

Davis and Meyers v. Chambersburg Zoning Hearing Board

EDWARD G. DAVIS, JR. AND HELEN L. MEYERS v. BOROUGH OF CHAMBERSBURG ZONING HEARING BOARD
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 2006-1302

Land Use Appeal; Appeal from Denial of Dimensional Variance Requests

1. Where a Court of Common Pleas in a zoning case takes no additional evidence, the standard of review for an appeal from the decision of a zoning hearing board is whether the board abused its discretion or committed an error of law.
2. An abuse of discretion is found if the zoning board's findings are not supported by substantial evidence, or such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.
3. A court may not substitute its judgment for that of the board.
4. To obtain a variance from the applicable zoning ordinance, the applicant must show he would suffer an unnecessary hardship if he were required to comply with the ordinance, and that the proposed use will not be contrary to the public interest.
5. The quantum of proof required to establish unnecessary hardship is less when a dimensional variance, rather than a use variance, is requested.
6. The dimensional variances are requested to reconstruct the same type of building that was destroyed by fire fifteen (15) years ago, and the new building would match the existing buildings on either side, and would conform to the profile of the neighborhood, thereby suggesting that a variance to build the same type of house that previously existed, and that currently exists next door, would be appropriate.
7. The zoning board acknowledged that to build a smaller, single-family home, variances would still need to be granted.
8. It is not physically possible for this lot to conform to the current Zoning Ordinance.
9. The lot is subject to hardship because no home can be built on it without some kind of variance, thus the premises are subject to an unnecessary burden.
10. The Court finds that the Zoning Board's conclusions are not supported by such relevant evidence that a reasonable mind might accept as adequate to support the Board's decision to deny relief that would permit Appellants to reconstruct a building of the type that previously existed on the premises, and of the same type that surrounds the premises.

Appearances:

David C. Wertime, Esquire, *Attorney for Appellants*

Melissa K. Dively, Esquire, *Attorney for Appellee*

OPINION

Statement of the Case

Appellant Helen L. Meyers (hereinafter "Meyers") is an owner of the premises known and numbered as 129-131 Garfield Street, in the Borough of Chambersburg, Franklin County, Pennsylvania (hereinafter "the premises"). Appellant Edward G. Davis, Jr. (hereinafter "Davis") entered into an agreement for the purchase of the premises from Meyers to construct a single-family semi-detached dwelling. Collectively, the parties shall be referred to as "Appellants."

A two-story duplex was originally constructed on the premises. The duplex predated the Borough of Chambersburg Zoning Ordinance (hereinafter "the Zoning Ordinance"). The duplex was damaged by fire and removed as a safety precaution. The premises are located in a Distributed Commercial - Neighborhood Business (hereinafter referred to as "DCNB") district under the Zoning Ordinance.

On February 20, 2006, Appellants filed with the Borough of Chambersburg Zoning Hearing Board (hereinafter "Board") a Notice of Appeal for a special exception or variance from the terms of the Zoning Ordinance. Appellants alleged that the appeal related to the lot area and yards of the premises; that the premises' present use was a vacant lot; that there were no present improvements on the premises; and that a duplex had previously existed on the premises, but was damaged and removed. Appellants requested that the Board grant four variances for the lot area, width, coverage, and yard requirements, as set forth in §§ 300-32 and 300-26 of the Zoning Ordinance:

- a. A variance to reduce the minimum square footage from 7,200 square feet to 3,185 square feet;
- b. A variance from the lot width of sixty (60) feet to thirty-five (35) feet;
- c. A variance from the front yard depth of ten (10) feet to zero (0) feet; and
- d. A variance from the side yard depth of five (5) feet to three (3) feet.

According to Phil Wolgemuth, Zoning Enforcement Officer, a duplex is a single family semi-detached dwelling.[1] Such a use is permitted in the DCNB district.[2] A public hearing on the Notice of Appeal was held on March 21, 2006. At this hearing, no objections were lodged by surrounding property owners or other interested parties. At the conclusion of the hearing, the Board voted 3-2 to deny all relief to Appellants. Appellants timely filed a Notice of Land Use Appeal. On appeal, Appellants argue that the Board's decision to deny the requested variances is an abuse of discretion and an error of law.

The *amicus curiae* Brief filed on behalf of the Borough of Chambersburg will not be considered in accordance with Pa.R.A.P. 102.

After carefully reviewing the submitted briefs and the record in this case, the Court is now ready to render a decision on the issue presented by Appellants.

Discussion

Where a Court of Common Pleas in a zoning case takes no additional evidence, the standard of review for an appeal from the decision of a zoning hearing board is whether the board abused its discretion or committed an error of law. Zoning Hearing Board of Sadsbury Twp. v. Bd. Of Supervisors of Sadsbury Twp., 804 A.2d 1274, 1278 (Cmwlth. 2002). An abuse of discretion is found if the zoning board's findings are not supported by substantial evidence, or such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Id. Upon reviewing the decision of a zoning hearing board, a court may not substitute its judgment for that of the board. Id. If the record demonstrates substantial evidence, the court is bound by the Board's findings that result from "resolutions of credibility and the weighing of evidence rather than a capricious disregard for the evidence." Id.

Appellants assert that the Board's action in denying the requested variances was an abuse of discretion. Appellants explain that the premises are a preexisting nonconforming lot, with an area of 3,185 square feet and a front lot line of 35 feet. There is no way to increase the square footage or lot frontage to make the lot conform to the requirements of the Zoning Ordinance. Appellants claim that the Board made no findings of fact or conclusions of law addressing these nonconformities.

Sections 300-26 and 300-32 of the Zoning Ordinance are at issue in this matter. Section 300-26 is part of the Moderate-Density Residential District requirements, while §300-32 is part of the Distributed Commercial-Neighborhood Business requirements. Section 300-32 defers to §300-26 regarding area and height requirements, but itself sets forth lot area, width, coverage, and yard requirements. Zoning

Ordinance §300-32(A) states that "any building occupied by two or more family units shall have a lot area of not less than 625 square feet per family." This provision is contrary to provisions of the Moderate-Density Residential regulations. The Board determined that the required lot area for the single-family detached dwelling is 7,200 square feet, but cites both §§300-26 and 300-32 as authority.[3]

Appellants applied for a dimensional variance. To obtain a variance from the applicable zoning ordinance, the applicant must show that he would suffer an unnecessary hardship if he were required to comply with the ordinance, and that the proposed use will not be contrary to the public interest. Yeager v. Zoning Hearing Bd. of the City of Allentown, 779 A.2d 595, 597 (Cmwlth. 2001). The quantum of proof required to establish unnecessary hardship is less when a dimensional variance, rather than a use variance, is requested. Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh, 721 A.2d 43, 48 (Pa. 1998). Hertzberg relaxed the burden to show an unnecessary hardship by establishing a factor test. See id at 50. Hertzberg held that to determine whether unnecessary hardship has been established, courts should 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." Id.

Appellants have requested dimensional variances in order to reconstruct the same type of building that was destroyed by fire fifteen (15) years ago. The new building would match the existing buildings on either side, and would conform to the profile of the neighborhood. Those existing properties are also nonconforming under the Zoning Ordinance.[4] Therefore, the characteristics of the surrounding neighborhood suggest that a variance to build the same type of house that previously existed, and that currently exists next door, would be appropriate. Additionally, the Board acknowledged in its Memorandum of Opinion that to build a smaller single-family home, variances would still have to be granted.[5] The Board noted that those variances would be smaller than the variances now requested, but in no way indicated assurances that such variances would be granted.[6] Therefore, it is not physically possible for this lot to conform to the current Zoning Ordinance. As Appellee notes in its Memorandum of Opinion, a variance is appropriate when the property, rather than the person, is subject to hardship. Yeager, 779 A.2d at 598. In this case, the lot is subject to hardship because no home can be built on it without some kind of variance. Thus, the Court finds that the premises at issue are subject to an unnecessary burden.

Appellee contends that Hertzberg applies when a variance is a mere technical and superficial deviation from the standards. 721 A.2d at 48, n. 7. It is true that Hertzberg refers to the variance granted as technical and superficial; however, the property at issue in Hertzberg was 3,409 square feet and contained no parking stalls. According to the zoning ordinance, the property was required to have 7,100 square feet and ten parking stalls. See Hertzberg, 721 A.2d at 45. The lot in Hertzberg contained less than half of the space required by the zoning ordinance. This difference is similar to the variances sought in the instant matter.

The Board must follow §300-113 of the Zoning Ordinance when determining whether to grant a variance. This section is based on the guidelines set forth in 53 P.S. §10910.2 which set forth when a variance should be granted. Section 300-113 provides that:

A. The Board may grant a variance provided the following findings are made where relevant in a given case:

1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical 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 provision of this chapter 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 this chapter 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 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.

Appellants assert that the Board's denial of their request for a variance was an abuse of discretion

because the Board considered only §300-113(A)(5), and ignored the other four subparagraphs. Appellants explain that the Board reasoned that all four variances requested were not the minimum variance necessary to allow a reasonable use of the premises.

The other four subparts of §300-113 are indeed relevant to this matter. Subsection (1) pertains to the unique physical circumstances of the lot size or shape and the resulting hardship. As discussed above, the lot does not conform to the Zoning Ordinance, and an unnecessary hardship results from the characteristics of the lot rather than the desire of the property owners. Subsection (2) address the fact that due to the physical characteristics of the lot, it is not possible for the lot to be developed in strict conformity with the regulations, and a variance is necessary to enable reasonable use of the property. If no variance is granted, Appellants will not be able to make any use of the property. In accordance with subsection (3), Appellants did not create the unnecessary hardship, as the lot size is predetermined, and no other land is available to enlarge the size because the lot is surrounded by other buildings. A variance will not alter the essential character of the area, pursuant to subsection (4), because the building sought by Appellants will conform precisely to what currently exists. If smaller variances were granted to allow the building of a smaller, single-family structure, such a building would not match the existing structures. The Board conceded that granting the variances would not alter the essential character of the neighborhood. [7] Finally, while the variances requested are not the minimum possible, they are the minimum variances that will provide for reasonable use of the premises. It is Appellants' decision to build a duplex rather than a single-family home, requiring a greater variance from the ordinance. That decision, however, will maintain the character of the neighborhood, conform to the footprint of the previously existing duplex and to the profile of all residential structures on the north and south sides of this section of the street. Requiring Appellants to construct a building different than the existing profile would create an oddity on the street, contrary to the characteristics of the surrounding neighborhood.

The Court finds that the Zoning Board's conclusions are not supported by such relevant evidence that a reasonable mind might accept as adequate to support the Board's decision to deny relief that would permit Appellants to reconstruct a building of the type that previously existed on the premises, and of the same type that surrounds the premises.

Conclusion

The Board's decision to deny Appellants' requested variances was an abuse of discretion and error of law. The Board determined that these variances should not be granted while acknowledging that the land could not be developed without the granting of variances. This unnecessary hardship on the property requires relief, and the appropriate relief is to grant variances that will allow the land to be developed in a manner that will conform to the building that previously existed on the land, and to the rest of the neighborhood. For these and all the reasons stated herein, the Court grants Appellants' request for the four variances for lot width, square footage, front yard, and side yard, and vacates the decision of the Zoning Hearing Board.

ORDER OF COURT

And now this 16th day of March, 2007, after consideration of Edward G. Davis, Jr. and Helen L. Meyers Land Use Appeal, briefs submitted by counsel and argument presented to the Court on this matter, it is hereby ordered that Appellants' Land Use Appeal is Granted.

[1] Chambersburg Zoning Hearing Board, Transcript of Proceedings; March 21, 2006, p. 5:3-8.

[2] Id.

[3] Zoning Hearing Board Memorandum of Opinion, May 3, 2006.

[4] Zoning Hearing Board Memorandum of Opinion, May 3, 2006, at 2.

[5] Id. at 7.

[6] Id.

[7] Zoning Hearing Board Memorandum of Opinion, May 3, 2006, at 7.

