IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Orange Stones, Co.	:	
	:	
City of Reading, City of Reading Zoning Hearing Board	:	
	:	
	:	
v.	:	No. 1777 C.D. 2010
	:	Submitted: January 21, 2011
College Heights Community Council	:	
	:	
Appeal of: City of Reading and College Heights Community Council	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI FILED: February 17, 2011

The City of Reading (City) and College Heights Community Council (Community Council) appeal from an order of the Court of Common Pleas of Berks County (trial court) reversing the decision of the Zoning Hearing Board of the City of Reading (Board) and granting the appeal of Orange Stones Co. (Applicant) from the Board's denial of its application for a personal care home. For the reasons that follow, we affirm the trial court's decision granting Applicant's appeal on procedural grounds, but remand the matter to the Board to determine substantive issues.

Applicant is a non-profit organization that owns property in Reading, Pennsylvania, located in the R-1 zoning district. The Community Council is a community organization comprised of individuals who all own property and live within close proximity to Applicant's property.[1] On September 5, 2008, Applicant, through its attorney, David Sobotka, filed an application with the City for a zoning permit to continue to use its property as a pre-existing, non-conforming personal care home use. The City Solicitor rejected the application because it did not meet the requirements of Section 27-301(3) of the City's zoning ordinance for failing to utilize the permit application form required by the City or to include the required application fee. The rejection letter stated that the application did not constitute a zoning permit application because it was not in accordance with the zoning ordinance.

[1] Applicant contends that the Community Council and the City cannot file an appeal because they are not neighboring landowners and own no land. First, the City has standing to challenge any zoning matter that takes place within its territorial limits to enforce the provisions of its ordinance. Second, the Community Council does not need to own land, but its members have to own property. Persons having no real interest in a dispute are not considered to have standing to become parties to a proceeding, and zoning cases are no exception to this general rule. Standing to become a "party" to oppose a variance sought by a property owner is governed by Section 908(3) of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §10908(3). That subsection provides that: "The parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of record before the board, and any other person **including civic or community organizations permitted to appear by the board**." (Emphasis added.) To be considered a "person aggrieved," the community organization need not own land, but its members must own property within the vicinity of the proposed use. *Pittsburgh Trust for Cultural Resources v. Zoning Board of Adjustment of the City of Pittsburgh*, 604 A.2d 298 (Pa. Cmwlth. 1992). Because the Community Council appeared before the Board and its members own property in the vicinity of the proposed use, it also has standing to participate in the appeal as a party.

On September 28, 2008, Applicant, again through its attorney, submitted a second application,[2] which was also rejected because it was found to be in violation of the following:

- Section 27-301(3)(B) of the Zoning Ordinance requiring all permit applications to be made in writing by the legal or equitable owner of the property or its authorized agents or appointees;

- Failing to provide sufficient information to the City's Zoning Officer to determine whether the proposed land use was a continuation of the prior nonconforming use which had been located at the property; and

- Failing to elaborate regarding Attorney Sobotka's relationship to the property in his capacity as the signatory on the second application.

Applicant filed an appeal to the Board from the denial of its second application. The Community Council and the City filed petitions to intervene which were granted.

[2] Included with the application were an affidavit by the Secretary/Treasurer of Applicant authorizing submission of the application; two copies of a plot plan for the property; a copy of the deed for the property; the legal address of the owner; the phone number of the contact person for the owner/applicant; a description of the use of the property as a "personal care home, operating twenty four hours a day, seven days a week. This use will be a continuation of the previous use consistent with zoning permits Nos. 2002-290 through and including 2008-546;" the existing use of the land as a personal care facility; the zoning district of the property as R-1 as well as a statement that "the use of the property will be the continuation of a prior non-conforming use;" the proposed land use as a continuation of a personal care facility; a statement that plot plans are included despite not being necessary; and a statement that there was a change of ownership as of August 8, 2008. Also, included with the application was a check for the application fee.

After a hearing, the Board denied Applicant's request for a zoning permit. Though it was not appealed by Applicant, having been cured by the filing of the second application, the Board denied the first application because it was not submitted on the appropriate form and did not include the required application fee as required by Section 27-301 of the zoning ordinance. It went on to deny the "second" application because the request was not made in writing by the legal or equitable owner of the property or its authorized agents as required by Section 27-301(3)(B) of the zoning ordinance.

Applicant appealed the Board's decision to the trial court, which, by order dated July 28, 2010, reversed,[3] noting that the only basis given by the Board for denial of the permit cited was that Attorney Sobotka did not execute an affidavit stating that he was authorized to make the application. "This is a ridiculous reason for the denial, but it is the sole reason. This court found it to be a frippery. Attorney Sobotka submitted a cover letter stating that his client's application for a zoning permit was enclosed. It was on his letterhead that reads

[3] The trial court's order stated: "AND NOW, this 28th day of July, 2010, after argument, it is hereby ORDERED that the decision of the Zoning Hearing Board of the City of Reading denying the Plaintiff's appeal based solely on procedural grounds as set forth in the Board's nine Conclusions of Law is reversed and the appeal of Plaintiff, Orange Stones Co. is sustained. The case is hereby remanded to the Board for further consideration, if necessary, of the substantive issues only, procedural issues having been resolved in favor of the Plaintiff."

Subsequently, the Community Council and the City filed an application for determination of finality and the trial court issued an order on August 27, 2010, stating the following: "Now this 27 day of August, 2010, the Application for Determination of Finality having been considered, it is hereby **ORDERED,** that the July 28, 2010 Order of Judge Jeffrey K. Sprecher, reversing the decision of the City of Reading Zoning Hearing Board as to its denial of Plaintiff's Zoning Appeal on procedural grounds, is determined to be a final order."

'Law Offices.' There can be no doubt that he was acting as the attorney for Orange Stones, not as a property owner, and that he was authorized to do so." (Trial Court's October 27, 2010 decision at 3.) The trial court initially remanded the matter to consider whether the proposed use was a continuation of the non-conforming use. That order was later amended to be a "final order." In its Rule 1925 Opinion, the trial court stated that the issue of whether the matter had to be remanded for consideration of substantive issues was waived because the Community Council and the City did not appeal the Board's failure to address the substantive issues. The Community Council and the City then filed this appeal.[4]

The Community Council and the City argue that the trial court erred by reversing the Board's denial of the second application because Applicant failed to comply with Section 27-301(3)(B) of the zoning ordinance. Section 27-301(3)(B) of the zoning ordinance provides:

> All requests for permits shall be made in writing by the legal or equitable owner of the subject property or their authorized agents or appointees. **The Applicant shall execute an affidavit through which he or she states that he or she is authorized to make the application pursuant to this section.** (Emphasis added.)

They argue that this provision not only requires that "all permits be made in writing by the legal or equitable owner of the property or their authorized agents or appointees," but that it also requires the applicant's agent, in this case,

[4] Our scope of review is limited to determining whether the Board committed an abuse of discretion or an error of law. *Larson v. Zoning Board of Adjustment of the City of Pittsburgh*, 543 Pa. 415, 672 A.2d 286 (1996).

Attorney Sobotka, to execute an affidavit stating that he is authorized to make the application pursuant to that section.

The second sentence of the Township's ordinance could be open to two interpretations because it may mean that the *applicant*, the person making the application, must execute an affidavit stating that *he* is authorized to make the application or that the *applicant's agent* must execute an affidavit stating that *he, as agent or appointee*, is authorized to make the application. While the Community Council and the City read the second sentence the latter way, requiring Attorney Sobotka to have executed an affidavit stating that he was authorized to make the application, the only reasonable interpretation of Section 27-301(3)(B) is to require the property owner to execute an affidavit that the agent is authorized to file the application, which was done in this case.

Applicant argues that the Community Council and the City cannot contend that the matter has to be remanded to the Board to consider the substantive issues because they did not file an appeal from either the Board's or the trial court's order. However, only an aggrieved party can appeal from an order entered by a lower court or an administrative agency. A prevailing party that disagrees with the legal reasoning of an order of a court or agency that contends the court or agency did not consider issues or that challenges a particular issue decided against it lacks standing to appeal because it is not adversely affected by the order. *United Parcel Service, Inc. v. Pennsylvania Public Utility Commission*, 574 Pa. 304, 830 A .2d 941 (2003); *Commonwealth v. Polo*, 563 Pa. 218, 759 A.2d 372 (2000); Pa. R.A.P. 501. Because the Community Council and the City were the prevailing

parties below, they could not appeal that order, they did not waive any issues on appeal, and they are free to challenge whether the trial court was required to remand for review of substantive issues, even if we interpreted the later order as doing what Applicant suggests. Because the Community Council and the City did not waive this issue, the matter must be remanded to the Board for further consideration of the substantive issues.

Accordingly, we affirm the trial court's decision granting Applicant's appeal on procedural grounds, but remand the matter to the Board to make a determination of the substantive issues.

_____

DAN PELLEGRINI, JUDGE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Orange Stones, Co.	:	
	:	
City of Reading, City of Reading Zoning Hearing Board	:	
	:	
v.	:	No. 1777 C.D. 2010
	:	
College Heights Community Council	:	
	:	
Appeal of: City of Reading and College Heights Community Council	:	

O R D E R

AND NOW, this 17th day of February, 2011, the order of the Court of Common Pleas of Berks County, dated July 28, 2010, is affirmed as to the procedural grounds, but the case is remanded to the City of Reading Zoning Hearing Board to determine the substantive issues in this matter.

Jurisdiction relinquished.

_____

DAN PELLEGRINI, JUDGE