

IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PA

MELINDA HADLEY LYON, :  
Appellant : NO: 10-01214  
vs. :  
ZONING HEARING BOARD of the :  
CITY OF WILLIAMSPORT, :  
Appellee :

**ORDER**

On June 18, 2010 the Appellant filed a Notice of Appeal from the decision of the Zoning Hearing Board of the City of Williamsport. The Appellant is the owner of property located at 1024 Packer Street in the City of Williamsport. The property is situated in an R-2 Zoning District. On the property is a dwelling which Appellant uses as a residence. The property also contains a detached garage. The Appellant proposes to renovate the second floor of the garage for residential use.

The City's Zoning Code only permits single family or group homes in R-2 districts. The Code does not permit multi-family uses within the district. The Appellant applied for a special exception to change from one nonconforming use to another, alleging that the garage was used as an office by her and former owners. The Appellant also applied in the alternative for a variance.

The Zoning Hearing Board, after conducting two hearings, denied both requests. Appellant then filed her appeal from the Board's decision and the City of Williamsport intervened as of right.

The standard of review of an adjudication of a municipal commission is limited to determining “whether constitutional rights have been violated, an error of law has been committed[,], or findings of fact necessary to support the adjudication are not supported by substantial evidence.” Day v. Civil Service Commission, 931 A.2d 646, 650 (Pa. 2007)(citations omitted). In determining whether the Board committed an error of law or an abuse of discretion, the “court must give great weight and deference to the 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 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).

The first issue before this Court is whether it was proper for the Zoning Hearing Board to find that the Appellant did not establish a non-conforming use. The Appellant has the burden of proving that the non-conforming use, or that the garage was used as an office prior to 1998, or when the current zoning code was adopted.

The City of Williamsport contends that the Appellant failed to offer any objective evidence of the time of the creation of the non-conforming use, the extent of the use, or the continuation of any such use. In this Court’s Order of November 15,

2010 this Court directed the Appellant to obtain and file a transcript of the hearings held with the Zoning Hearing Board. The Appellant failed to submit the transcripts as directed. Accordingly, this Court finds that the Appellant failed to meet her burden of proof, and the Zoning Hearing Board did not commit an error of law or abuse its discretion in finding that the Appellant failed to establish a non-conforming use.

The Appellant alternatively sought a variance. In order to be entitled to a variance, an applicant must meet all five (5) requirements of Section 910.2 of the Municipalities Planning Code, 53 P.S. 10910.2. In Talifeferro v. Daney Township Zoning Hearing Board, 873 A.2d 807 (Pa.Comm.w. 2005), the Commonwealth Court stated:

A zoning hearing board may grant a variance when the following criteria are met:

(1) an unnecessary hardship will result if the variance is denied, due to the unique physical circumstances or conditions of the property; (2) because of such physical circumstances or conditions the property cannot be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property; (3) the hardship is not self-inflicted; (4) granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and (5) the variance sought is the minimum variance that will afford relief. Id. at 812. (Citations omitted).

Appellant's main argument for obtaining the variance appears to be that an occupied structure, as opposed to a vacant garage, will deter crime. According to the Appellant, due to the peculiar configuration of the property the entryway to the garage is not visible to the house. Since the garage appears to be vacant it invites mischief. This is not evidence of a hardship. Zoning variances are to be sparingly granted, and the reasons for granting them must be substantial, serious and compelling. In Re Boyer, 960 A.2d 179, 183 (Pa.Comm.w. 2002). Accordingly, this

Court finds that the Zoning Hearing Board did not commit an error of law in denying the Appellant's request for a variance.

**ORDER**

AND NOW, this 10<sup>th</sup> day of February, 2011, the decision of the Zoning Hearing Board is hereby AFFIRMED.

BY THE COURT,

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Richard A. Gray, J.

cc: Norman Lubin, Esquire  
  
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