming uses is permitted, *Silver*, supra; *Shinn v. Lower Merion Township Zoning Hearing Board*, 10 Pa. Cmwlth. 545, 312 A.2d 823 (1973), such expansion may occur only to meet natural business expansion in order that the original property

interest can be protected. It must not be unreasonable, must be only that which is absolutely necessary and must not be inconsistent with the public interest. *Thayer v. Lower Milford Township*, 16 Pa. Cmwlth. 124, 343 A.2d 92 (1974).

At the time of the alleged expansion only two cars were located on lot 604 and at the time of the hearing there was one car each on lots 600 and 608. It seems fair to conclude that M was merely attempting to assert an expansion right. There is nothing to indicate that this expansion was necessary to accomodate M's growing used car business.

Abandonment of nonconforming use - The decision of the board was not only that the use could not be expanded from lot 604 to 600 and 608, but also that the use on 604 had been abandoned. Article I, Section 4, paragraph 3-A(c) of the ordinance provides:

If any such nonconforming use of land ceases for any reason for a period of more than 90 days, any subsequent use of such land shall conform to the regulations specified by this ordinance for the zone in which such land is located.

On the subject of whether the use has been abandoned or not, there was conflicting testimony. Four neighbors who can see the lots and a high school student who rode his motorcycle on the land, testified that beginning in the summer of 1976 for an extended period, no cars appeared on any of the lots. Three of the neighbors said it was from mid-July, 1976, until at least January 26, 1977. Mr. Brown and two of his employees said cars were offered for sale during the period in question. And a witness said he actually purchased a used car off lot 604 on October 16, 1976.

There is, then, a conflict in the testimony. But the board resolved this conflict and concluded that the nonconforming use of lot 604 had been abandoned. Though we are not privileged to put ourselves in the place of the board in determining the significance of the evidence, we believe that the evidence supporting the theory of abandonment is substantial.

If the use of 604 as a used car lot was abandoned, it follows that it would be impossible to expand that use onto 600 and 608. Logic requires that there be a nonconforming use in existence at the time of the expansion.

We will therefore make an order dismissing the appeal and sustaining the order of the board.

ORDER OF COURT

NOW, October 16, 1978, the appeal of M. Realty & Leasing Company from the decision of the Zoning Hearing Board is dismissed. The cost shall be paid by M. Realty & Leasing Company, Appellant.

COMMONWEALTH EX REL. COLEMAN V. COLEMAN, C.P.
Franklin County Branch, No. 241-1978 N.S.

Nonsupport - Support of Spouse - Spouses in Common Abode - Requirement that Breadwinner Spouse Neglect to Provide Necessaries

1. The Court may impose an order for support on a spouse for the maintenance of the other spouse where the parties continue to reside together in their home only where the evidence establishes that the breadwinner-spouse is neglecting to provide food, shelter, medical and dental care and other necessary living expenses which are reasonable and in accordance with the family station in life.

Thomas M. Painter, Esq., Counsel for Petitioner

William F. Kaminski, Esq., Counsel for Respondent

OPINION AND ORDER

KELLER, J., October 20, 1978:

The petition of Margaret M. Coleman for support was filed July 5, 1978, and an order setting hearing on the matter for July 26, 1978 was signed the same date. The hearing was subsequently continued until September 27, 1978, and then until October 4, 1978. The hearing was held on that date and counsel submitted Memoranda of Law in support of the position of their respective clients.

FINDINGS OF FACT

1. The petitioner, Margaret M. Coleman, and respondent, William W. Coleman, are husband and wife.

2. The parties reside at their home 433 Fairview Avenue, Waynesboro, Franklin County, Pennsylvania.

3. There are no dependent children and the petitioner seeks support only for herself.

4. The petitioner is employed by G. C. Murphy Co. as a checkout clerk.

5. The petitioner's average weekly income during the last six months was \$91.00, which included overtime.

6. The respondent is self-employed as a trucker.

7. The petitioner and respondent filed a joint United States Individual Income Tax Return for 1977. An analysis of Form 1040, Schedule C, discloses the respondent had a net profit of \$7,183.76, plus a depreciation deduction of \$4,421.20 for a total of spendable pre-tax income of \$11,604.92 per annum, or \$223.10 pre-tax net weekly income.

8. The petitioner testified that respondent loads and unloads his own truck and therefore the "unloading" expense item in the amount of \$1,918.00 on Schedule C was not an out-of-pocket deduction. This represents an additional \$36.00 per week pre-tax income.

9. The respondent pays all household bills such as utilities, fuel oil, insurance, maintenance and repairs.

10. The respondent gives the petitioner \$25.00 per week for groceries and household goods.

11. The respondent rarely eats at home, and the petitioner does not prepare meals for him.

12. During the last three years the respondent has had a new roof and siding installed on the home, and during the past year expended \$600.00 for insulation. He has advised the petitioner that she need not put any of her money into the home.

13. The petitioner has recently purchased new linens and a pole light for the yard. She has done interior painting and put carpeting down, has made some interior repairs and does the yard work.

14. The petitioner submitted the following as a list of her weekly expenditures:

Car payment	\$ 27.11
Car insurance	4.84
Food	35.00
Gas and car maintenance	12.00
Waynesboro Hospital (past due bill having \$232.00 balance)	2.50
Medical and dental	3.85
Clothing	9.61