

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

IN RE: RICHARD GRIGGS : Civil Action — Law
variance denial :
 :
Appeal of Richard Griggs : No. 97-00,722

OPINION and ORDER

Richard Griggs has appealed the Duboistown Zoning Hearing Board’s denial of his application for a lot dimension variance pursuant to 53 P.S. § 11002 et seq. Mr. Griggs had requested permission to construct a four-unit apartment building on a lot that was 94 ½ feet wide, which is less than the 100 feet required by § 4.60 of the zoning ordinance. After thoroughly reviewing the record, including the transcript of the zoning hearing,¹ the court finds that the Zoning Board improperly denied Mr. Griggs a de minimis width dimension variance.

Discussion

The record in this case includes a transcript of the hearing and the Zoning Board’s Findings of Fact and Conclusions of Law. Therefore, this court did not take additional evidence and so the court’s function is limited to determining whether the Zoning Board

¹ On the date scheduled for argument counsel for Mr. Griggs and counsel for the Zoning Board requested this court to forego the argument and decide the issue based on briefs. The court agreed to do so, but noted that no brief had been filed by the Zoning Board. Counsel for the Zoning Board indicated that he would file a brief shortly. The promised brief never appeared, despite repeated phone calls from this court’s office to counsel for the Zoning Board and numerous assurances from counsel that the brief would be filed. Finally, the court concluded that the brief would never materialize, and was forced to decide the case without the benefit of a brief from the Zoning Board.

committed an error of law and whether its findings are supported by substantial evidence.

53 P.S. § 11005-A. Nascone v. Ross Tp. Zoning Hearing Bd., 81 Pa. Cmwlth. 482, 473 A.2d 1141 (1984).

After reviewing the record, it is clear that the Zoning Board committed two errors. First, it based its denial on concerns that should be considered only in a “special use” hearing, under § 6.10 of the zoning ordinance. Mr. Griggs’ letter of 7 March 1997 clearly requested a zoning variance for the minimum lot width requirement, under § 8.22 of the ordinance. Such a variance was necessary in order to qualify as a “special use” under § 4.55 of the ordinance, since Mr. Griggs’ lot was short of the minimal width requirement. Therefore, it was premature to consider the requirements of § 6.10. The Zoning Board should have limited discussion at the hearing to the merits of a dimensional variance. Only after granting such a variance should the Board have held a hearing to address the requirements for a “special use.” In prematurely considering these matters, the Zoning Board deprived Mr. Griggs of the opportunity to complete specific building plans and to adequately prepare to address the special use requirements. Therefore, the Zoning Board’s denial based on its conclusions relating to all concerns except those relevant to a dimensional variance was improper.

Secondly, the Zoning Board improperly denied Mr. Griggs a dimensional variance. The Zoning Board has the power to grant such a variance under § 8.22 of the zoning ordinance if certain conditions are met, and the Board found that these conditions were not met. However, Pennsylvania case law has established a narrow exception to dimensional variance requirements: the de minimis variance. Under this doctrine, the applicant need

not meet the requirements listed in § 8.22 of the ordinance. An applicant is entitled to a de minimus variance if the variance sought is minor and rigid compliance with the ordinance is not absolutely necessary to protect the underlying public policy concerns. King v. Zoning Hearing Board of the Borough of Nazareth, 76 Pa. Cmwlth. 318, 463 A.2d 505 (1983).

Mr. Griggs' lot is 94 ½ feet wide. The zoning ordinance requires a lot for a multifamily residence in an R-3 Residential district to be 100 feet wide. Therefore, Mr. Griggs' lot is less than 6% short of the width requirement. This is clearly a minor deviation. See Pyzdrowski v. Pittsburgh Board of Adjustment, 437 Pa. 481, 263 A.2d 426 (1970); Appeal of Ressler Mill Foundation, 132 Pa. Cmwlth. 569, 573 A.2d 675 (1990).

Moreover, the record contains no evidence that strict compliance with the width requirement is necessary to protect the underlying public policy concerns. The primary purpose of the width requirement is to protect the integrity of the area by creating open space. See id. at 676. There is no reason why granting Mr. Griggs the requested variance would violate this public policy, especially in light of the fact that the length of the lot exceeds by 50 feet the ordinance minimum of 140 feet. As the Commonwealth Court stated in Ressler Mill, supra at 676:

[T]he lot width requirement works in conjunction with the minimum lot area to create open space. In the case at hand, Landowners' property is a little larger than the one acre minimum lot area requirement. Inasmuch as Landowners' property has the required lot area and the variance is minor, we conclude that rigid compliance with the Ordinance is not necessary to protect the public policy concern.

The Zoning Board concluded that "rigid compliance is absolutely necessary due to the property being partially in the flood way district and the development of the adjoining properties." Conclusion of Law #5. However, this conclusion is not substantiated by any

evidence, nor does the Zoning Board explain why the location in the flood district and the development of adjoining properties demand strict compliance with the width requirement. The court cannot ascertain any logical connection between these factors and the policy behind the dimensional requirements. Thus the court finds that the Zoning Board committed an error of law and that its findings were not supported by substantial evidence.

ORDER

AND NOW, this _____ day of January, 1999, the court grants finds that the Duboistown Zoning Hearing Board improperly denied the application of Richard Griggs for a dimensional variance. Therefore, the court reverses the Zoning Board and grants Richard Griggs a variance under § 8.22 of the ordinance. The court notes that Mr. Griggs may now apply for a special use under § 6.10 of the ordinance.

BY THE COURT,

Clinton W. Smith, P.J.

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