

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| DAUGHERTYS RUN ROAD SOLAR I, LLC, | : NO. CV-2024-01278 |
| Appellant, | : |
| | : |
| vs. | : CIVIL ACTION – LAW |
| | : |
| OLD LYCOMING TOWNSHIP BOARD | : LAND USE APPEAL |
| OF SUPERVISORS, | : |
| Appellee. | : Petition to Intervene |

OPINION & ORDER

The above-captioned matter came before the Court on March 20, 2025, for an evidentiary hearing on the Petition to Intervene (filed December 24, 2024). Upon request by counsel for Petitioner, the Court permitted parties to file either briefs or correspondence in support of their respective positions on or before April 18, 2025. The parties having submitted their respective briefs per this Court’s Order of March 25, 2025, the Court now renders this Opinion and Order.

I. BACKGROUND

The above-captioned case was commenced by Notice of Land Use Appeal, filed on November 19, 2024. Daughertys Run Road Solar 1, LLC (hereinafter “Appellant”) appealed a written decision—issued on October 22, 2024 (hereinafter the “October 22nd Decision”)—by the Old Lycoming Township Board of Supervisors (hereinafter “Appellee”). The subject property is located at 916 Daughertys Run Road, Williamsport, PA 17701, with a Tax Parcel number of 43-348-138.A. (hereinafter the “Property”), situate in Old Lycoming Township, Lycoming County, leased by the Appellant. Appellant’s Land Use Appeal appeals only condition number one (1) from Appellee’s October 22nd decision.

Shortly thereafter, Kathleen M. Caputo (hereinafter “Petitioner”) filed a Petition to Intervene (hereinafter “Petition”) on December 24, 2024, contending that the determination of the Appellant’s appeal would affect a “legally enforceable interest of Petitioner,” because Petitioner owns real property within the vicinity of the Property in question, and that the Appellant’s proposed solar array would “generate[] noise on a consistent basis and decrease[]

local property values,” and that construction of the solar array “will adversely affect Petitioner’s use of the property, including by potentially damaging Petitioner’s well.” Pet.’s Petition (unpaginated).

On March 20, 2025, Petitioner testified—*inter alia*—that she is the owner of 448 Gearhart Lane, Williamsport, PA, situate in Old Lycoming Township, Lycoming County, that Appellant’s “solar project” is twenty-five (25) feet from the Petitioner’s yard, and that the “solar project” is approximately seventy-five (75) feet from the Petitioner’s house. Tr. of March 20, 2025, at 4-5. Petitioner testified—in response to counsel for the Appellant’s question “[a]nd why do you believe that your interests are not adequately represented by the Township”—that “[b]ecause I think the Township represents a broad group of people, the residents of the Township; but because my property directly adjoins this property, I am directly impacted by it.” *Id.* at 6. Petitioner contends that 1) she has a legally enforceable interest that will be affected by the outcome of the above-captioned appeal and therefore is permitted to intervene pursuant to Pa. R. Civ. P. Rule 2327; that 2) there is no basis for refusing intervention pursuant to Pa. R. Civ. P. Rule 2329; and that 3) Petitioner was not required to attach “a copy of a pleading” under Pa. R. Civ. P. Rule 2328. Pet.’s Brief at 3-7. Appellant, in opposition to the Petition, contends that 1) the Appellee already adequately represented Petitioner’s interest in the case at hand; that 2) the Petition fails to comply with Pa. R. Civ. P. Rule 2328; and that 3) Petitioner may not raise new issues as an intervenor. Appellant’s Brief at 1-5.

II. QUESTION PRESENTED

WHETHER PETITIONER WILL BE GRANTED LEAVE OF COURT TO INTERVENE IN THIS APPEAL.

III. BRIEF ANSWER

PETITIONER WILL NOT BE GRANTED LEAVE OF COURT TO INTERVENE.

IV. DISCUSSION

Title 53, Part I, Section 11004-A—Intervention—provides the following:

Within the 30 days first following the filing of a land use appeal, if the appeal is from a board or agency of a municipality, the municipality and any owner or tenant of property directly involved in the action appealed from may intervene as of course by filing a notice of intervention, accompanied by proof of service of the same, upon each appellant or each appellant's counsel of record. **All other intervention shall be governed by the Pennsylvania Rules of Civil Procedure.**

53 PA. STAT. AND CONST. STAT. § 11004-A (emphasis added).

As reiterated by our Commonwealth Court in *Stanbro v. Zoning Hearing Board of Cranberry Township*,

The rules of civil procedure which apply to interventions are set forth at Pa.R.C.P. Nos. 2326–2350. One wishing to intervene is required to file a petition to intervene, “setting forth the ground on which intervention is sought and a statement of relief or defense which the petitioner desires to demand or assert.” Pa.R.C.P. No. 2328. The trial court then must hold a hearing to determine whether the petition to intervene should be granted. Pa.R.C.P. No. 2329. **Whether or not to grant a petition is within the discretion of the trial court.** *Acorn Development Corporation v. Zoning Hearing Board of Upper Merion Township*, 105 Pa.Commonwealth Ct. 138, 523 A.2d 436 (1987).

Stanbro v. Zoning Hearing Board of Cranberry Township, 566 A.2d 1285, 1287 (Pa. Commw. Ct. 1989) (emphasis added), *appeal denied*, 526 Pa. 645 (Pa. 1990).

Regarding who may intervene, Rule 2327 of the Pennsylvania Rules of Civil Procedure provides the following, in full:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if

(1) the entry of a judgment in such action or the satisfaction of such judgment will impose any liability upon such person to indemnify in whole or in part the party against whom judgment may be entered; or

- (2) such person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof; or
- (3) such person could have joined as an original party in the action or could have been joined therein; or
- (4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pa. R. Civ. P. 2327; *see generally* *Wexford Science and Technology, LLC v. City of Pittsburgh Zoning Board of Adjustment*, 260 A.3d 316, 324 (Pa. Commw. Ct. 2021) (quoting *Larock v. Sugarloaf Township Zoning Hearing Board*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999)) (“Courts have long recognized that ‘[o]wners of property in the immediate vicinity of property involved in zoning litigation have the requisite interest and status to become intervenors under Pa. R.C.P. No. 2327(4).’”).

At the March 20th hearing, Petitioner testified that she is the owner of 448 Gearhart Lane, Williamsport, PA, situate in Old Lycoming Township, Lycoming County, that Appellant’s “solar project” is twenty-five (25) feet from the Petitioner’s yard, and that the “solar project” is approximately seventy-five (75) feet from the Petitioner’s house. Tr. of March 20, 2025, at 4-5. For those reasons, it appears to the Court that Petitioner’s property is in the “immediate vicinity” of the Property “involved in zoning litigation” and, therefore, Petitioner has “the requisite interest and status to become [an] intervenor[]” under Pa. R. Civ. P. 2327(4). Pa. R. Civ. P. 2327; 260 A.3d at 324.

Qualifying under Rule 2327, however, is not sufficient, because a petition to intervene must also comply with Rule 2328, which provides, in part,

- (a) Application for leave to intervene shall be made by a petition **in the form of** and verified in the manner of a plaintiff’s initial pleading in a civil action, setting forth the ground on which intervention is sought and a statement of the relief or the defense which the petitioner desires to demand or assert. The petitioner shall **attach to the petition a copy** of any pleading which the petitioner will file in the action if permitted to intervene **or** shall state in the petition that the petitioner adopts by reference in whole or in part certain named pleadings or parts of pleadings already filed in the action.

Pa. R. Civ. P. 2328(a) (emphasis added); *see generally* *Hayes v. School District of Pittsburgh*, 381 A.2d 193, 195 (Pa. Commw. Ct. 1977) (“We are further not persuaded by appellees’ claim

that failure to comply with technical rules justified refusal of the petition. As noted in *Esso*, supra, the proper response to such technical defects would be leave to amend under Pa.R.C.P. No. 1033 rather than refusal under Pa.R.C.P. No. 2329.”).

While this Court notes that there are no attachments to the Petition (filed December 24, 2024), the *Hayes* Court was not persuaded “that failure to comply with technical rules justified refusal of the petition” and opined, instead, that “the proper response to such technical defects would be leave to amend under Pa.R.C.P. No. 1033....” 381 A.2d at 195. Therefore, based on the reasoning in *Hayes v. School District of Pittsburgh*, a petitioner is permitted to amend her petition under Pa. R. Civ. P. 1033. 381 A.2d at 195; accord *Esso Standard Oil Company v. Taylor*, 159 A.2d 692, 695 (Pa. 1960) (quoting *O’Connell v. Roefaro*, 137 A.2d 325, 331 (Pa. 1958)) (“Procedural rules are not ends in themselves, but means whereby justice, as expressed legal principles, is administered. They are not to be exalted to the status of substantive objectives....”); see generally Pa. R. Civ. P. 126 (“The rules shall be liberally applied to secure the just, speedy, and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantive rights of the parties.”).

Having analytically marched through both Rules 2327 and 2328, the Court now arrives at Rule 2329, which provides, in part, that after a petition to intervene is filed and a hearing is conducted, “[t]he court, if the allegations of the petition have been established and are found to be sufficient, shall enter an order allowing intervention;” a court may, however, refuse an intervention if “the interest of the petitioner is already adequately represented.” Pa. R. Civ. P. 2329(2); see generally *Selbovitz v. Streamline Solutions LLC*, 332 A.3d 826, 831 (Pa. Super. Ct. 2025) (quoting *Shirley v. Pennsylvania Legislative Reference Bureau*, 318 A.3d 832, 853 (Pa. Super. Ct. 2025)) (“Reading Rule 2329 in conjunction with Rule 2327, the effect of Rule 2329 is that if the petitioner is a person coming within one of the classes described in Rule 2327, the allowance of intervention is not discretionary, but is mandatory, unless one of the grounds for refusal of intervention enumerated in Rule 2329 is present.”).

In particular, our Commonwealth Court—in *Larock v. Sugarloaf Township Zoning Hearing Board*—discussed the following:

Since the Residents fall within one of the classes of persons permitted to intervene under Pa. R.C.P. No. 2327(4), we must determine whether the trial court erred in concluding that under Pa. R.C.P. No. 2329(2), the Residents' interests are adequately represented by the Zoning Board and the Township. “Even if there is a legally enforceable interest under Rule 2327(4), **a mere prima facie basis for intervention is not enough and intervention may be denied if the interest of the petitioner is already adequately represented.**” *Keener*, 714 A.2d at 1123.

....

The Residents' goal is to prohibit the quarry entirely. Conversely, the Zoning Board's and the Township's goals are to protect the interests of the Township, which may at some point include settlement of the matter that would allow the quarry. Indeed, at oral argument, Counsel for the Township indicated that it is not necessarily opposed to the quarry. In fact, Counsel alluded to the possibility that the Township might consider settling the case by permitting the quarry, albeit with conditions. In other words, if it is possibly only a matter of time until the quarry comes in anyway, it would be in the Township's interest to have an opportunity to impose conditions favorable to the Township. Since the Township does not unequivocally share the Residents' interest in totally precluding the quarry, we conclude that the trial court erred when it denied the Residents' petitions to intervene.

740 A.2d at 314 (emphasis added); *see, e.g., Wexford Science and Technology, LLC*, 260 A.3d at 324 (holding that “[b]ecause the trial court did not conduct a hearing, there was no factual record to support its conclusion...” regarding whether the proposed intervenors’ interests were adequately represented, and therefore the trial court erred in denying intervention).

The Petition was filed on December 24, 2024, and a hearing was conducted on March 20, 2025. At the March 20th hearing, Petitioner testified—in response to counsel for the Appellant’s question “[a]nd why do you believe that your interests are not adequately represented by the Township”—that “[b]ecause I think the Township represents a broad group of people, the residents of the Township; but because my property directly adjoins this property, I am directly impacted by it.” Tr. of March 20, 2025, at 6. The Petitioner further testified that both she and the Township support upholding the conditions imposed on Appellant’s project. *Id.* Upon counsel for Appellant’s questions, Petitioner did not fully

articulate how her position is different from the Township’s position, but stated instead that “I just feel that because I’m directly affected by it I want to have a say in the process.” *Id.*

Unlike *Wexford Science and Technology, LLC v. City of Pittsburgh Zoning Board of Adjustment*, this Court conducted an evidentiary hearing on March 20th for the express purpose of providing Petitioner a forum in which to provide evidence that Petitioner’s interests are not adequately represented by the Township. No such evidence was provided.

It is clear to the Court that Petitioner is in full agreement with the conditions imposed by the Township. Further, had the Petitioner intended to broaden the scope of the appeal, the Petitioner could have filed a separate appeal. While the Court will not speculate as to whether Petitioner seeks to expand the scope of the appeal, it is very clear that Township intends to vigorously defend the conditions imposed—unlike in *Larock*, where counsel for the township there contemplated a potential for settlement. On this record, the Court can find no basis for concluding that Township will fail to adequately advocate the interests of Petitioner.

ORDER

AND NOW, this 29th day of April, 2025, because the Court concludes that Petitioner’s interests will be adequately advocated by the Township, the Petition to Intervene is **DENIED**.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

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