

COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CALVIN TILLEY and PATRICIA TILLEY,

: NO. 18 - 1498

:

: CIVIL ACTION - LAW

vs.

:

:

ZONING HEARING BOARD,

:

:

ORDER

AND NOW, this 28th day of June, 2019, after consideration of the submitted Briefs, it is hereby ORDERED and DIRECTED as follows:

This Court concurs with Appellants' reliance on *Hertzberg v. Zoning Bd.* 721 A.2d (Pa. 1998), which asserted that an abuse of discretion may be satisfied when Board's findings are not supported by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Appellee Zoning Hearing Board of the City of Williamsport's decision can be reversed if there is an abuse of discretion or an error of law; Appellants contend that both grounds for reversal are present in the matter at bar. It is averred that the findings of fact are not supported by sufficient evidence. Zoning Hearing Board's Findings of Fact, #17, asserts that Randall Webster testified that it is possible to construct a residential dwelling on The Lot in compliance with all requirements of the Zoning Ordinance. However, Randal Webster testified that comporting with said requirements would be "pretty tough". (Randal Webster Transcript at 39)

Appellee's Finding of Fact #23, listed as Finding of Fact #17, asserts that the Board finds that Appellants will suffer no undue hardship if The Lot were to be developed for residential use consistent with the uses permitted in the R3 Zoning District. Appellants' Supplemental Brief in Support of Appeal contends that the record contradicts this notion; citing Mr. Webster's testimony wherein it was stated as follows:

Mr. Miele: So as a practical matter, the only thing we can use this lot for is gardening and parking?

Mr. Webster: I would say, yes. (Randal Webster Transcript at 49-50)

Mr. Webster also provided testimony that the cost of a single-story residential structure on the subject lot would be \$150,000, and \$300,000 for a two-story building. Because of the dimensions of The Lot and the set-back restrictions imposed by the Zoning Ordinance, any potential development with regard to residential properties would not be financially viable:

Mr. Miele: How about a \$150,000 house, do you think that would support a rent that would pay for that in that neighborhood?

Mr. Webster: Not for one unit, no.

Mr. Miele: Okay. Well, let's say we put two units in. We put a first floor and a second floor in, are you still going to get enough rent to pay your taxes, insurance, and your mortgage –

Mr. Webster: No. (Randal Webster Transcript at 49-50)

The Appellants contend that The Board committed an error of law in its Conclusion of Law #4, wherein it was stated that “No unnecessary hardship exists which was not created by the Appellants.” This appears to be at odds with *Oxford Corporation v. Zoning Hearing Board of the Borough of Oxford*, 34 A.3d 286, 295-96 (Pa. Cmwlth. 2011), which held in pertinent part:

“To demonstrate the requisite unnecessary hardship, an applicant must prove either: (1) the physical characteristics of the property are such that it could not in any case be used for any permitted purpose, or that it could only be used for such purpose at prohibitive expense; or (2) the characteristics of the property are such that the lot has either no value or only distress value for any purpose permitted by the ordinance.”

In *Allegheny West Civic Council v. Zoning Board*, 689 A.2d 225-228 the Pennsylvania Supreme Court held that unnecessary hardship does not require a showing that the property is valueless without an ordinance. In the matter at bar, the record establishes that developing The Lot for residential structures would be fiscally excessive, thus satisfying the unnecessary hardship criteria. This Court is of the opinion that Randal Webster's testimony does not conform to the Zoning Board of Williamsport's Findings of Fact or Conclusions of Law. Accordingly, the Board's decision is hereby REVERSED.

BY THE COURT,

Date

Senior Judge, Specially Presiding

cc: C. Edward Mitchell, Esq.
Norman Lubin, Esq.
Joseph Musto, Esq.