

their petition asking that the supervisors bear the burden of care for these burial grounds. Their efforts precisely track the statute language and therefore, the provided relief must be granted.

This case is distinguishable from *In re Limestone Cemetery*, 24 D&C 2d 281 (1962) where the court entered a temporary order requiring the township supervisors to contribute to the care of an abandoned cemetery. The order contained a provision that a genuine effort was to be made to locate descendants of those buried in the cemetery and further, to assess the descendants' willingness to contribute to the cemetery's care before the court would enter a permanent order casting the burden on the supervisors. In the case presently before this Court, the descendants of those buried are known and have been identified as those attending an annual family reunion. However, these descendants are unwilling to assume the moral responsibility and duty to maintain and care for the family cemetery.

It is through the reunion group's president, Theodore Kuhn, that the matter of care for the cemetery was acted upon. While Mr. Kuhn has not only been willing to assume the obligations of caring for the Peter Kuhn Memorial to the best of his ability as president of the group, and has also expended his personal funds in seeking a resolution of the cemetery care problem, it is discouraging to see the apathy and lack of cooperation of the other members of the reunion group who have shunned their moral duty to care for their ancestors' burial grounds.

Since there are no family members willing to assume the responsibility for care of the cemetery and the supervisors have filed to request the landowner to clean-up the grounds, petitioners' request that defendants care for the cemetery at a cost of not more than \$500.00 per year must be granted.

ORDER OF COURT

NOW, this 24th day of February, 1982, after hearing on the petition submitted by residents of Antrim Township, Franklin County, Pennsylvania, praying for an Order directing the Supervisors of Antrim Township to care for the Peter Kuhn Cemetery, pursuant to the Act of 1933, May 1, P.L. 103, Article VII, Section 702, as amended, (53 P.S. 65728), it appearing to the Court that the cemetery grounds are being neglected although occasionally used for burial purposes, and that there is no cemetery association or organization with available funds to care for such cemetery, and that there is no avail-

able sources of funds for perpetual care of any lot or the cemetery in its entirety, it is ordered that the Supervisors of Antrim Township are directed to care for said Peter Kuhn Cemetery, located in Antrim Township, Franklin County, Pennsylvania, being the area identified as an existing cemetery at the rear of Lot 8 on the subdivision plan for Joseph V. and Eileen Tanzola, dated January 18, 1975, which plan is recorded herein by reference, at a cost of not more than \$500.00 in any one year, out of monies from the general fund of the Township, such cemetery to remain open to the public under the regulation and control of the Supervisors.

McCREA v. ZONING HEARING BOARD, C.P. Franklin County Branch, Vol. Y., Page 79

Zoning Appeal - Variance - Burden of Proof

1. An applicant must sustain the heavy burden necessary to warrant the grant of a variance and also the burden of proving unnecessary hardship.
2. To allow a variance, a zoning hearing board must find that there is no possibility of developing the property in accordance with its present zoning and that the variance requested represent the minimum variance that will afford relief.

William C. Cramer, Esq., Counsel for Appellants

J. Dennis Guyer, Esq., Counsel for Appellee

OPINION AND ORDER

KELLER, J., March 9, 1982:

The appellants filed an application for a variance with the Zoning Hearing Board of Washington Township, Franklin County, on October 13, 1981. After proper advertising and posting of the time and place of hearing, the Board conducted a public hearing on October 26, 1981, to consider the merits of appellants' application. The appellants and their son, Richard, appeared and testified at the hearing. Appellants were not represented by counsel.

At the conclusion of the testimony a motion to deny the variance was made and seconded. At this point the appellant requested a "month's delay." The motion denying the variance was unanimously passed. The Chairman of the Zoning Hearing Board denied the requested continuance.

On November 23, 1981, a Petition to Stay Action and a Zoning Appeal Notice were presented to the Court, and on the same date an Order staying the decision and order of the Township Zoning Hearing Board and Writ of Certiorari were filed. The appellee filed the entire record of the case in the office of the Prothonotary on December 17, 1981, and the issues were argued before this Court on February 4, 1982. The matter is now ripe for disposition.

The property involved is located in a district in Washington Township which has been zoned commercial since July 16, 1973. Appellants improved the property under a permit issued on June 27, 1978, with a structure to be used as a show home for their building business. Such use of the premises is permissible under Section 1301 of the Washington Township Zoning Ordinance.

Appellants applied for a variance when they decided to use the demonstration home as a residence because Section 1301 does not permit single family homes in commercial zones. Section 300.8.a of the zoning ordinance specifically prohibits uses of dwellings in the commercial and industrial districts in the following language:

"Hereafter, a building shall not be erected or converted in any Commercial or Industrial District established on the Zoning Map, for use as a dwelling, unless the dwelling use is incidental and accessory to the principal use of the premises."

Appellants assert two basic arguments in support of their position that this section does not prohibit use of the model home as a dwelling in this particular case.

First, appellants urge that there is no need to "erect or convert" any building on the premises for use as a dwelling since the ordinary use of the building is as a residence. Appellants argue that the words "erect or convert" apply only to physical aspects of the building and thus fail to recognize that the issue here involves a change in usage of the building rather than structural changes.

Counsel for appellants observes that "converted" is

FIRST NATIONAL

bank and trust co.

13 West Main St.
WAYNESBORO, PA. 17268
717-762-3161



TRUST SERVICES
COMPETENT AND COMPLETE

CITIZENS *National Bank*
OF **AND TRUST COMPANY**

WAYNESBORO, PENNSYLVANIA
17268

Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS
POTOMAC SHOPPING CENTER — CENTER SQUARE
WAYNESBORO MALL

generally defined as the past tense of the verb "to change or transform from one state to another; alter in form, substance or qualify." *Webster's Third International Dictionary*. We agree that this is certainly a generally accepted meaning of the word. Furthermore, the change in usage of the structure from a commercial to a residential use is obviously a change in the substance or usage. Therefore, appellants' attempt to use the model home as a residence is indeed a conversion of the structure and as such, is prohibited by Section 300.8.a of the zoning ordinance.

Second, appellants assert that the use of the building as a dwelling is "incidental and accessory" to its principal commercial use. The structure was built to fulfill the business purpose of a demonstrator home and was in total compliance with the zoning regulations. To suddenly change the usage of the structure from one which is permitted to one that is strictly prohibited cannot be viewed as incidental or naturally related to the original use.

For these reasons, we must conclude that appellants have failed to establish their position that Section 300.8.a does not prohibit use of the model home as a dwelling.

Appellants also assert on appeal that they should be granted a variance for their property because the use of the model home as a dwelling is the only practical and reasonable use of the disputed property. An applicant must sustain the heavy burden necessary to warrant the grant of a variance and also the burden of proving unnecessary hardship. *Nardozza Zoning Case*, 45 Pa. Cmwlth. 482, 405 A. 2d 1020 (1979). Section 912 of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, 53 P.S. Sec. 10912, lists the prerequisites for the granting of a variance. Inter alia, the Board must find that there is no possibility of developing the property in accordance with its present zoning and that the variance requested represents the minimum variance that will afford relief. *Kernick v. Zoning Hearing Board of Municipality of Penn Hills*, 56 Pa. Cmwlth. 512, 425 A. 2d 1176 (1981).

In the case at bar, the record is devoid of any evidence tending to show that the property in question cannot be developed as presently zoned, and, in fact, appellants concede that no effort had been made on their part to ascertain whether the property could be used as zoned. Under the rationale of *Bruni v. Zoning Hearing Board of Plymouth Township*, 52 Pa. Cmwlth. 526, 416 A. 2d 111 (1980), since appellants failed to

submit evidence showing that the permitted uses are not feasible for the property in question, then the claimed hardship is economic only and not the required unnecessary hardship. The reasonable use argument of appellants must fail because insufficient evidence of the unsuitability of the property for its zoned use was presented and economic hardship is legally insufficient to constitute an unnecessary hardship.

Appellants were given adequate notice of the hearing date. They were permitted to present unlimited testimony before the Board. Their request for a continuance after their evidence had been presented and after the motion to deny the variance had been made and seconded by two members of the three-man Board, was clearly untimely and properly denied.

We find no error of law or abuse of discretion and, therefore, the order of the Zoning Hearing Board of Washington Township denying appellants' application for a variance shall be affirmed.

ORDER OF COURT

NOW, this 9th day of March, 1982, the appeal of Ellsworth McCrea and Jean McCrea is dismissed, and the Order of the Zoning Hearing Board of Washington Township, Pennsylvania affirmed.

Costs to be paid by appellants.

Exceptions are granted appellants.

MONN v. MONN, C.P. Franklin County Branch, No. 1980 - 298

Support - Jurisdiction - Out of State Defendant

1. Where defendant attended a conference before the Domestic Relations Hearing Officer, her appearance constituted a waiver of any defect in service or jurisdiction over the person of the defendant.

2. The Pennsylvania Rules of Civil Procedure are not meant to govern actions under the interstate provisions of the Revised Uniform Reciprocal Enforcement of Support Act.