

must prove that the landowner intended to abandon the use and that the use was actually abandoned).

The only other issue presented in this case is whether the proposed change of the business from the repair of automobiles and the sale automobile parts to the sale and repair of sporting goods is such a change in the nonconforming use as to deprive the Rhinharts the benefit of grandfathering of the prior business. The Court finds this issue to be more difficult than the abandonment issue. It is the policy of the law to closely restrict nonconforming uses and to strictly construe provisions in zoning ordinances, which provide for the continuance of nonconforming uses. See Hanna v. Bd. of Adjustment, 408 Pa. 306, 312 (1962).² Nevertheless, it is the Court's responsibility to interpret the specific zoning ordinance implicated by the case. The Pennsylvania Supreme Court has stated:

The prime guideline in this, as well as every zoning case, is the pertinent zoning ordinance itself. Case law, of course, is a helpful factor, but the principal judicial inquiry must logically be the language of the statute or ordinance in controversy.

Jackson v. Pottstown Zoning Bd. of Adjustment, 426 Pa. 534, 537 (1967).

Piatt Township argues its actions were appropriate under Section 1202A of their zoning ordinance. Section 1202A indicates that a zoning permit shall be required "prior to the change or extension of a nonconforming use." Thus, Piatt Township argues that they have the discretion to deny a zoning permit for a change in a nonconforming use, which is what they did in this case. The Court would tend to agree

² The law adopted this policy, because nonconforming uses are inconsistent with zoning as the purpose of zoning is to ensure orderly physical development by confining particular uses of property to certain defined areas. Hanna v. Bd. of Adjustment, supra, at p. 312.

with Piatt Township, if it were not for Section 900e, which states: "a nonconforming use of a building or land may be changed to a nonconforming use of the same or a more restricted classification."

To ascertain whether the proposed change is to a nonconforming use of the same or more restricted classification, the Court must examine Section 304 of the Piatt Township zoning ordinance. Retail stores are listed in Section 304 as a permitted use. Automotive service stations and repair shops are listed in Section 304 as a conditional use. The change of nonconforming use in this case appears to be to a use of the same or more restricted classification than the existing nonconforming use. Therefore, it appears that the Rhineharts' proposed change of nonconforming use is permitted by Section 900(e) of the Piatt Township Zoning Ordinance. In fact, this conclusion is consistent with the finding of the Piatt Township Zoning Board, who stated:

In making its determination, the Board did find that the proposed use as a retail/repairs shop for sporting goods (including archery related merchandise and firearm related merchandise) would constitute a use of the same classification as the nonconforming use that existed as of April 2, 1986.

Decision of the Zoning Board, at p.6.

The case of Jackson v. Pottstown Zoning Board of Adjustment, supra, is similar to the instant case and is supportive of the Rhineharts' position. In Jackson, a retail family grocery business operated as a lawful nonconforming use in an R3 residentially zoned district. A new owner of the property filed an application with borough officials for permission to operate a retail beer distributorship business on the

property. The township had a zoning ordinance with very similar language to the Piatt Township ordinance in that it allowed change of nonconforming use to a use "of the same or more restricted classification." When the township zoning board approved the change of nonconforming use, protesting neighbors appealed the matter to the Court of Common Pleas. The Montgomery County Court reversed the decision of the zoning board and the property owner appealed. The Pennsylvania Supreme Court, interpreting the ordinance in question, noted there was no commercial distinction between a grocery store and a beer distributorship and held the change of the nonconforming use was permitted under the zoning ordinance.

While the Court is sympathetic to the classic policy of not extending nonconforming uses, the Court is bound to interpret the statute or ordinance before it. In the future, Piatt Township may consider changing or amending Section 900(e) of their ordinance that, by its language, is liberal in allowing a new property owner to change a nonconforming use.³

One final point should be addressed. Although the Rhineharts want to change the nonconforming use to retail/repair of sporting goods, they also desire to keep doing automobile repairs. This is impermissible. Public policy does not permit adding to the number of nonconforming uses on a property. Dalay v. Zoning Hearing Bd

³ In fact, this Court would agree with the Jackson v. Pottstown decision, where the writer expresses the view that the right to a non-conforming use should not run with the land. Id. At p. 529 n.5. While it may be fair to allow a property owner to continue a use which later becomes nonconforming with new zoning, a new property owner, and especially one who changes a non conforming use, is not in a strong equitable position to benefit from the nonconforming use concept. See also Drucker v. Zoning Hearing Bd, 556 A.2d 955, 956 (Pa. Comwlth. 1989)(noting there is no constitutionally protected right to change from one nonconforming use to another). The Court notes its allowance of a change of an nonconforming use in the case at bar is based upon the ordinance and its terms.

of Haverford Tp., 461 A.2d 347, 350 (Pa.Cmwlth. 1983)(noting an additional nonconforming use may not generally be appended to an existing nonconforming use). Therefore, the Rhineharts must choose between the proposed sporting goods use and the previous automotive use.

Accordingly, the following is entered:

ORDER

AND NOW, this _____ day of June 2002, for the reasons stated in the above opinion, the Court GRANTS the appeal of John and Brenda Rhinehart. The Appellants shall choose which nonconforming use they are going to have on the property (sporting goods or automotive) and register the same with the Township within twenty (20) days of this Order.

By The Court,

Kenneth D. Brown, Judge

cc: Christopher Williams, Esquire
Marc Drier, Esquire
Frank Micelli, Esquire
Work File
Gary Weber, Esquire (Lycoming Reporter)