

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MARK R. AUNGST,	:	NO. 13 – 00,246
Appellant	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
ZONING HEARING BOARD OF THE	:	
BOROUGH OF SOUTH WILLIAMSPORT,	:	
Appellee	:	
	:	
BOROUGH OF SOUTH WILLIAMSPORT,	:	
Intervenor	:	Land Use Appeal

OPINION AND ORDER

Before the court is Appellant’s appeal of the decision of the Zoning Hearing Board of South Williamsport, which upheld the decision of the Zoning Officer that a structure Appellant built on his property violated Section 16.2.2.2(1) of the Borough’s zoning ordinance. A certified record was filed June 5, 2013, briefs were filed July 30, August 20 and August 21, 2013, and argument was heard August 29, 2013.

At issue is a structure¹ built by Appellant in his front yard. As the structure is not attached to Appellant’s house, it is governed by Section 16.2.2.2(1) of the Zoning Ordinance, which provides, in pertinent part, as follows:

(1) Unattached Accessory Structures in R-Districts

Accessory structures, which are not attached to a principal structure, may be erected within (1) of the side yards or within the rear yard, but not in the front yard....

Exemptions to this “no structures in the front yard” rule are found in Section 16.2.2.3 of the Ordinance, the relevant portion of which reads as follows:

Lamp posts, flagpoles, mailboxes, exterior lighting fixtures, flower boxes, lawn ornaments, signs for home occupations permitted in

¹ The Borough’s Zoning Ordinance defines “structure” as “[a]ny man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land”.

accordance with this ordinance, basketball hoops and access structures to aid the handicapped shall be exempt from Sections 16.2.2.2(1) and (3) above....

Appellant contends his structure is a “flower box” and thus permitted in his front yard.² The Zoning Hearing Board determined the structure is not a flower box “under any plain and ordinary meaning or definition of [the] term”, finding that such is two feet wide, five and one-half feet high (except where interrupted by a seven and one-half feet high covered opening), and runs the majority of the 71 ½ feet length of the front yard, not to mention the 15 feet extension of the structure along one of the perpendicular (to the front line) property lines. The court cannot find any abuse of discretion in the Board’s determination as the sheer size of the structure removes it from any possible definition of “flower box”. *See* attached photograph, marked Exhibit 1.

Appellant’s argument, that the ordinance is ambiguous because it does not provide for the maximum size of permitted flower boxes, is an attempt to introduce ambiguity where there is none. Any reasonable person would *not* describe the structure at issue as a “flower box”. Further, his reliance on Walker v. Ehlinger, 676 A.2d 213 (Pa. 1996), is mis-placed. There, the only issue before the Court was whether concrete barriers constituted a “structure” under the relevant ordinance. The Court found that they did not as they were not affixed to the property. Notwithstanding Appellant’s assertion to the contrary, the Court did *not* base its holding on the fact that there was no size restriction in the ordinance.

As the Zoning Hearing Board has pointed out, the list of exemptions must be read in its entirety. Lamp posts, flagpoles, mailboxes, exterior lighting fixtures, basketball hoops and flower boxes all evoke in the mind’s eye a certain range of images, seen ordinarily in the neighborhood. Whether Appellant attaches a lamp, flag, red “mail is inside” flag, lighting fixture, basketball net or flowers to his structure, it does not by any stretch of the imagination fall within the list of exemptions. Therefore, the court finds no error of law or abuse of discretion in the Board’s conclusion that Section 16.2.2.2(1) prohibits Appellant’s structure and that it must be removed.

² Appellant cannot contend the structure is a fence, as fences in the front yard are restricted to three and one-half feet in height and Appellant’s structure significantly exceeds that height.

ORDER

AND NOW, this 10th day of September 2013, for the foregoing reasons, the decision of the Zoning Hearing Board is hereby AFFIRMED. Appellant must comply with the October 15, 2012, Enforcement Notice.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Marc S. Drier, Esq.
J. Michael Wiley, Esq.
Joseph F. Orso, III, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson