

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ryan M. Vandegrift :

v. :

City of Pittsburgh Zoning Board of Adjustment :

v. :

City of Pittsburgh and Remo Gritz and Maureen Gritz :

Remo Gritz and Maureen Gritz :

v. :

City of Pittsburgh Zoning Board of Adjustment :

v. :

City of Pittsburgh :

Appeal of: Remo Gritz and Maureen Gritz :

No. 1841 C.D. 2010
Submitted: February 4, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: March 17, 2011

Remo Gritz and Maureen Gritz (together, the Gritzes) appeal from the August 11, 2010, order of the Court of Common Pleas of Allegheny County (trial

court), which reinstated the Zoning Administrator's approval of an application filed by Ryan M. Vandegrift (Vandegrift) to renovate his property. We affirm.

On January 30, 2009, the Zoning Administrator approved an application filed by Vandegrift to renovate his property at 1216 Resaca Place. The Gritztes own the property at 1214 Resaca Place. On March 17, 2009, the Gritztes filed a protest appeal with the Zoning Board of Adjustment (ZBA). On April 16, 2009, the ZBA held a hearing on the matter, and, although the ZBA was required to issue its decision within forty-five days of the hearing, i.e., by June 1, 2009, the ZBH did not issue a decision until August 25, 2009. In its decision, the ZBA sustained the Gritztes' protest.

Vandegrift appealed to the trial court, which took no additional evidence on the matter. The trial court recognized that the ZBA failed to issue its decision within forty-five days of the hearing. Thus, the trial court held that the Gritztes' protest appeal was deemed denied under section 922.09.D of the Zoning Code of the City of Pittsburgh. Moreover, the trial court noted that the Gritztes had no remedy before the trial court because they failed to appeal the deemed denial within thirty days of the deemed denial, i.e., by July 1, 2009. Thus, the trial court reinstated the approval of Vandegrift's application.¹ The Gritztes now appeal to this court.

¹ In addition to concluding that the Gritztes failed to file a timely appeal, the trial court held that Vandegrift had a vested right to approval of his application under *Petrosky v. Zoning Hearing Board*, 485 Pa. 501, 402 A.2d 1385 (1979). The trial court pointed out that: (1) Vandegrift exhibited due diligence in attempting to comply with the law; (2) he acted in good faith in applying for and receiving approval of his plans before beginning construction; (3) he expended substantial unrecoverable funds; (4) the appeal period expired without an appeal being taken; and (5) the Gritztes failed to prove that Vandegrift's plans would adversely affect their property rights or the **(Footnote continued on next page...)**

The Gritztes argue that the trial court erred in concluding that, under section 922.09.D of the Zoning Code, the ZBA’s failure to issue a timely decision resulted in a deemed denial of their protest appeal. We disagree.

Under section 923.02.D of the Zoning Code, the filing of appeals with the ZBA shall be in accordance with the provisions for variance appeals in section 922.09.² Section 922.09.D of the Zoning Code provides as follows:

The [ZBA] shall hold a public hearing on the **variance application**. After the public hearing, the [ZBA] shall act to approve, approve with conditions, approve in part, deny, or deny in part the **application** within forty-five (45) days of the [ZBA] hearing. Where the [ZBA] fails to render its decision within the period required by this subsection . . . the decision shall be deemed to have been rendered in **denial of the application** unless the **applicant** has agreed in writing or on the record to an extension of time.

(See Gritztes’ Brief at 6; ZBA’s Brief at 5, quoting Zoning Code) (emphasis added).

The Gritztes contend that the words “applicant” and “application” in section 922.09.D refer to Vandegrift and his renovation application. The Gritztes

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public health, safety or welfare. *See id.* at 507, 402 A.2d at 1388. Although the Gritztes argue here that the trial court erred in its analysis of this issue, we need not address the Gritztes’ argument because we agree with the trial court that the Gritztes failed to file a timely appeal to the trial court.

² Section 923.02.D of the Zoning Code states that the “filing of appeals, hearings notices and hearings, whether for interpretations, variances or validity determination, shall be in accordance with this Code’s provisions for variance appeals in Sec. 922.09.” (See ZBA’s Brief at 5 n.1, quoting Zoning Code).

assert that Vandegrift is the only “applicant” in this case and his renovation application is the only “application.” Thus, the ZBA’s untimely decision resulted in a deemed denial of Vandegrift’s application. We reject such a literal reading of the provision.

First, if we were to adopt a truly literal reading of section 922.09.D, we would conclude that it relates only to a “variance application.” Vandegrift did not file a variance application; he filed an application to renovate his property. Second, we cannot read section 922.09.D by itself. Rather, we must read it in conjunction with section 923.02.D, which adopts section 922.09.D with respect to appeals to the ZBA. Substituting “variance application” language with “appeal” language, section 922.09.D means that, where the ZBA fails to render a decision on an appeal within forty-five days, the appeal to the ZBA is deemed denied.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 17th day of March, 2011, the order of the Court of Common Pleas of Allegheny County, dated August 11, 2010, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge