IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Appeal of Scudese Family Limited Partnership From the Decision of the Zoning Hearing Board of East Allen Township Dated November 17, 2007	:	No. 1609 C.D. 2010
	:	Submitted: December 23, 2010
Appeal of: Scudese Family Limited Partnership	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: February 4, 2011

The Scudese Family Limited Partnership (Scudese) appeals from the March 31, 2009, order of the Court of Common Pleas of Northampton County (trial court) which affirmed in part and reversed in part the decision of the Zoning Hearing Board of East Allen Township (ZHB) and denied Scudese's request for variances.[1] We affirm.

[1] Scudese filed a notice of appeal with this Court on August 4, 2010, from the trial court's March 31, 2009, order, which was entered on April 2, 2009. In conjunction therewith, Scudese's counsel filed an affidavit stating neither he nor counsel for the ZHB had received notice that the trial court's order had been entered on April 2, 2009. Consequently, this Court, by order entered August 25, 2010, remanded this matter to the trial court for a hearing and determination of when notice was actually given to the parties and whether there was a breakdown in the judicial system

(Continued....)

Scudese owns property located in the Light Industrial/Business Park District (LI/BP District) in East Allen Township (Township). The property is 1.7282 acres or 75,280 square feet. The property contains a single family dwelling built in 1920, a detached garage and a shed. The property is both non-conforming in size and use.

On July 10, 2007, Scudese applied for a permit to build a new non-residential structure on the property, specifically, a 50 foot by 150 foot pole building. Reproduced Record (R.R.) at 325a. The permit application provided that the height of the pole building would be 14 feet, the left side yard would be 25 feet and the right side yard would be 55 feet. Id. The proposed use of the pole building is warehousing. Id.

By letter dated July 20, 2007, the Township Zoning/Compliance Officer, Donald A. Keller, denied Scudese's application. Id. at 327a. Therein, Keller pointed out that the property is non-conforming in size (two acre minimum) and use (single family residence). Id. Keller informed Scudese that there can only be one principal use on the lot and in accordance with the definition of "principal use" set forth in Section 250-10 of the Township Zoning Ordinance, the principal use of the property is the residence.[2] Id. Keller further informed Scudese that, in

allowing for a notice of appeal *nunc pro tunc*. In response to this Court's remand order, on October 4, 2010, the trial court filed its findings of fact and conclusions of law finding that there was a breakdown in the processes of the trial court resulting in the parties' counsel not receiving notice of the trial court's March 31, 2009, until July 8, 2010. Accordingly, by order entered October 7, 2010, this Court permitted Scudese to appeal *nunc pro tunc* from the trial court's March 31, 2009, order and deemed the notice of appeal filed by Scudese on August 4, 2010, timely.

[2] The term "principal use" is defined as "[t]he single dominant use or single main use on a lot." Section 250-10 of the Township Zoning Ordinance, R.R. at 33a.

accordance with Section 250-27(C)(9)(b)(1) of the Township Zoning Ordinance,[3] any accessory structure cannot exceed 50% of the principal building area without a variance. Id. Keller advised Scudese that if the principal use is to be the warehouse, which is a permitted principal use in the LI/BP District, then the existing residence would not be permitted since two principal uses are not allowed in the LI/BP District. Id. Keller further advised Scudese that single family dwellings are not permitted as accessory structures in the LI/BP District. Id. Therefore, Keller denied Scudese's application based on the following: (1) the proposed building is larger than permitted for a non-conforming lot and structure (Section 250-27(C)(9)(b)(1)); and (2) the minimum side yard required is 40 feet and only 25 feet is provided on the south side of the lot [Section 250-22(G) of the Township Zoning Ordinance[4]]. Id.

Scudese appealed the denial of the permit application to the ZHB. Therein, Scudese requested an interpretation of the various provisions of the Township Zoning Ordinance cited by Keller in the denial letter and further

[3] Section 250-27(C)(9)(b)(1) provides, in relevant part, that any residential accessory building larger than 144 square feet shall not exceed 50% of the floor area of the principal building. R.R. at 110a.

[4] Section 250-22(G) sets forth the minimum yard requirements for each use in the LI/BP District and provides as follows:

		Side Yard		
	Front Yard	**One**	**Both**	**Rear Yard**
Principal Use	**(feet)**	**(feet)**	**(feet)**	**(feet)**
Any use	40	40	80	40

R.R. at 67a.

requested variances from Sections 250-70(B)(1),[5] 250-70(B)(3),[6] 250-22(H),[7] 250-28[8] and 250-33[9] of the Township Zoning Ordinance.

---

[5] Section 250-70(B)(1) of the Township Zoning Ordinance sets forth the requirements for off-street loading and provides, in pertinent part, that each off-street loading and unloading space shall be at least 14 feet in width by 75 feet in depth. R.R. at 156a.

[6] Section 205-70(B)(3) of the Township Zoning Ordinance provides, in pertinent part, that each off-street loading space shall be located entirely on the lot being served and must be so located that each space and all maneuvering room is outside of the required buffer areas. R.R. at 156a.

[7] Section 250-22(H) of the Township Zoning Ordinance governs special 100 feet wide raised berm buffer yard requirements and provides, in pertinent part, that a 100 feet wide raised berm buffer yard shall be constructed between any proposed non-residential use in the LI/BP District and any contiguous property containing an existing residential dwelling including those located across a public street from the proposed use. R.R. at 67a.

[8] Section 250-28 governs principal buildings and provides as follows:

> A. Street frontage required. Every principal building shall be built upon a lot with frontage upon a public or private street improved to meet Township standards or for which such improvements have been insured by the posting of a performance guarantee pursuant to the Subdivision and Land Development Ordinance, excepting however, those principal buildings specifically approved by the Board of Supervisors.
>
> B. Two or more on a lot. Two or more principal buildings on a lot shall:
>
> (1) Be separated by at least twice the required side yard in that district; and
>
> (2) Conform to the standards and improvements required for a land development by the Subdivision and Land Development Ordinance.

R.R. at 111a.

[9] Section 250-33 governs non-conformities. R.R. at 120a. Section 250-33(C)(2) governs non-conforming lots and provides as follows:

> (a) Nonresidential lots. A building may be constructed on a nonconforming nonresidential lot provided the yard and lot

(Continued....)

A hearing before the ZHB was held on October 16, 2007. Keller testified on behalf of the Township. Scudese presented the following witnesses: (1) Stanley Shelosky, a civil engineer who prepared the site plan for the proposed pole building; (2) Gabriel Scudese, Trustee of the Scudese Family Limited Partnership; and (3) William Perry, owner of the residence located across a public street from the property at issue herein.

At the conclusion of the hearing, the ZHB voted unanimously to deny Scudese's appeal from the permit denial and further denied Scudese's request for variances from Sections 250-22(H), 250-70(B)(1), 250-70(B)(3), 250-28 and 250-33 of the Township Zoning Ordinance. The ZHB issued a written decision on November 17, 2007. Therein, the ZHB found as follows:

> 5. The Board finds that the lot is a non-conforming lot.
>
> 6. The Board finds that the existing residence is a lawful, pre-existing non-conforming use.
>
> 7. The Board finds that the residence is the existing, principal use on the property.
>
> 8. The Board finds that two principal uses are not permitted on either a conforming lot or a non-conforming lot.

> coverage requirements on (sic) this ordinance are met and all DEP requirements are met.
>
> (b) Residential lots. A building may be constructed on a nonconforming, residential lot provided that the minimum yard and a maximum land coverage requirements listed for the Suburban Residential (SR) District are complied with and all DEP requirements are met.

R.R. at 121a.

9. The Board finds that the proposed use of the pole barn for "warehousing" is not a permissible accessory use to a residence.

10. The Board finds that the dimensions of the proposed pole building exceed fifty percent (50%) of the principal residence in violation of Section 250-27(C)[(9)](b)(1) which provides that an accessory building larger than 144 square feet shall not exceed fifty percent (50%) of the floor area of the principal building.

11. The Board finds that [Scudese's] reliance upon Section 250-28 is misplaced. Section 250-28(B) of the Ordinance permits two or more principal buildings on a lot under certain circumstances. However, this provision does not provide that two or more principal buildings may be constructed on a "non-conforming lot" which is separately defined in Section 250-10 of the Township Zoning Ordinance.[10]

12. The Board finds that [Scudese] has failed to demonstrate compliance with Section 250-33(C)(2)(a). First, the lot in question is a not a "non-residential lot". The principal use of the lot since 1920 has been residential. Accordingly, the Board finds that [Scudese's] lot is a residential lot. Second, this provision provides that "a building" may be constructed on a ["]non-conforming, non-residential lot." The residence constitutes the "building" constructed on the lot. This provision does not provide for more than one building to be constructed on a non-conforming, non-residential lot as proposed by [Scudese]. Finally, this provision provides that a building may be constructed on a non-conforming, non-residential lot "provided the yard and lot coverage requirements in this Ordinance are met . . .".

[10] Section 250-10 defines "non-conforming lot" as "[a] lot which does not conform with the minimum lot width, or area dimensions specified for the district where such lot is situated, but was lawfully in existence prior to the effective date of this ordinance or is legally established through the granting of a variance by the Board. Contiguous nonconforming lots under common ownership shall be considered one lot." R.R. at 31a.

The Board finds that [Scudese] has failed to comply with the yard requirements for the [LI/BP District] as set forth in Section 250-22(G).

13. The Board notes that [Scudese] has not requested a variance to Section 250-22(G) of the Ordinance for the reason that [Scudese] contends that a side yard may be less than forty feet (40') and in fact may be zero feet (0') so long as both side yards total a minimum of eighty feet (80'). The Board finds this interpretation to be incorrect. For the reason that [Scudese] failed to request a variance to Section 250-22(G), the proposal is in violation of the Ordinance.

14. Pertaining to [Scudese's] request for a variance from Section 250-70(B)(1), the Board finds that [Scudese] has failed to demonstrate unique physical circumstances or conditions peculiar to the property such that it creates an unnecessary hardship to reduce the loading space from the required seventy-five feet (75') in length to thirty-five (35') in length.

15. Pertaining to [Scudese's] request for a variance from the requirements of Section 250-22(H) which require a one hundred feet (100') wide raised berm buffer yard to be constructed between a proposed, non-residential use and an existing, residential dwelling located across a public street from a proposed use, the Board finds that [Scudese] has failed to demonstrate unique physical circumstances or conditions peculiar to this property such that it creates an unnecessary hardship.

16. Pertaining to [Scudese's] request for a variance from the requirements of Section 250-70(B)(3) of the Ordinance which prohibits a loading space from being located within any buffer yard, the Board finds that [Scudese] has failed to demonstrate unique physical circumstances or conditions peculiar to this property such that it creates an unnecessary hardship.

17. Pertaining to [Scudese's] request for a variance from the requirements of Section 250-28 and Section 250-33(A) of the Ordinance, the Board finds that [Scudese]

> has failed to demonstrate unique physical circumstances or conditions peculiar to this property such that it creates an unnecessary hardship.
>
> 18. The Board notes that the property is currently used as a residence with garage and other amenities and can continue to be used as such despite the denial of [Scudese's] request for zoning relief.
>
> 19. [Scudese] has failed to demonstrate that the property cannot be developed in strict conformity with the provisions of the Zoning Ordinance and that the authorization of the variances is necessary to enable the reasonable use of the property. In fact, the property can continue to be utilized as a residential property with the amenities currently existing on the property.

Upon review, the trial court affirmed the ZHB's decision with regard to Sections 250-22(G), 250-22(H) and 250-33(C)(2) of the Township Zoning Ordinance, reversed the ZHB's decision with regard to Sections 250-10, 250-28(B), 250-250(C)(2), and 250-27(C)(9)(b)(1), and denied Scudese's requests for variances. This appeal followed.[11]

Scudese raises the following issues:

> (1) Whether the ZHB erred as a matter of law when it determined that Section 250-22(G) of the Township Zoning Ordinance can be interpreted to mean that both side yards must be 40 feet or more, and failed to consider

[11] In an appeal from the grant or denial of a zoning variance where, as here, the trial court has not taken any additional evidence, this Court's scope of review is limited to a determination of whether the zoning hearing board committed an error of law or abused its discretion. Hill District Project Area Committee, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 638 A.2d 278 (Pa. Cmwlth.), petition for allowance of appeal denied, 538 Pa. 629, 646 A.2d 1182 (1994). An abuse of discretion will only be found where the zoning board's findings are not supported by substantial evidence. Id. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Teazers, Inc. v. Zoning Board of Adjustment of the City of Philadelphia, 682 A.2d 856 (Pa. Cmwlth. 1996).

> Section 603.1 of the Pennsylvania Municipalities Planning Code[12] (MPC), when making its ruling;
>
> (2) Whether the ZHB erred as a matter of law when it determined, without authority, that the application of Section 250-22(H) of the Township Zoning Ordinance is triggered by a property located outside of the Township, and failed to consider Section 603.1 of the MPC, when making its ruling;
>
> (3) Whether the ZHB erred as a matter of law when it determined that Scudese's property is a non-conforming "residential lot" under Section 250-33(C)(2) of the Township Zoning Ordinance when the property is situated in the LI/BP District, the Township Zoning Ordinance fails to define "residential lot", and the intended use is commercial, and failed to consider Section 603.1 of the MPC, when making its ruling; and
>
> (4) Whether the ZHB erred as a matter of law when it determined that Scudese is not entitled to the requested variances because Scudese is entitled to use the property for its existing non-conforming use.

In support of the first issue, Scudese argues that the ZHB's interpretation of Section 250-22(G) of the Township Zoning Ordinance is illogical and contends that the only logical interpretation is that one of the side yards must be at least 40 feet and that the total of both side yards must be at least 80 feet. Scudese contends that if both of the side yards are required to be at least 40 feet,

---

[12] Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §10603.1, added by the Act of December 21, 1988, P.L. 1329. Section 603.1 provides as follows:

> In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

then there would be no need for the requirement that both must be 80 feet. Scudese argues that there is no ambiguity with respect to the proper interpretation of Section 250-22(G). Scudese argues further that to the extent any ambiguity exists, Scudese is entitled, pursuant to Section 603.1 of the MPC, as well as case law, to prevail because zoning ordinances must be strictly construed and landowners are to be allowed the widest possible use and enjoyment of their property.

We agree with Scudese that zoning ordinances must be strictly construed thereby affording the broadest interpretation so that landowners may have the benefit of the least restrictive use and enjoyment of their land. Federici v. Borough of Oakmont Zoning Hearing Board, 583 A.2d 15 (Pa. Cmwlth. 1990), appeal dismissed, 531 Pa. 454, 613 A.2d 1205 (1992). However, a zoning hearing board's interpretation of a zoning ordinance is entitled to great weight and deference from a reviewing court. Section 1921(c)(8) of the Statutory Construction Act of 1972, 1 Pa. C.S. §1921(c)(8); Borough of Milton v. Densberger, 719 A.2d 829 (Pa. Cmwlth. 1998).

The primary objective of interpreting ordinances, like statutes, is to ascertain the intent of the legislative body that enacted the ordinance. Adams Outdoor Advertising v. Zoning Hearing Board of Smithfield Township, 909 A.2d 469, 483 (Pa. Cmwlth. 2006). Where an ordinance's words "are free from all ambiguity, the letter of the ordinance may not be disregarded under the pretext of pursuing its spirit." Id. (citing Section 1921 of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1921). However, "[a]n ambiguity exists when language is subject to two or more reasonable interpretations and not merely because two conflicting interpretations may be suggested." Id. Moreover, any interpretation of a zoning ordinance must serve to construe the ordinance in a sensible and logical

manner. Council of Middletown Township, Delaware County v. Benham, 514 Pa. 176, 523 A.2d 311 (1987). Zoning ordinances are to be construed in a sensible manner to preserve their validity. Id.

Herein, the ZHB rejected Scudese's interpretation of Section 250-22(G) of the Township Zoning Ordinance as incorrect. As noted herein, Section 250-22(G) provides as follows:

		Side Yard		
Principal Use	**Front Yard (feet)**	**One (feet)**	**Both (feet)**	**Rear Yard (feet)**
Any use	40	40	80	40

R.R. at 67a.

In affirming the ZHB's decision with respect to Section 250-22(G), the trial court opined that Scudese's interpretation of this Section would give the Township Zoning Ordinance a meaning that the Township could not possibly have intended. We agree.

As pointed out by the trial court, if Scudese's interpretation were followed, two adjoining landowners in the LI/BP District could construct buildings flush with their lot lines, and in fact, construct buildings without even an inch between them. We conclude that the Township intended to clearly prevent just such an occurrence when it enacted Section 250-22(G) of the Township Zoning Ordinance. The ZHB interpreted Section 250-22(G) in a sensible manner in order to preserve its validity. We note that one of the main purposes of the Township Zoning Ordinance is to prevent overcrowding of land, and imposing appropriate side yard setbacks is a means of achieving this purpose. See Section 250-4(B)(2) of the Township Zoning Ordinance, R.R. at 15a.

Therefore, we conclude that the ZHB did not err by finding that both side yard setbacks must be 40 feet or more in the LI/BP District. In addition, as noted by the ZHB, Scudese did not request a variance from the requirements of Section 250-22(G). Accordingly, the erection of the pole barn for warehousing purposes by Scudese with side yard setbacks less than 40 feet each violates the Township's Zoning Ordinance. As such, the ZHB properly upheld the denial of Scudese's request for a building permit on this basis alone.

Next, Scudese argues that Section 250-22(H) of the Township Zoning Ordinance is not applicable to the proposed development of the property at issue herein. Section 250-22(H) provides that a 100 foot wide raised berm buffer yard shall be constructed between any proposed non-residential use in the LI/BP District and any contiguous property containing an existing residential dwelling including those located across a public street from the proposed use. R.R. at 67a. Scudese points out that the existing residential dwelling located across the public street from the proposed development at issue in this case is actually located outside the Township boundaries. Thus, the residential property which the required buffer would be "shielding" is outside of the Township. Scudese contends that the Township may only regulate land uses within its municipal boundaries. Scudese argues that the physical characteristics of a property in one municipality should not affect the application of a zoning ordinance on an adjoining property in a neighboring municipality. Therefore, Scudese contends that the requirements of Section 250-22(H) are not applicable to Scudese's proposed development. We disagree.

It is indisputable that the property that Scudese wishes to develop is located entirely within the Township's municipal boundary. Accordingly, we agree with the trial court that the fact that the residential property which the

required buffer would be "shielding" is outside of the Township is not relevant. The Township is only attempting to impose the requirements of its zoning ordinance on a property located within its boundaries and as Scudese aptly points out, the Township may regulate land uses within its municipal boundaries. St. Luke Evangelical Lutheran Church v. Zoning Hearing Board of Easttown Township, 403 A.2d 128 (Pa. Cmwlth. 1979). The trial court correctly reasoned that the fact that zoning regulation may from time to time be affected by land outside of the Township's municipal boundaries is neither here nor there.[13] Accordingly, we find no error in the denial of Scudese's permit request by the ZHB on the basis of Section 250-22(H) of the Township's Zoning Ordinance.

Next, Scudese argues that the ZHB erroneously determined that the property is a non-conforming residential lot under Section 250-33(C)(2) of the Township's Zoning Ordinance rather than a non-residential lot because: (1) the property is situated in the LI/BP District; (2) the Township's Zoning Ordinance fails to define "residential lot"; and (3) the intended use of the property is commercial. Section 250-33(C)(2) provides as follows:

> (a) Nonresidential lots. A building may be constructed on a nonconforming nonresidential lot provided the yard and lot coverage requirements on (sic) this ordinance are met and all DEP requirements are met.
>
> (b) Residential lots. A building may be constructed on a nonconforming, residential lot provided that the minimum yard and a maximum land coverage requirements listed for the Suburban Residential (SR)

[13] We note that the requirements of Section 250-22(H) actually benefit the residential property located across the public street and outside the Township's municipal boundary from Scudese's proposed development by shielding that property from the effects of Scudese's proposed non-residential use.

> District are complied with and all DEP requirements are met.

R.R. at 121a.

As found by the ZHB, it is indisputable that Scudese's property has contained a small residence since 1920 and that the use of the property as residential is non-conforming since the property is located in the LI/BP District. The meanings of "residential lot" and "non-residential lot" are clear and do not need to be defined by the Township Zoning Ordinance. Based on the record and the ZHB's findings, the ZHB correctly found that Scudese's property is a residential lot. In addition, the fact that Scudese's property is located within the LI/BP District does not automatically convert the same to a non-residential lot. Scudese's property is non-conforming because it does not conform to the intended use of property within the LI/BP District.

Furthermore, as stated by the ZHB, Section 250-33(C)(2)(A) provides that a building may be constructed on a non-conforming non-residential lot provided the yard and lot coverage requirements are met. Thus, even if the ZHB would have found that Scudese's property is a non-residential lot, as found by the ZHB, Scudese has failed to comply with the side yard requirements for a non-residential lot in the LI/BP District as set forth in Section 250-22(G) of the Township Zoning Ordinance.

Finally, Scudese argues that the ZHB erred when it denied the requested variances because Scudese is entitled to use the property for its existing, non-conforming residential use. Scudese argues that this is not a use variance case but a dimensional variance case. Scudese contends that only dimensional variances are being sought for a permitted use by right in the LI/BP District; therefore, this matter must be analyzed in accordance with our Supreme Court's

decision in Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998).

Section 910.2 of the MPC[14] delineates the standards that a zoning hearing board must follow in granting a variance. An applicant must show, *inter*

---

[14] Added by the Act of December 21, 1988, P.L. 1329, 53 P.S. §10910.2. Section 910.2 of the MPC provides:

> (a) The board shall hear requests for variances where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The board may by rule prescribe the form of application and may require preliminary application to the zoning officer. The board may grant a variance, provided that all of the following findings are made where relevant in a given case:
>
> (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
>
> (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
>
> (3) That such unnecessary hardship has not been created by the appellant.
>
> (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
>
> (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

(Continued....)

alia, physical circumstances unique to the property, which create an unnecessary hardship and no possibility that the property can be developed in strict compliance with the zoning ordinance.

"When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations." Hertzber*g*, 554 Pa. at 257, 721 A.2d at 47. The Pennsylvania Supreme Court held in Hertzberg that:

> To justify the grant of a dimensional variance, courts may consider multiple factors, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.

Id. at 263-64, 721 A.2d at 50. Further,

> while *Hertzberg* eased the requirements for granting a variance for dimensional requirements, it did not make dimensional requirements . . . 'free-fire zones' for which variances could be granted when the party seeking the variance merely articulated a reason that it would be financially 'hurt' if it could not do what it wanted to do with the property, even if the property was already being occupied by another use. If that were the case, dimensional requirements would be meaningless-at best, rules of thumb-and the planning efforts that local governments go through in setting them to have light, area (side yards) and density (area) buffers would be a waste of time. Moreover, adjoining property owners

---

> (b) In granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the zoning ordinance.

> could never depend on the implicit mutual covenants that placing dimensional restrictions on all property would only be varied when there were compelling reasons that not to do so would create a severe unnecessary hardship.

Society Created to Reduce Urban Blight v. Zoning Board of Adjustment of the City of Philadelphia, 771 A.2d 874, 877-78 (Pa. Cmwlth.), petition for allowance of appeal denied, 567 Pa. 733, 786 A.2d 992 (2001). Finally,

> [e]ver since our Supreme Court decided *Hertzberg,* we have seen a pattern of cases arguing that a variance must be granted from a dimensional requirement that prevents or financially burdens a property owner's ability to employ his property *exactly as he wishes,* so long as the use itself is permitted. *Hertzberg* stands for nothing of the kind. *Hertzberg* articulated the principle that unreasonable economic burden may be considered in determining the presence of unnecessary hardship. It may also have somewhat relaxed the *degree* of hardship that will justify a dimensional variance. However, it did not alter the principle that a substantial burden must attend *all* dimensionally compliant uses of the property, not just the particular use the owner chooses. This well-established principle, unchanged by *Hertzberg,* bears emphasizing in the present case. A variance, whether labeled dimensional or use, is appropriate only where the *property,* not the person, is subject to hardship.

Yeager v. Zoning Hearing Board of the City of Allentown, 779 A.2d 595, 598 (Pa. Cmwlth. 2001) (emphasis in original) (quotation marks omitted).

Thus, Scudese was required to prove that an unnecessary hardship stemming from unique physical characteristics or conditions would result if the requested dimensional variances were denied. To show unnecessary hardship, an applicant must prove that 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 arranged for such purposes 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 ordinance. Laurento v. Zoning Hearing Board, 638 A.2d 437 (Pa. Cmwlth. 1994). The applicant has not suffered the required hardship if the property may be used for any purpose permitted by the zoning ordinance. Miller v. Zoning Hearing Board of Ross Township, 647 A.2d 966 (Pa. Cmwlth. 1994).

As pointed out by the trial court in this case, Scudese failed to present any evidence that the unique physical characteristics of the property prevent it from being used for any reasonable use. While we agree with Scudese that the Township Zoning Ordinance permits a second principal use on its property and that a pole barn/warehouse is a permitted use in the LI/BP District, we do not agree that the ZHB erred by denying the requested variances. Scudese simply failed to show that the property could not be used for any reasonable permitted use absent the granting of the dimensional variances. Therefore, we reject Scudese's contention that the request for variances should have been granted.

The trial court's order is affirmed.

_____

JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Appeal of Scudese Family Limited Partnership From the Decision of the Zoning Hearing Board of East Allen Township Dated November 17, 2007	:	No. 1609 C.D. 2010
Appeal of: Scudese Family Limited Partnership	:	

O R D E R

AND NOW, this 4th day of February, 2011, the order of the Court of Common Pleas of Northampton County entered in the above-captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge