

DOMINIC J. SANTALUCIA,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Appellant	:	
	:	
vs.	:	NO. 02-00,426
	:	
ZONING HEARING BOARD OF THE	:	ZONING APPEAL
CITY OF WILLIAMSPORT,	:	APPEAL DENIAL OF APPLICATION
Appellee	:	FOR SPECIAL EXCEPTION

Date: July 24, 2002

MEMORANDUM OPINION and ORDER

Background

The Appellant, Dominic J. Santalucia, applied to the City of Williamsport Zoning Hearing Board (hereafter “Board”) for a special exception by which he requested authorization to convert a single-family dwelling, which he owns but does not reside in, into a duplex. The building is located at 747 West Third Street, Williamsport. This zoning district is designated by the City as “R-3.” The applicable section of the City Zoning Ordinance is Section 1333.05(7), which permits the conversion of an existing single-family residence into a duplex as a special exception. Accordingly, the initial application was denied by Mr. Schelb, the Zoning Officer, and the application went to the Williamsport Planning Commission, which recommended the conversion and then was brought for hearing before the Board. No one appeared in opposition at the Board proceedings on February 21, 2002. The Board in a 2-1 decision denied the special exception request on the basis that the application did not comply with a comprehensive plan of the City. The intent of the City as announced in the comprehensive plan is that a priority of maintaining residential neighborhoods and preserving

single-family dwellings is expressed. The Board then made a finding that the number of single-family residential structures in the City has declined relative to the number of multi-residential structures. The Board further found that single-family residential structures were in short supply in the City. The Board found that the structure and lot complied with all terms of the Zoning Ordinance regarding its use as a duplex. The Board based its decision on the fact that converting the structure would not be consistent with the spirit, purpose and intent of the Zoning Ordinance. The Zoning Ordinance does contain the provision that in granting a special exception, the exception can be granted if in accordance with the comprehensive plan.

Discussion

This Court is compelled to reverse the decision of the Williamsport Zoning Hearing Board despite its respect for the Board's function of appropriately interpreting and applying its ordinances. In this case there was no evidence presented to the Board concerning the number of single-family residences that do or do not exist in the City. Further, the comprehensive plan relied upon promotes residential use. This would include multi-family, as well as single-family, structures. The plan does not prohibit multi-family nor duplex structures. The general statement as to purpose in the comprehensive plan cannot be used to defeat the rights of the Appellant without substantial evidence showing the granting of the special exception defeats the plan.

When a Zoning Ordinance permits a use by special exception and the applicant shows compliance with all the special conditions the burden of going forward with producing evidence contrary to the granting of exceptions falls upon those opposing the same. Here no such evidence was presented. While the burden of seeking a special exception remains upon

the applicant he has done all that would be possible to do in this case to comply. Pennsylvania law is clear that when the applicant meets all the requirements of the Ordinance for a special exception that the special exception must be granted. *See, Greaton Properties, Inc. v. Lower Merion Township*, 796 A.2d 1038 (Pa. Cmwlth. Ct. 2002). Also, see arguments and citations set forth in Brief of Appellant filed May 30, 2002, which are adopted by the Court in support of its reason and discussion.

Accordingly, the following Order will be entered.

ORDER

The Appeal filed by Dominic J. Santalucia of the Williamsport Zoning Hearing Board decision of February 21, 2002 is sustained and it is ORDERED and DIRECTED that the said Appellant be granted a special exception in accordance with his application for conversion of the single-family dwelling unit of 740 West Third Street, Williamsport, Pennsylvania to a duplex. Appellant shall submit appropriate plans for a building permit in accordance with the findings of this Order, which plans must conform to all other requirements of the City Codes applicable thereto. This shall include, but not necessarily be limited to, the appropriate demonstration of an adequate kitchen in the second unit.

BY THE COURT:

William S. Kieser, Judge

cc: Norman Lubin, Esquire
Fred A. Holland, Esquire
Judges
Paul J. Petcavage, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)