

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PENNSYLVANIA GENERAL ENERGY	:	NO. 11 - 01,875
COMPANY, LLC,	:	
Appellant	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
WATSON TOWNSHIP ZONING HEARING BOARD,	:	
Appellee	:	LAND USE APPEAL

OPINION AND ORDER

Before the court is the Land Use Appeal filed by Pennsylvania General Energy Company, LLC on October 14, 2011. Argument was heard February 21, 2012.¹

Appellant, a company involved in the drilling and production of natural gas in this area, applied to Watson Township for a special exception and two variances in order to use a certain property situate on State Route 44 as an office and water transfer station. After five public hearings, the Zoning Hearing Board denied the application, leading to the instant appeal.

At a conference following the filing of the appeal, counsel indicated the court could proceed on the record below and therefore, no additional evidence was received. Consequently, the court is limited to determining whether the Board committed an error of law or an abuse of discretion. Borough of Moosic v. Zoning Hearing Board of Moosic, 11 A.3d 564 (Pa. Commw. 2010). In order to find an abuse of discretion, the court must conclude that the Board's findings are not supported by substantial evidence. Valley View Civic Association v. Zoning Board of Adjustment, 462 A.2d 637 (Pa. 1983). Further, even if the court finds the Board's reasoning erroneous, it may affirm if other reasoning leads to the same result. *See Gateside-Queensgate Company v. Delaware Petroleum Company*, 580 A.2d 443 (Pa. Commw. 1990).

¹ Watson Township filed a Notice of Intervention, intervening as of right, on November 10, 2011, and Vern and Victoria VanOrder were permitted to intervene by Order dated January 24, 2012.

In the instant appeal, Appellant contends first and foremost that the Zoning Hearing Board erred as a matter of law by placing on it the burden of proving that the general requirements for the granting of a special exception were met, whereas the burden should have been placed on the objectors to show that Appellant did not meet the requirements. Appellant also contends the Board erred as a matter of law in denying their variance requests as such requests were actually not necessary, since both requests are based on circumstances which predated the enactment of the zoning ordinance and which circumstances are not being changed by Appellant's proposed use. The Township argues that, although the burden is indeed on the objectors to show that the proposed use would be detrimental to the public health, safety and welfare, Appellant did not in the first instance prove that its proposed use complies with the objective requirements of the zoning ordinance. The VanOrders agree with the Township on this point, and contend as well that Appellant failed to satisfy the objective criteria required for adequate ingress and egress from Route 44. The Zoning Hearing Board argues that its decision was correct for a variety of reasons.

An applicant for a special exception has the initial burden to show that the proposed use complies with the terms of the ordinance which expressly govern such a grant by showing that (1) it meets the threshold definition of what is authorized as a special exception, and (2) it satisfies the specific requirements or standards applicable. Bray v. Zoning Board of Adjustment, 410 A.2d 909 (Pa. Commw. 1980). Once this burden has been met, it is incumbent on any objectors to demonstrate that the proposed use would be detrimental to public health, safety and welfare, or is not in harmony with the spirit, intent or purpose of the ordinance. Id. After reviewing the record, the court agrees with the Township and the VanOrders that Appellant did not meet its burden with respect to the first requirement.

The property at issue is located in a Residential District, and its zoning is therefore governed by Section 312 of the Watson Township Zoning Ordinance, which provides as follows:

310 R – Residential District

312 Use Regulations

- A. Permitted Principal Uses
 - 1. All agricultural uses including farming.
 - 2. One-family detached dwelling.
 - 3. Seasonal dwellings and hunting camps.

- B. Permitted Accessory Uses
 - 1. Private garages and carports.
 - 2. Private swimming pool.
 - 3. Home occupations.
 - 4. Other uses and structures which are customarily accessory and clearly incidental to permitted uses and structures.
 - 5. Roadside stands for sale of farm products.

- C. Uses Permitted as Special Exceptions
 - 1. Public or semi-public recreational facilities and/or services.
 - 2. Retail businesses – general stores, offices.
 - 3. Multi-family dwellings.
 - 4. Clubs.
 - 5. Transient vacation dwelling.
 - 6. Any lawful use, not listed or described for any district as a permitted use or special exception use, that is similar in characteristics to a permitted use or special exceptions use listed or described for this district. It is the intent of this provision, when read in conjunction with Section 322 C. 9, to allow the possibility of any lawful use somewhere within the Township.

Appellant plans to use the property for a water transfer station and office. Clearly, the office qualifies for consideration as a special exception, but the water transfer station, which involves the delivery by trucks of water and the transfer of that water to underground tanks (from which it will be pumped by underground pipelines to a pumping facility and from there to various gas well drilling sites), does not qualify unless it is a use which is similar in characteristics to one of the permitted or special exception uses listed.

The court cannot find that a water transfer station is similar to any of the listed uses. Appellant claims simply that the use *is* similar, without discussion, based on its conclusion that the Board “made no finding to the contrary”. The Board did find, however, in Conclusion of Law #6, that “[t]he proposed use would constitute a totally different type of use from what

exists in the general area now around the Trading Post property.”² While this finding was not made in direct consideration of the initial requirement, and thus the Board did err in failing to consider the issue in its proper context, its conclusion is supported by the record.

That the use is not similar to any of the uses listed for the Residential District is underscored by an examination of the section governing the other zoning district in the Township, Open Space/Agricultural District, as well as the sections which speak to the purpose of each district. Section 320 of the ordinance provides as follows:

320 O/A – Open Space/Agricultural District

322 Use Regulations

- A. Permitted Principal Uses
 1. All agricultural uses including farming.
 2. Single-family detached dwellings.
 3. Manufactured homes on permanent foundations and individual lots.
 4. Seasonal dwellings, hunting camps and lodges.
 5. Public or private parks.
 6. Automotive service stations.
 7. Natural gas wells and pipelines.

- B. Permitted Accessory Uses
 1. Private garages.
 2. Private swimming pools.
 3. Home occupations.
 4. Roadside stands for the sale of farm products.
 5. Other uses and structures customarily incidental to permitted uses.

- C. Uses Permitted as Special Exceptions
 1. Public or semi-public recreational facilities and/or services.
 2. Sawmills.
 3. Campgrounds.
 4. Multi-family dwellings.
 5. Manufacturing uses.
 6. Transient vacation dwellings.
 7. Cell phone towers.

² This finding was made in conjunction with the Board’s consideration of Section 708D(8), and it’s determination of whether Appellant demonstrated the compatibility of the proposed use with existing development and development anticipated in the future.

8. Compressors and meter stations for natural gas pipelines.
9. Any lawful use not listed or described for any district as a permitted use or special exception use, that is similar in characteristics to a permitted use or special exceptions use listed or described for this district. It is the intent of this provision, when read in conjunction with Section 312 C. 6, to allow the possibility of any lawful use somewhere within the Township.

The purpose of the Residential District is explained in Section 311, as follows:

311 Purpose – This district is intended for application to open rural areas where public water and sewer facilities are not presently nor contemplated to be available in the foreseeable future. These regulations are to foster a single-family environment on a minimum of one-acre lots; to prohibit all activities of a commercial or industrial nature; and to encourage the continuation of agricultural activities.

The purpose of the Open Space/Agricultural District is explained in Section 321, as follows:

321 Purpose - This district is intended to encourage the preservation of agricultural lands and to encourage conservation of other lands where building or development might not be in the public's best interest. The district discourages development in areas having excessive slope, and recognizes the need to preserve natural drainageways, open spaces, and the rural farming characteristics of the township.

Reading all four sections together, it is clear the township has provided for activities of a commercial or industrial nature to be restricted to the Open Space/Agricultural District: they are expressly prohibited in the Residential District by Section 311, and Section 322 lists as uses permitted in the Open Space/Agricultural District, either outright or by Special Exception, manufacturing uses and other commercial uses such as automotive service stations, cell phone towers, gas wells and pipelines, campgrounds and sawmills. While Appellant argues its proposed use is not industrial, and the Township argues it *is* industrial, the Court finds the description of no moment as it is definitely “of a commercial or industrial nature”, and is *not* similar to any of the uses permitted, either outright or by Special Exception, in the Residential District. Therefore, the Zoning Hearing Board correctly denied the application for a Special Exception, albeit for another reason.

With respect to the variance requests, the Board concluded that the site is not in conformity with the minimum lot area requirement of Section 313A and the maximum lot coverage requirement of Section 313C, and, further, that Appellant failed to prove that granting the variances would not alter the character of the neighborhood. The court finds these conclusions to constitute an error of law. Although the lot size of .7 acre does not meet the current minimum lot size of 1 acre, and the lot coverage exceeds the maximum lot coverage allowed,³ it is not disputed that these conditions existed prior to the adoption of the ordinance. Section 401 of the Ordinance provides that “[a]ny nonconforming use or structure legally existing at the time of the adoption of this Ordinance ... may be continued ... even though it does not conform to regulations of the district in which it is located. ...” Thus, no variance from these two requirements is necessary, unless one of the exceptions listed in Section 401 applies.

The Township argues that Section 401B requires a variance: “If any non-conforming building or use is abandoned for a period of one year,⁴ the future use of such building or land shall be in conformity with district regulations.” This argument misses the mark: the exception clearly applies only to an abandoned *use*, and Appellant is not seeking to continue the previous use of the building or land. As long as Appellant does not seek to change the size of the lot or the coverage of the lot, nothing prevents the use of the lot as it exists. Indeed, Section 500A provides that “[n]o yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements as set forth herein for the zone in which it is located. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.”

There was nothing presented to show that Appellant planned to reduce the size of the lot. Further, the evidence showed that Appellant intends to merely resurface the existing pavement and will not expand it. See PGE Exhibit No. 17. The Board’s conclusion that “[t]he proposed site area would have additional paving” is not supported by the evidence. Therefore,

³ The court does not find it necessary to determine whether by lot “coverage” the Ordinance refers to coverage by buildings alone, or coverage by buildings and driveways/parking lots.

⁴ The evidence indicates the property has been for sale for over a year. Although such circumstance may or may not constitute abandonment of its former use as a general store, such a determination is not herein necessary to the issue at hand.

the Board abused its discretion in denying the variance requests, inasmuch as it should have simply indicated the variance requests were not necessary.

The court notes the Board did not separately address the request for a special exception to use the property as an office; all findings and conclusions were directed toward the proposed use as a water transfer station. Since Appellant did not argue that at least the use as an office should have been approved, the Court assumes Appellant is not interested in purchasing the property for only such a use and will also not separately address that use. If the court is wrong in this assumption, Appellant may seek reconsideration on that basis and such separate use will be addressed.

In closing, the court wishes to comment that it believes the proposed water transfer station and its resultant decrease in truck traffic would be a significant benefit to all citizens who are affected by the current overload on our local highways and roads. The economic benefit to Appellant notwithstanding, Appellant is to be commended for its attempt to minimize the industry's negative effect on the neighborhoods in which it operates. Unfortunately for Appellant, however, the Watson Township Zoning Ordinance places a priority on its' Residential District citizens' peaceable enjoyment of their property and the court is constrained to uphold the Board's decision regarding Appellant's request for a special exception.

ORDER

AND NOW, this 6th day of March 2012, for the foregoing reasons, the Board's decision to deny Appellant's request for a special exception is hereby AFFIRMED. As the court has determined no variance is necessary with respect to either the lot size or the lot coverage, the Board's decision to deny Appellant's request for variances from those two requirements is hereby REVERSED.

BY THE COURT,

Dudley N. Anderson, Judge

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