

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Orange Stones Co.,	:	
	:	
Appellant	:	
	:	
v.	:	No. 2014 C.D. 2009
	:	Submitted: June 18, 2010
Borough of Hamburg, Zoning Hearing	:	
Board and Borough of Hamburg	:	
Berks County Pennsylvania	:	
	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON

FILED: September 9, 2010

Orange Stones Co. (Orange Stones), formerly Alcat Reentry Centers, Inc., appeals from an order of the Court of Common Pleas of Berks County (trial court), dated September 16, 2009. The trial court affirmed the decision of the Borough of Hamburg Zoning Hearing Board (Board), denying Orange Stones' application for a zoning permit. We affirm the trial court's order.¹

Orange Stones is the owner of real property (Property) located at 215 Pine Street, in the Borough of Hamburg, Berks County. The Property is located in

¹ We note that this Court decided a related matter on March 17, 2010, in *Orange Stones Co. v. Borough of Hamburg Zoning Hearing Board*, 991 A.2d 996 (Pa. Cmwlth. 2010). That case involved the same parties and the same parcel of real property, but it concerned a prior zoning permit application filed by Orange Stones.

a Village Center Zoning District as defined by the Borough of Hamburg Zoning Ordinance (Zoning Ordinance)² and is within the flood plain boundary of a 100-year floodplain. On September 11, 2008, Orange Stones submitted an application for a zoning permit to the Borough of Hamburg (Borough), describing the proposed use for the Property as “First floor: 68 bed inpatient non hospital rehabilitation center for drug and alcohol persons with 16 bed Halfway house. Second floor: No work to be done to remain unoccupied. Existing single story building: unoccupied and no work to be done.” (Reproduced Record (R.R.) at 002a.)

On October 6, 2008, the Borough’s zoning officer issued a letter denying Orange Stones’ application on the basis that the application was incomplete. The zoning officer’s letter provided, in pertinent part:

A review indicates the following items must be submitted:

1. Provide actual dimensions and shape of the lot to be built upon. The drawings you submitted are not adequate. Please provide plans with all required information that can be easily read.
2. The exact size and location on the lot of buildings, structures and signs existing and/or proposed extensions thereto and/or to be constructed thereon.
3. The number of dwelling units, if any or [sic] to be provided.
4. Parking spaces and/or loading facilities existing or to be provided. Please reference zoning section 506 [sic] and provide details showing compliance with all requirements. How will storm

² Ordinance Number 725-04 of the Borough of Hamburg.

water be handled. [sic] Paving within 50 feet of the stream is a concern. You should contact Berks Conservation District to ensure compliance with all applicable requirements regarding work to be done in proximity to the stream.

5. In case of new construction, additions or replacement, show height, width and depth of structures, buildings or signs. New construction includes renovations on this scale. Please provide floorplans [sic].
6. An Occupancy certificate is required. Please provide a floor plan of the building showing dimensions and window, door, and stair locations. No description of the proposed construction (floor plan showing use of areas) has been provided with this submission as I requested for the first and second submission.

(R.R. at 006a-07a (emphasis in original).) In response to the October 6, 2008 denial letter, Orange Stones' design professional submitted a revised site plan on October 29, 2008. Among other differences, the revised site plan displayed a proposed addition to the building that was not shown on the site plan submitted with Orange Stones' application.³ (See Original Record, Exhibit 14.)

Orange Stones appealed to the Board. The Board held hearings on December 2, 2008, and January 6, 2009. On February 9, 2009, the Board affirmed the zoning officer's denial of Orange Stones' application at a public meeting. Thereafter, the Board issued a written decision on March 6, 2009.⁴ The Board determined, *inter alia*:

³ The revised site plan, submitted October 29, 2008, was admitted into the record without Orange Stones' objection. (R.R. at 230a.)

⁴ The Board's March 6, 2009 decision was improperly dated February 6, 2009. (Orange Stones' Brief, Exhibit A at 3.)

2. Pages 28, 29, and 31 of the Notes of Testimony[, (R.R. at 046a-47a, 049a),] make it clear that the applicant failed to show the position of the buildings on the lot and *failed to show the proposed addition to the building*. The Zoning Officer was justified in requiring more information from the applicant before he could approve the application.

(Orange Stones' Brief, Exhibit A at 2 (emphasis added).)

Orange Stones appealed to the trial court, which, without taking additional evidence, affirmed the Board's decision by order dated September 16, 2009. This appeal followed.

On appeal,⁵ Orange Stones argues, *inter alia*, that the Board abused its discretion in finding that Orange Stones' zoning permit application failed to show a proposed addition as required by Section 705.1.1(2) of the Zoning Ordinance.⁶ Specifically, Orange Stones contends that the zoning officer had no knowledge, *at the time* the October 6, 2008 denial letter was issued, that the site plan was

⁵ "Because the trial court did not take any additional evidence, our scope of review is limited to determining whether the [Board] committed an error of law or manifestly abused its discretion." *Diversified Health Assocs., Inc. v. Zoning Hearing Bd. of the Borough of Norristown*, 781 A.2d 244, 246-47 (Pa. Cmwlth. 2001). This Court will find an abuse of discretion only where the Board's findings are not supported by substantial evidence. *Valley View Civic Ass'n v. Zoning Bd. of Adjustment*, 501 Pa. 550, 555, 462 A.2d 637, 640 (1983). "Substantial evidence" is "such relevant evidence as a reasonable mind must accept as adequate to support a conclusion." *Id.*

⁶ Section 705.1.1(2) of the Zoning Ordinance provides:

705.1.1 Form of Application – All applications shall be made in writing and shall be accompanied by two sets of plans showing at least the following information:

2. The exact size and location on the lot of buildings, structures or signs existing and/or proposed extensions thereto and/or to be constructed thereon.

Section 705.1.1(2) of the Zoning Ordinance.

deficient concerning a proposed addition. Orange Stones maintains, therefore, that failure to show a proposed addition was not a proper basis for the zoning officer's denial. Because we disagree with Orange Stones' assertion that the zoning officer had no knowledge of the proposed addition as of October 6, 2008, we must conclude that the zoning officer's denial was proper.

This Court, on review, may not substitute its interpretation of the evidence for that of the Board's. *Taliaferro v. Darby Twp. Zoning Hearing Bd.*, 873 A.2d 807, 811 (Pa. Cmwlth.), *appeal denied*, 585 Pa. 692, 887 A.2d 1243 (2005). Questions of witness credibility and evidentiary weight are within the exclusive province of the Board as fact-finder. *Id.* Where the record contains substantial evidence, "we are bound by the [B]oard's findings that result from resolutions of credibility and conflicting testimony rather than a capricious disregard of evidence." *Id.*

Here, substantial evidence in the record supports the finding that the zoning officer had knowledge of the proposed addition at the time of the denial. First, a review of the denial letter demonstrates that the zoning officer was concerned with Orange Stones' failure to show a proposed addition as of October 6, 2008. Notably, items two and five of the denial letter specifically request the size and location of "proposed extensions" and "additions," respectively. (R.R. at 006a-07a.) Next, the zoning officer gave the following testimony before the Board:

Q: Now, the size of the buildings is clear, isn't it? I mean, it shows where the buildings are located on the lot, does it not?

A: You're actually enlarging it and you're not showing that. There's an addition to the building that you're not showing on this drawing.

...

Q: Okay. Now, you contend, though, that this is not accurate because it doesn't show an extension?

A: The information that you submitted to me, that I have, both, indicates that there's an addition, that you're proposing an addition to this building, and you're not showing it on this drawing.

Q: But you didn't have that in front of you on October 6th, 2008, did you?

A: Actually, I do have a copy of your construction permit application that does show that there's an addition to the building.

...

Q: So you're saying that the exact size and location on the lot of buildings, structures and signs, that is a deficiency; right? That's what you're saying?

A: Right, yes.

Q: I'm asking you, what about that drawing as of October 6th, 2008, was deficient?

A: It did not show the addition that you're proposing to build.

Q: As of October 6th, 2008, though.

A: I believe so.

...

Q: How did you know as of October 6th that that was deficient?

A: Because I believe your construction permit application was prior to this submission, and that indicated that you were putting an addition on the building.

...

Q: What I'm interested in, [zoning officer], is what information you had in front of you on October 6, 2008, that led you to believe the exact size and location on the lot of buildings, structures, and signs existing and/or proposed extensions thereto and/or to be constructed thereon, what information did you have on this map or in your head that led you to believe that was deficient. [sic]

A: I obviously knew it, because it turned out to be true.

Q: Sitting here today, you can't tell me?

A: I can't answer that question.

...

Q: As of October 6, 2008, [zoning officer], are you telling me that the identification of the maximum building height of 31 feet was insufficient?

A: I did not know whether it was sufficient or not.

Q: Why not?

A: Because I wasn't sure what the dimensions of your addition were going to be.

Q: As of October 6, 2008?

A: Yes.

Q: What information did you have in front of you about this addition?

A: I'm not sure. I am not sure.

Q: So sitting here today, you can't tell me --

A: Can't answer that, no.

(R.R. at 047a-50a, 052a, 092a-93a.) While this testimony is less than consistent with regard to how the zoning officer discovered the deficiency in Orange Stones' application, the zoning officer consistently testified that he knew at the time he

issued the October 6, 2008 denial letter that Orange Stones' application failed to show a proposed addition. Finally, the revised site plan, submitted by Orange Stones' design professional in response to the October 6, 2008 denial letter, displayed a proposed addition not shown on the original site plan. Although the revised site plan, having been submitted on October 29, 2008, could not have formed a basis for the zoning officer's denial, the revised site plan corroborates the zoning officer's testimony that Orange Stones' application was deficient with regard to a proposed addition as of October 6, 2008.⁷

Accordingly, we affirm.

P. KEVIN BROBSON, Judge

⁷ Orange Stones also argues that its zoning permit application was sufficient, as submitted, because the site plan provided enough information to demonstrate compliance with the minimum setback and maximum height limitations of the Zoning Ordinance, which Orange Stones contends in the purpose of Section 705.1.1(2) of the Zoning Ordinance. We disagree. In the absence of a site plan showing proposed additions to a building, zoning officers are unable to affirmatively determine whether the minimum setback and maximum height limitations of a zoning ordinance have been satisfied. Moreover, Orange Stones is asking this Court to disregard the clear language of Section 705.1.1(2) of the Zoning Ordinance in pursuit of its purpose. *See Greth Dev. Grp., Inc. v. Zoning Hearing Bd. of Lower Heidelberg Twp.*, 918 A.2d 181, 189 n.7 (Pa. Cmwlth.) ("While the legislative intent of the governing body which enacted the ordinance is of primary concern when interpreting a zoning ordinance, the letter of the ordinance is not to be disregarded under the pretext of pursuing its spirit."), *appeal denied*, 593 Pa. 742, 929 A.2d 1163 (2007). In making such a request, however, Orange Stones fails to cite supporting legal authority. *See Browne v. Dep't of Transp.*, 843 A.2d 429, 435 (Pa. Cmwlth.) (holding that failure to include analysis and relevant authority may result in waiver), *appeal denied*, 581 Pa. 681, 863 A.2d 1149 (2004).

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Board and Borough of Hamburg	:	
Berks County Pennsylvania	:	
	:	

ORDER

AND NOW, this 9th day of September, 2010, the order of the Court of Common Pleas of Berks County, dated September 16, 2009, is hereby **AFFIRMED**.

P. KEVIN BROBSON, Judge