

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

JOHN J. KROPP; WESLEY E.	:	
MCCRACKEN, JR.; RICHARD B.	:	
STROBLE; and DIANE CUPP,	:	
Appellants	:	NO: 11-00015
	:	
vs.	:	
	:	
ZONING HEARING BOARD OF THE	:	
BOROUGH OF SOUTH	:	
WILLIAMSPORT	:	
Appellee	:	
	:	
vs.	:	
	:	
SHANNON PROPERTIES, L.P.,	:	
Applicant	:	

OPINION

Background:

Shannon Properties, L.P. (hereinafter “Shannon Properties”) seeks to construct a tire sales and service facility in the town commercial district of the Borough of South Williamsport. The application for the proposed use was initially denied by the South Williamsport Zoning Officer because it was felt that the proposed facility was not a permitted use in a town commercial district. A timely appeal was filed with the Zoning Hearing Board of South Williamsport, and a hearing was held on December 20, 2010. On January 5, 2011 the Zoning Hearing Board issued an opinion in which the majority of the Board concluded that the proposed use was a permitted use.

The Appellants filed their appeal with the Court of Common Pleas on January 6, 2011. Shannon Properties subsequently intervened. Following a pre-hearing conference, this Court entered an order declining to remand or accept new testimony and scheduling argument on the matter. Following argument and a review of the record, this Court affirms the decision of the Zoning Hearing Board.

Discussion:

In a zoning appeal, where the trial court does not take any additional evidence, its review is limited to determining whether there was an error of law, the findings of the board are supported by substantial evidence and whether it abused its discretion. Rushford v. Zoning Board of Adjustment of Pittsburgh, 473 A.2d 719 (Pa.Comm.w. 1984). A zoning hearing board is the entity responsible for the interpretation and application of its zoning ordinance. For this reason, a zoning hearing board's interpretation of its zoning ordinance is entitled to receive great weight and deference from the reviewing court. The basis for this deference and weight is the knowledge and expertise a zoning hearing board possesses to interpret the ordinance it is charged with administering. Adams Outdoor Advertising, LP v. Zoning Hearing Board of Smithfield Twp., 909 A.2d 469, 483 (Pa.Comm.w. 2006).

The question before this Court is whether the Zoning Hearing Board erred in finding that Shannon Properties proposed use of the property is permitted. The Appellants assert that the Applicant's proposed use falls within the definition of an Automotive Service Station or an Automotive Repair Facility, uses not directly permitted in the Town Commercial District.

The term "Automotive Repair Facility" is defined as follows:

[a] building or structure used primarily for making major repairs to motor vehicles (automobiles, motorcycles, trucks, farm equipment or machinery, and/or snowmobiles), including overhauling, body work, painting, refinishing and upholstery, as well as incidental servicing and maintenance.” (Zoning Ordinance, Article 2, Section 2.2, Definition of Terms, “Automotive Repair Facility”, at 2-4).

The definition of “Automotive Service Station” is as follows:

A building or structure where gasoline or any motor vehicle fuel or oil or other lubricating substance, batteries, tires, and other automotive accessories are supplied and dispenses to the motor vehicle trade, at retail, and where minor repair service or an automated car wash may be offered.” (Zoning Ordinance, Article 2, Section 2.2, Definition of Terms, “Automotive Service Station”, at 2-4).

The Court cannot conclude that the Board erred in finding that the Shannon facility did not meet these definitions. Moreover, the Zoning Hearing Board concluded that the proposed use was that of a “Retail, Wholesale, Office, Service or Repair Business” which is a permitted use of property zoned Town Commercial District.

The term “Retail Business” is defined as follows:

[a] place of business engaged in the selling of goods and merchandise to the general public for personal, business or household use and rendering services incidental to the sale of such goods. For purposes of this ordinance, a dry cleaner and laundry shall be considered a retail business. (Zoning Ordinance, Article 2, Section 2.2, Definition of Terms, “Retail Business”, at 2-26).

The undisputed testimony of Steven Shannon before the Zoning Hearing Board, was as follows:

Q: With regard to your sales facility will you be providing services such as vehicle overhauling?

A: No.

Q: Body work?

A: No.

Q: Painting?

A: No.

Q: Refinishing?

A: Nope.

Q: Upholstering?

A: No.

Q: Frame repair?

A: No.

Q: Collision repair?

A: No.

* * * * *

Q: Now, with regard to your facility you don't dispense any gasoline?

A: No.

Q: You don't intend to?

A: No.

* * * * *

Q: What percentage of your operation or retail sales volume would be tires?

A: Eighty percent.

Q: Okay. So the minor repairs to vehicles would only be 15 to 20 percent?

A: Correct.

Q: And essentially what you're doing is servicing or installing what you're selling at retail?

A: That is correct.

* * * * *

Q: Is what you're proposing to do here the same allocation of services that you do at your other location in terms of lube, oil, filters, shocks, struts, air conditioning recharge, radiator services, PA state inspection, exhaust work, brake service, belts and hoses, under car service, batteries, custom wheels, and road service available, is that the 20 percent?

A: That's the 20 percent, yeah, because that's low volume for us. We offer it, but we don't do a lot. We do a lot more tires.

* * * * *

Q: Mr. Shannon, primarily this is going to be for light commercial and cars? With the gas industry coming in to the area you're not going to be servicing trailer trucks there I wouldn't think?

A: No.

(N.T. 12/20/20, p. 33-25, 36, 49).

Subsequent to the hearing, the Board issued the following Findings of Fact:

Mr. Shannon testified that the proposed use would not entail any overhauling, body work, painting, refinishing and upholstering, frame repair and/or collision repair work on vehicles.

Mr. Shannon testified that no gasoline would be sold on site and that no gas industry trucks or equipment would be serviced at the proposed use.

Mr. Shannon testified that the business at the other locations is about 80% tire related with the remaining 20% of the business being minor repairs.

(Opinion and Order of Borough of South Williamsport Zoning Hearing Board, Findings of Fact, 20-21, 26, p. 9-10).

This Court concludes that the actions of the Zoning Hearing Board were neither arbitrary nor an abuse of discretion. The ZHB properly considered all of the testimony and concluded that the use was permissive. Testimony clearly supported

the Findings of Fact entered by the Zoning Hearing Board. As the definition of a “Retail Business” is one in which goods are sold and services are rendered incidental to the sale of goods, and Mr. Shannon testified that the sale of tires will constitute 80% of his business, with the remaining 20% being comprised of services, this Court finds that the Zoning Hearing Board did not abuse their discretion.

Moreover, ordinance restrictions are to be narrowly construed and any language in an ordinance which can be interpreted to permit the use, must be broadly construed in a manner which will least restrict the owner’s use of the land. Counsel of Middleton Township v. Benham, 523 A.2d 311, 315-316 (Pa. 1985).

ORDER

AND NOW, this 22nd day of June, 2011, the majority decision of the Zoning Hearing Board of the Borough of South Williamsport issued January 5, 2011 is hereby AFFIRMED and the appeal is DISMISSED.

BY THE COURT,

Richard A. Gray, J.

cc: J. Michael Wiley, Esquire

John R. Bonner, Esquire

Alvin J. Luschas, Esquire
120 West Main Street
Bloomsburg, PA 17815

Gary Weber, Esquire