

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAM YOUNG and JANE YOUNG, :
Appellants :
v. :
ZONING HEARING BOARD OF THE :
CITY OF WILLIAMSPORT :
Appellee :

No. 06-01,259
CIVIL ACTION
LAND USE APPEAL

MEMORANDUM OPINION AND ORDER

Before this Honorable Court, is Appellant Young’s June 16, 2006 Land Use Appeal filed to the May 23, 2006 decision of the Williamsport Zoning Hearing Board (hereinafter “Board”) denying the Appellants’ application for special exception under Section 1319.14 of the WILLIAMSPORT, PA., ZONING ORDINANCE (2005). After consideration of the oral arguments, briefs, the certified record, and the hearing transcript, the Court hereby REMANDS the matter to the Board for further proceedings in accordance with this Opinion and Order.

Background

The Appellants own several properties in the City. The case *sub judice* arose when the Appellants applied for a special exception in April 2006 to convert one such property (located at 1242 W. Fourth Street) from a single-family dwelling into a duplex. The W. Fourth Street property is located in what the City has designated a Commercial District. Williamsport Zoning Ordinances permit the type of conversion the Young’s seek to accomplish upon the Williamsport Planning Commission’s (hereinafter “Commission”) review and the Board’s approval of a special exception application. On May 8, 2006, the Commission issued a favorable review of the Appellants’ special exception application. On May 18, 2006, the Board held a hearing on the

Appellants' application and on May 23, 2006, the Board formally denied said application. In denying the Appellants' application, the Board concluded that the Appellants had failed to meet the first two elements of Section 1319.14 of the WILLIAMSPORT, PA., ZONING ORDINANCE (2005): (1) the proposed conversion is in accordance with the Comprehensive Plan and consistent with the spirit purposes and intent of the Zoning Ordinance and (2) the proposed conversion is in the best interest of the City, the convenience of the community, the public welfare, and a substantial improvement to the property in the immediate vicinity.

The Appellants' filed a timely appeal of the Board's decision and, on September 5, 2006, this Court heard arguments on said appeal. The Appellants appeal raises two issues for this Court's review. First, whether the Board committed an error of law or abused its discretion by failing to grant Appellants' special exception application. Second, whether the Board made findings of fact that were not supported by substantial evidence.

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

Board's decision was not supported by substantial evidence and is therefore an abuse of discretion.

“An applicant has the burden of proving that it has met the criteria for special exception contained in the ordinance, and must prove not only that the proposed use was of a type permitted by special exception but also that the proposed use complied with the other applicable requirements of the ordinance which expressly govern such a grant. (citations omitted). *Shamah v. Hellam Township Zoning Hearing Bd.*, 167 Pa. Commw. 610 , 648 A.2d 1299, 1303 (Pa. Commw. Ct. 1994).

Here, although the special exception the Appellants seeks is permitted under Section 1333.05 of the WILLIAMSPORT, PA., ZONING ORDINANCE (2005), the Board found that the Appellants failed to prove that said exception satisfied subsections (1) and (2) of Section 1319.14 of the WILLIAMSPORT, PA., ZONING ORDINANCE (2005) (see, ¶ 2 *supra.*). Unfortunately, the facts the Board used to support this conclusion were not based on substantial evidence.

At the May 18, 2006 hearing on the Appellant's application for special exception, Appellant William Young testified that, if his application were granted, he intended to convert the W. Fourth Street property single-family dwelling at issue into a duplex with the ultimate intent to rent the duplex to ten students (the property is located near the Pennsylvania College of Technology). Mr. Young went on to testify that he owned two other properties in the neighborhood, both of which he had converted into apartments and currently rents to college students. In response to Board member questions, Mr. Young explained that he intended to build a parking lot in the rear of the structure to avoid traffic congestion and that he intended to keep the exterior of the building in an “arts and crafts” style. Then, Board member Vanderlin “testified” regarding her interpretation of the Comprehensive Plan, the neighborhood, and the

effect that granting the Appellant's application may have on the neighborhood. After a brief recitation of the facts, Mayor Wolfe testified in opposition to granting the application. Mayor Wolfe agreed with Board Member Vanderlin and added that she believed that granting this application would be the "tipping point" for the neighborhood; the Board adopted Mayor Wolfe's "observations and opinions as accurate and adopted the same as findings of fact."

First of all, and most obvious, it is not clear from the record or hearing transcript which Comprehensive Plan the Board and Mayor Wolfe relied upon when they opined that the Appellant's plans did not comport with referenced Plan (i.e. the Williamsport vs. the Lycoming County Comprehensive Plan and/or the Comprehensive Plan in effect in 2005 – when the applicable zoning ordinance was passed – vs. the Comprehensive Plan in effect at the time of the May 2006 hearing). Second of all, even if it were clear which Comprehensive Plan applied to the instant matter, there was no evidence presented regarding actual facts/figures to support Board Member Vanderlin and Mayor Wolfe's "tipping point" testimony that the Board adopted as fact. Such vague and unsubstantiated statements cannot be used to deny the Appellant's application.

ORDER

AND NOW, this _____ day of September 2006, the Court, having found the Board's decision regarding the Appellants' application for special exception to be unsupported by substantial evidence and therefore an abuse of discretion, hereby **REMANDS** the matter to the Board for further proceedings.

By the Court,

Nancy L. Butts, Judge

xc: Norman M. Lubin, Esq.
Fred A. Holland, Esq.
Hon. Nancy L. Butts
Judges
Laura R. Burd, Esq. (Law Clerk)
Gary L. Weber, Esq. (Lycoming Reporter)