

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>SHEDDY FAMILY TRUST, by and</b>	:	
<b>through LOUIS SHEDDY, its Trustee</b>	:	
<b>and LOUIS SHEDDY, Individually,</b>	:	
<b>Appellant</b>	:	
	:	
<b>v.</b>	:	<b>No. 05-01,733</b>
	:	<b>CIVIL ACTION</b>
<b>PIATT TOWNSHIP ZONING</b>	:	
<b>HEARING BOARD,</b>	:	
<b>Appellee</b>	:	
	:	
<b>and</b>	:	
	:	
<b>PIATT TOWNSHIP,</b>	:	
<b>Intervenor</b>	:	
	:	
<b>and</b>	:	
	:	
<b>STEVEN HELM,</b>	:	
<b>Intervenor</b>	:	
	:	<b>LAND USE APPEAL</b>

**OPINION AND ORDER**

Before this Honorable Court, is Appellant Sheddy’s September 26, 2005 Land Use Appeal filed to the September 1, 2005 decision of the Piatt Township Zoning Hearing Board. After consideration of briefs filed in this matter and the certified record, the Court hereby DENIES the Appeal of Appellant Sheddy.

***Background***

On June 3, 2005, the Appellant filed a variance request with the Piatt Township Zoning Board (hereinafter “the Board”) regarding expansion of the Appellant’s auto salvage operation, located at 1545 Devil’s Elbow Road, to 500 Sam’s Road, Jersey Shore, Pennsylvania. The Board addressed the Appellant’s variance request at an August 29, 2005 hearing before the

Board. On September 1, 2005, the Board denied the Appellant's variance request. The Board determined that, the land the Appellant wished to expand onto was "new land" not land "set aside" for the expansion of the auto salvage operation and because said new land was in an agricultural zone, the Appellant's request must be denied. Moreover, the Board noted that because the Appellant's planned expansion is less than 50% of the volume or area of the nonconformity which existed at the effective date of this Ordinance, he was entitled to expand, without a variance, *within the parcel of land already set aside for such expansion* and, the Board determined, that set aside land was sufficient for the sought expansion.

### ***Discussion***

"This Court's scope of review in a land use appeal, where, as here, the trial court did not take additional evidence, is limited to determining whether the governing body committed an error of law or abused its discretion." *Ruf v. Buckingham Twp.*, 765 A.2d 1166, 1168 (Pa. Commw. Ct. 2001) citing *Herr v. Lancaster County Planning Commission*, 155 Pa. Commw. 379, 625 A.2d 164 (Pa. Cmwlth. Ct. 1993), *appeal denied*, 538 Pa. 677, 649 A.2d 677 (1994). An abuse of discretion occurs when the governing bodies' findings are not supported by substantial evidence. *Id.*; *Valley View Civic Ass'n v. Zoning Board of Adjustment*, 501 Pa. 550, 462 A.2d 637 (Pa. 1983). In this context, substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Valley View Civic Ass'n*, 501 Pa. 550, 555, 462 A.2d 637, 640 (Pa. 1983). Instantly, the Court finds that the Council's Decision was supported by substantial evidence, comported with all applicable laws, and therefore, was not an abuse of discretion.

The Appellant's first issue raised on appeal is that the Court must disregard Appellee Board's Findings of Fact and Conclusions of Law because he claims that said findings and

conclusions were made by the Board Solicitor and not the Board; however, the Appellant's reliance on the record as support of this contention is not persuasive. After a thorough review of the transcript of the proceedings and the certified record in this matter, the Court finds that the Board made its own Findings of Fact and Conclusions of Law. Furthermore, as Appellee Board highlights in its Brief, the fact that the Board's decision bares the Board Solicitor's signature is not evidence that anyone made the preceding decision other than the Board:

[a]lthough Section 908(9) [of the Municipalities Planning Code] requires that decisions be in writing, there is nothing in that Section to indicate who must sign a decision, or even that a decision must be signed at all. In the instant case, the written decision bore the name of the Board; that fact was sufficient to at least represent that the writing was the act of the Board itself. The fact that the solicitor signed the written decision did not preclude the writing or the stated decision from being that of the Board. [citation omitted]. At the very least, the solicitor's signature served to verify that the writing was the official decision of the Board.

*Hill v. Lower Saucon Township Zoning Hearing Bd.*, 72 Pa. Commw. 381, 385, 456 A.2d 667, 669 (1983 Pa. Commw. Ct.).

The Appellant's second issue raised on appeal is that, as a matter of right, the Board was required to grant his variance request, and its refusal to do so amounted to an abuse of discretion; however, the Court does not interpret the relevant Piatt Township Zoning Ordinance (hereinafter "Ordinance") as the Appellant suggests. Section 900(D)(4) of the Ordinance states that "[f]or nonconforming uses where normal operations involve natural expansion . . . , expansion shall be permitted *by right* up to 50% of the volume or area of the nonconformity which existed at the effective date of this Ordinance" [December 16, 2002] (*emphasis added*). For expansion beyond 50%, approval must be obtained from the Zoning Hearing Board." It is not contested that the Appellant's current use of land is a nonconforming use. It is also uncontested that the matter before the Board currently before this Court derived from the Appellant's *variance* request. If

the Appellant is entitled, as he argues, as a matter of right, to expand his nonconforming use so long as said expansion is less than 50% of the volume or area of the already existing nonconformity, then he need not have filed a variance request. As the Ordinance directs, such a request need only be made if the expansion exceeds 50% of the volume or area of the already existing nonconformity, which the Board determined the Appellant failed to prove.

The Appellant's third issue raised on appeal is that the Board incorrectly determined that it lacked the authority to grant the Appellant's variance request for an expansion from one parcel of land to another. As previously discussed, because the Appellant's variance request is permitted, as a matter of right, so long as it is on the land set aside for expansion and is less than 50% of the volume or area of the already existing nonconformity, the Board did not need to address the issue of an expansion from one parcel or land to another. Despite that, the Court, contrary to the Appellant's assertion, finds that the Board did address this issue (*see* ¶s 2-3 of the DELIBERATIONS section of the Board's September 1, 2005 Written Decision).

The Appellant's final issue raised on appeal contends that the Board's application of the elements regarding consideration of a variance request were erroneously astounding. After determining that the Appellant's request must be denied under Section 900(D)(4) of the Ordinance, the Board went on to determine that his request must also be denied under Section 1001(C)(2) of the Ordinance because the Defendant, as required by the Ordinance, could expand his auto salvage operation onto already existing land as opposed to expanding onto adjoining land as he proposed. The Board noted that although said expansion would "present some limitations . . . there is a possibility that the other unused portions of the property can be utilized to accommodate any anticipated expansion. . ." This Court does not find that this decision is evidence that the Board abused its or that its findings are not supported by substantial evidence.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of October 2006, the Court hereby **DENIES** the appeal of Sheddy Family Trust, by and through Louis Sheddy, its trustee and Louis Sheddy, Individually, and the Decision of the Board is hereby **AFFIRMED**.

By the Court,

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Nancy L. Butts, Judge

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