

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

MAPLE STREET A.M.E. ZION	:	
CHURCH	:	
Appellant	:	NO: 08-00921
	:	
vs.	:	
	:	
CITY OF WILLIAMSPORT and CITY	:	
COUNCIL OF THE CITY OF	:	
WILLIAMSPORT	:	
Appellees	:	

OPINION
Issued Pursuant to Pa.R.A.P. 1925(a)

On October 16, 2009 this Court issued an order on a land use appeal filed by Appellant, Maple Street A.M.E. Zion Church (hereinafter “the Church”). The appeal involved a variance request and zoning interpretation regarding off-street parking requirements applied to the Church.

On November 12, 2009, the Appellees, the City of Williamsport and City Council of the City of Williamsport (hereinafter “the City”) filed a Notice of Appeal from this Court’s October 16, 2009 Order. On November 17, 2009, a Cross-Appeal was filed by the Church.

The City contends that this Court erred in concluding that a deemed approval had occurred pursuant to 53 P.S. § 10908(9). The Commonwealth Court’s scope of review of a decision of a common pleas court is limited to a determination of whether the court abused its discretion or committed an error of law or whether constitutional rights were violated. Long v. Thomas, 619 A.2d 394 (152 Pa.Comm. 416), *appeal*

denied, 631 A.2d 1012 (Pa. 1992). A finding that the court abused its discretion requires proof of “more than a mere error in judgment, but rather evidence that the law was misapplied or overridden, or that the judgment was manifestly unreasonable or based on bias, ill will, prejudice or partiality.” Chapman-Rolle v. Rolle, 893 A.2d 770 (Pa.Super. 2006)(quoting Spahr v. Spahr, 869 A.2d 548, 551 (Pa.Super. 2005). Moreover, an appellate court may reverse a trial court’s determination only if the court’s order cannot be sustained on any valid ground. Id. at 773.

As set forth in this Court’s Opinion and Order of October 16, 2009, the Church filed a request for a variance from the Williamsport Zoning parking requirements on February 11, 2008. A hearing was conducted on February 21, 2008. The Zoning Hearing Board failed to issue a written decision. Section 10908 of the Municipalities Planning Code sets forth municipal procedural requirements. The introductory language to Section 10908 provides, “The board **shall** conduct hearings and make decisions in accordance with the following requirements.” (Emphasis added).

Section 10908(9) specifically provides:

The board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor[e]. Conclusions based on any provisions of this act or any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the board shall make his report and recommendations available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the board prior to final decision or entry of findings, and the board’s decision shall be entered no later than 30 days after the report of the hearing officer. **Where the board fails to**

render the decision within the period required by this subsection, or fails to hold the required hearing within 60 days from the applicant's request for a hearing, **the decision shall be deemed to have been rendered in favor of the applicant** unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the board to meet or render a decision as hereinabove provided, the board shall give public notice of said decision within ten days from the last day it could have met to render a decision in the same manner as provided in subsection (1) of this section. If the board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction. (Emphasis added).

Pursuant to the clear mandates of 53 P.S. 10908(9) this Court did not abuse its discretion in finding that the Church was entitled to a variance of Williamsport Zoning Ordinance parking requirements by ruling that a deemed approval had been rendered.

Although the City contends that proper notice was not provided and proper procedures followed relating to the deemed approval, notice of the deemed approval was appropriately published by the Church in the Sun Gazette on December 9, 2008 and December 16, 2008. Proof of publication of the deemed approval was presented and accepted by City Council during its meeting of January 29, 2009. No appeal to the deemed approval was filed.

The City's final arguments relate to whether the deemed approval issue was appropriately raised before the Court. As set forth in this Court's Order of October 16, 2009, the General Assembly set forth the purpose of the Municipalities Planning Code in Section 10105 of the Act. This section provides:

It is the intent, purpose and scope of this act to protect and promote safety, health and morals; **to accomplish coordinated development; to provide for** the general welfare by guiding and protecting amenity, convenience, future governmental economic, practical, and social and cultural facilities,

development and growth, as well as **the improvement of governmental processes and functions**; to guide uses of land and structures, type and location of streets, public grounds and other facilities; to promote the conservation of energy through the use of planning practices and promote the effective utilization of renewable energy sources; and to permit municipalities to minimize such problems as may presently exist or which may be foreseen.

Pennsylvania courts have interpreted the purpose of this Act as the Legislature's mandate for unified regulation of land use and development. Reihart v. Township of Carroll, 409 A.2d 1167 (Pa. 1979).

In the case at bar, the deemed approval issue was clearly raised in the Zoning Appeals filed by the Church on May 5, 2008 and April 28, 2009. The policy favoring judicial economy supports having the deemed approval as part of the overall zoning appeal when, as here, it was properly raised and preserved.

As sufficient evidence of record exists to support the findings of fact and conclusions of law made by the Court, this Court respectfully urges affirmance.¹

The Church's Cross Appeal relates to the City's determination that the Church did not have a right to non-conforming parking. As set forth in this Court's Order of October 16, 2009, the trial court's standard for review of the City's determination, was whether City Council committed an error of law or abused its discretion. Great weight and deference is to be given to a Board's determination. Snyder v. Zoning Hearing Bd. of Warminster Twp., 782 A.2d 1088, 1089 (Pa.Cmwlth. 2001)(citing *Smith v. Zoning Hearing Bd. of Huntingdon Borough*, 734 A.2d 55 (Pa.Cmwlth. 1999). "Abuse of discretion may not be found merely because the appellate court might have reached a different conclusion, but requires a showing of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support to

¹ As set forth in this Court's Order of October 16, 2009, were it not for the variance issue, the Church's appeal would have been dismissed.

be clearly erroneous.” Paden v. Baker Concrete Construction, Inc., 658 A.2d 341, 343 (Pa. 1995). Judicial discretion may not be substituted for administrative decision-making, even if the reviewing court might reach a different conclusion. Williams v. Commonwealth, State Civil Service, 327 A.2d 70, 71 (Pa. 1974).

Following a review of the evidence presented, this Court found that City Council did not abuse its discretion in concluding that the Church did not have a right to non-conforming parking. Factual findings were made regarding this issue, which were supported by the testimony presented. Moreover, in granting a conditional use, the governing body may attach such reasonable conditions and safeguards, in addition to those expressed in the zoning ordinance, as it may deem necessary to implement the purposes of the MPC in the zoning ordinance. 53 P.S. § 10603(c)(2); Levin v. Bd of Supervisors of Benner Twp., 669 A.2d 1063, 1073 (Pa. Commw. 1995). The Condition at issue merely required that the Church secure and maintain 8 off street parking spaces. This action was consistent with Section 1345.01 of the Zoning Ordinance which required eight off-street parking spaces for church use. As City Council did not abuse its discretion in reaching this determination, this Court denied the Church’s request to strike this condition. Moreover, as sufficient evidence of record exists to support this Court’s ruling on the conditional use issue, this Court respectfully urges affirmance.

BY THE COURT,

Richard A. Gray, J.

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