

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TROY A. MUSSER,	:	NO. 13 - 00,922
Appellant	:	
vs.	:	CIVIL ACTION - LAW
	:	
ZONING HEARING BOARD OF WOODWARD TOWNSHIP,	:	
Appellee	:	
	:	
WOODWARD TOWNSHIP,	:	
Intervenor	:	LAND USE APPEAL

OPINION AND ORDER

Before the court is the Land Use Appeal filed by Troy Musser on April 19, 2013. Woodward Township filed a Notice of Intervention, intervening as of right, on April 29, 2013. Following a conference and argument on July 2, 2013, the court granted Appellant’s Motion to Present Additional Evidence. Argument was then heard September 6, 2013, following which counsel requested the opportunity to submit briefs. Appellant’s brief was filed September 25, 2013; Intervenor’s brief was filed October 10, 2013.

Appellant owns a motel located on State Route 220 in Woodward Township and in connection with a recent addition to the structure, applied to the Woodward Township Zoning Officer for a permit to install a third access to the property from Grandview Road, which runs from State Route 220 along the eastern property line. The property currently has two access points, in the form of a half-circle driveway in front of the motel, both on Route 220. Appellant seeks to add a short third driveway from Grandview Road to the rear of the property as the new addition, a row of rooms added as a second story, is actually at ground level at the back since the property is sloped uphill from front to back. The Zoning Officer denied the request and the Zoning Hearing Board affirmed that decision.

Because additional evidence was presented, the court must make its own findings of fact based on that evidence as well as the record below. 53 P.S. Section 11005-A. The facts

are, however, not in dispute. It is also agreed that the matter is governed by Section 902(C) of the Township's Zoning Ordinance, which provides as follows:

902 DRIVEWAYS AND ACCESS DRIVES

C. The number of driveways or access drives provided shall be the fewest required to adequately serve the needs of the abutting property. The total number of driveways or access drives shall not exceed two (2) per lot, except where frontages of exceptional length occur. In cases where frontages are 50 feet or less, each lot shall be limited to one (1) driveway or access drive.

The evidence established that the property has a frontage along State Route 220 of 404.15 feet, and along Grandview Road of 384.50 feet. *See* Appellant's Exhibit No. 1. It was also established that nearby properties fronting on Route 220 have frontages of 302 feet, 420 feet, 192 feet, 344 feet, 188 feet, 187 feet, 44 feet and 127 feet. *See* N.T., April 2, 2013 at p. 13. Because the Zoning Hearing Board considered only the frontage along Route 220, it decided that Appellant's frontage of 404 feet did not constitute an "exceptional length". The court believes, however, that both road's frontage should be considered, as to exclude the frontage on Grandview Road is not logical.

The Ordinance does not define "frontage". The Hearing Board apparently concluded that since the word "front" is contained in the word "frontage", it must mean only the road that is in the "front" of the hotel. There is no reason why the word "frontage" could not be referring to the road rather than the building, however, meaning that any part of the property which "fronts" on a road is to be considered "frontage". Suppose a property was vacant land on a corner lot – which would be the front? Or, suppose a homeowner chose to place his residence such that it faced away from the road (where, for instance, there was a long driveway and woods between the road and the house) – would one conclude that he had no frontage? Since the Township chose the word "frontage" without defining it, even if the word is capable of two interpretations, the court must resolve the issue in favor of the property owner. *See* 53 P.S. Section 10603.1. Therefore, both frontages should be considered in deciding whether Appellant has "frontages of exceptional length".

Since the combined length of both frontages is 788 feet, and those of the nearby lots range from 44 feet to 420 feet, the court believes Appellant's frontages are exceptional such as

justifies a third access drive. Or, in the alternative, one could view the frontage on Grandview Road alone, which has no driveway at all, and thus up to two driveways could be installed there as it exceeds 50 feet. In fact, this interpretation is consistent with Section 902A of the zoning ordinance, which provides “in the interest of public safety” that “[w]here possible, all residential lots shall access onto a local street rather than a collector road”. Such a choice would be possible only where a lot had frontage on both types of roads, and to consider only one of those two frontages would ignore the safety considerations of the ordinance.

The court finally notes the requirement of Section 602(C)(1) of the ordinance that “[o]n a corner lot, the side yard abutting the street shall have a width equal to the required front yard depth for the district in which the lot lies.” While not directly supportive, this requirement does reflect the Township’s view that all road frontage should be considered in the layout of a lot’s improvements. The court sees no reason to not extend that reasoning to the instant question.

Accordingly, as the proposed driveway meets the criteria of the zoning ordinance, the permit should be issued.

ORDER

AND NOW, this 16th day of October 2013, for the foregoing reasons, the Board’s decision to deny Appellant’s request for a zoning permit is hereby REVERSED. The matter is hereby remanded to the Board to issue the requested permit.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson