

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Manayunk Neighborhood Council, Inc. :
and Kevin Smith, :
Appellants :
v. : No. 2094 C.D. 2009
City of Philadelphia Zoning Board : Argued: May 17, 2010
of Adjustment and Daniel Neducsin :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: June 30, 2010

Manayunk Neighborhood Council, Inc. and Kevin Smith¹ (hereinafter collectively referred to as “MNC”) appeal from an order of the Court of Common Pleas of Philadelphia County (trial court). The trial court affirmed a decision of the Philadelphia Zoning Board of Adjustment (Zoning Board), which granted a request for use/zoning variances filed by Daniel Neducsin (Applicant). We vacate and remand.

The subject property is located at 1 and 1R Leverington Avenue (the Property) in the Manayunk neighborhood of Philadelphia. The Property is situated on Venice Island, between the Leverington Avenue Bridge and the Green Lane

¹ Kevin Smith is President of the Manayunk Neighborhood Council.

Bridge, and it is bordered by the Manayunk Canal and the Schuylkill River. The Property is in the RC-1 Residential Zoning District (RC-1 District) and is subject to flood plain controls.² The Property is also subject to the Main Street/Manayunk and Venice Island Special District Controls set forth in Section 14-1615 of the Philadelphia Code.

On August 15, 2007, Applicant submitted an application for a zoning/use registration permit to the Department of Licenses and Inspections (Department) for the proposed development of a 280 unit condominium complex on the Property. The Department denied the application because: (1) the proposed floor elevation³ is below the required level of 40.2 feet; (2) the proposed height and

² As to flood plain controls, Section 14-1606(5)(a) of the Philadelphia Code provides, in relevant part, as follows:

(5) Special Controls. The following special controls are imposed to regulate setbacks in the flood plain, construction, and earth-moving activity along watercourses subject to flooding. These controls are in addition to the requirements of the Pennsylvania Department of Environmental Resources:

(a) *Within the Floodway.*

(.1) No encroachment (including fill, new construction, or any development) is permitted except that public utilities are permitted as long as they cause no increase in the One-Hundred (100) Year Flood level.

³ Section 14-1606(5)(b) of the Philadelphia Code, relating to Flood Plain Controls, provides:

(B) Within the Floodway Fringe

....

(.2) Construction of dwellings is permitted if the lowest floor elevation (including basements and cellars) is one foot (1') above the Regulatory Flood Elevation."

The Zoning Board concluded that 34 feet has been proposed but that 40.2 feet is required. Zoning Board's Conclusion of Law 5.

scale of the ceiling exceeds the 55 foot height limit⁴ of an RC-1 District; (3) the proposed gross floor area⁵ exceeds that permitted under the Zoning Code; and (4) stacked parking⁶ is not permitted in an RC-1 District.

Applicant thereafter filed a petition for appeal with the Zoning Board, requesting variances and seeking to relocate lot lines to create one lot from two lots, to demolish an existing building located on the Property that had previously been used for a restaurant before the business was closed down, and to erect four structures for use as 280 dwelling units with an accessory fitness center for residents, a management/sales office and 360 off-street parking spaces. A hearing was conducted on October 24, 2007, during which Applicant testified and presented the testimony of: (1) Stephen Varenhorst, the project's architect; (2) Walter Bright, a traffic engineer who prepared a traffic impact report; and (3) Dr. John Weggel, a professor of civil engineering from Drexel University, who performed a flood study.

Applicant testified that the development proposes to add 280 condominium units to the Manayunk area to provide housing for people who have chosen to live in the city and enjoy what the city offers. Applicant testified further that the average tenant makes \$62,000 per year and that the 280 units would enable

⁴ Section 14-1615(8)(b) of the Philadelphia Code provides that "the maximum height shall be 6 stories and no more than 55 feet above average ground level." The application proposes a maximum height of 89 feet. Zoning Board's Conclusion of Law 6.

⁵ Section 14-205 of the Philadelphia Code requires that the gross floor area comport with the 135% requirement which limits the square feet in this case to 266,717, whereas the proposed gross floor area for the subject development is 353,050 square feet or 178%.

⁶ Section 14-1402(1)(b) of the Philadelphia Code prohibits stacked parking in an RC-1 District.

Manyunk to receive the benefit of the spending or disposable income of the tenants.

Mr. Varenhorst testified as to the dimensions of the buildings involved in the development of the Property. Mr. Varenhorst testified that the top height of the four buildings is 89 feet and the low is 78 feet which exceeded the permitted height of 55 feet. Mr. Varenhorst testified further that he was not asked to draft a plan to conform to the 55 foot height requirement because the approach was to reach additional square footage in order to reduce the footprint of the site.

Mr. Bright testified that the increase in traffic resulting from the development of the Property could be handled within the existing cartway with minor changes of traffic signals. Dr. Weggel opined that the proposed development would not aggravate the flood/risk level of the neighborhood.

MNC and other neighbors testified that the development would increase traffic in the already congested neighborhood and would cause further deterioration of the already problematic parking and rush hour traffic situation. An architect, John Hunter, also testified in opposition to the development, opining that the condominiums were too high contrasted with the neighborhood and obstructed the view of the Manayunk Bridge. Mr. Hunter opined further that there is no study detailing what sort of development and character of development would meet the zoning requirements; specifically, what a development would consist of at the permitted 55 foot height requirement.

By decision dated November 14, 2007, the Zoning Board granted a use/zoning variance,⁷ finding, in part, that the proposed floor area ratio was greater

⁷ The use/zoning variance was granted with a proviso relating to central air, garbage disposal, an emergency pedestrian bridge and parking. Zoning Board's Decision at 8.

than that permitted under Section 14-205 of the Philadelphia Code and that the Property at issue is in the floodway fringe.⁸ In its decision, the Zoning Board summarized the bases for the petition of appeal/variance request as:

Additional parking, maximizing green space, the lowest floor elevation was inaccurately reflected in the Refusal [by the Department], the height and scale are consistent with the community, 24-hour activity would occur as a result of the additional residences, the project will allow continuous public access to the River and Canal and hardship exists.

Zoning Board's Finding of Fact 8.

In its Findings of Fact, the Zoning Board set forth the procedural history and identified a multitude of documents presented by the parties and objectors. As to the testimony of Applicant, the Zoning Board simply found that he testified about the nature of the application. The Zoning Board merely stated that Mr. Varenhorst testified as to the proposed design of the development. The Zoning Board found that: "John Richard Weggel, with training in technology and pathologic water resources engineering, testified as an expert on the Owner's behalf. He concluded that the proposed development would not have a negative impact upon the river." Zoning Board's Finding of Fact 14. The Zoning Board did not set forth any findings with respect to Mr. Bright's testimony or his traffic impact study.

⁸ The trial court explained that the Department and Zoning Board found that the Property was located in the floodway fringe as opposed to the FEMA floodway itself. The City Planning Commission, however, confirmed that the property is within the FEMA floodway, and even MNC conceded in its proposed findings of fact that the Property is located within the FEMA floodway. Trial court opinion at 3, n.1. Based upon the above, the trial court considered the Property to be based within the FEMA floodway. Id.

The Zoning Board issued approximately 18 “findings” in which it merely stated the name and address of the person testifying and identified the subject area to which the person testified.⁹ As to 11 of the witnesses who testified before the Board, the Zoning Board found merely that they “testified in opposition to the Application.” Zoning Board’s Findings of Fact 18, 21, 25-33. The Zoning Board found two other witnesses testified in support of the Application while two others believe “that modifications to the proposal are necessary.” Zoning Board’s Finding of Fact 19, 22 23, 24. As to the testimony of Paula Brumbelow of the Philadelphia Planning Commission, the Zoning Board found that she “stated that a recommendation was not possible on the day of the Hearing.” Zoning Board’s Finding of Fact 34. The Board provided no other summary as to the testimony of these witnesses, although it did provide specific citations to the Notes of Testimony for each Finding of Fact.

In its Conclusions of Law, the Zoning Board set forth the relevant Sections of the Philadelphia Code, recognizing the need to consider twenty (20) separate criteria contained in Section 14-1802 of the Philadelphia Code.¹⁰ The

⁹ For example, the Zoning Board found that Joyce Finnen “testified about flooding and parking shortages, in opposition to the Application;” Keith Newman “testified about traffic concerns, in opposition to the Application;” Kevin Smith “expressed flooding concerns.” Zoning Board’s Findings of Fact 16, 17, 20.

¹⁰ Section 14-802 sets forth the criteria for granting variances and provides, in relevant part, as follows:

(1) The Zoning Board of Adjustment shall consider the following criteria in granting a variance under § 14-1801(1)(c):

(a) that because of the particular physical surrounding, shape, or topographical conditions of the specific structure or land involved, a literal enforcement of the provisions of this Title would result in unnecessary hardship;

(Continued...)

(b) that the conditions which the appeal for a variance is based are unique to the property for which the variance is sought;

(c) that the variance will not substantially or permanently injure the appropriate use of the adjacent conforming property;

(d) that the special conditions or circumstances forming the basis for the variance did not result from the actions of the applicant;

(e) that the grant of the variance will not substantially increase congestion in the public streets;

(f) that the grant of the variance will not increase the danger of fire, or otherwise endanger the public safety;

(g) that the grant of the variance will not overcrowd the land or create an undue concentration of population;

(h) that the grant of the variance will not impair an adequate supply of light and air to adjacent property;

(i) that the grant of the variance will not adversely affect transportation or unduly burden water, sewer, school, park or other public facilities;

(j) that the grant of the variance will not adversely affect the public health, safety or general welfare;

(k) that the grant of the variance will be in harmony with the spirit and purpose of this Title; and

(l) that the grant of the variance will not adversely affect in a substantial manner any area redevelopment plan approved by City Counsel or the Comprehensive Plan for the City approved by the City Planning commission.

(2) In addition to the criteria set forth in § 14-1802(1), the Zoning Board of Adjustment shall also consider the following criteria when granting a variance under § 14-1801(1)(c):

(a) that the grant of the variance will not create any significant environmental damage;

(b) that the grant of the variance will not significantly increase the danger of flooding;

(c) that the grant of the variance will not cause erosion, siltation or pollution that are significant;

(Continued....)

Zoning Board also set forth some general case law on variances, including the need for a showing of a hardship unique or peculiar to the property that was not self-created, further recognizing that adverse economic impact alone is not sufficient to

(d) that the applicant will take reasonable means to minimize environmental damage during construction;

(e) that the applicant in developing the site will use reasonable countermeasures in order that the completed project will not create significant environmental damage;

(f) that because of the particular physical surroundings, shape, or topographical conditions of the specific structure or land involved, a literal enforcement of the provisions of this Title would result in unnecessary hardship;

(g) that the conditions upon which the appeal for a variance is based are unique to the property for which the variance is sought;

(h) that the variance will not substantially or permanently injure the appropriate use of adjacent conforming property.

(3) Where the property in question is situated within areas subject to flooding as provided in Section 14-1606, relating to Flood Plain Controls, the Zoning Board of Adjustment shall consider the following criteria when granting a variance under Section 14-1801(1)(c):

(a) Within the Floodway. No variances may be issued which would result in any increase in flood levels during the Regulatory Flood.

(b) Within the Floodway Fringe.

(.1) that the grant of the variance will not significantly increase the danger of flooding.

(.2) that the grant of the variance will not endanger the loss of property, or the public health, safety or welfare.

....

(8) The applicant shall have the duty of presenting evidence relating to the criteria set forth herein.

grant a variance. After issuing conclusions of law as to the above “legal standards,” the Zoning Board concluded as follows:

After a review of the record and the consideration of the evidence presented, the Zoning Board finds that the Applicant has met its burden in support of a zoning/use Variance(s). Granting Variances in the instant matter *would not* create an overuse for the Subject Property. Applicant has provided evidence of hardship. Therefore, a Zoning Permit and/or Use Registration Permit is granted *with provisos*.

Zoning Board’s Conclusion of Law 13.

MNC appealed to the trial court, which affirmed based on the record. In its decision, the trial court summarized the testimony in greater detail, and determined that the Zoning Board’s decision was supported by substantial evidence.

On appeal to this Court, MNC argues that the Zoning Board abused its discretion or committed an error of law in granting the application for variance when: (a) the Zoning Board failed to make all necessary findings of fact; or (b) when substantial evidence did not exist to support the findings of fact.

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).

In order to qualify for a variance, an applicant must establish that (1) an unnecessary hardship stemming from unique physical characteristics or conditions will result if the variance is denied; (2) because of such physical circumstances or condition, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property; (3) the hardship has not been created by the applicant; (4) granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and (5) the variance sought is the minimum variance that will afford relief.¹¹ Ruddy v. Lower Southampton Township Zoning Hearing Board, 669 A.2d 1051 (Pa. Cmwlth. 1995), petition for allowance of appeal denied, 546 Pa. 651, 683 A.2d 887 (1996).¹²

The reasons for granting a variance must be substantial, serious, and compelling. Valley View Civic Association v. Zoning Board of Adjustment, 501

¹¹ A zoning hearing board is charged with reviewing the record concerning an applicant's project and determining that the proposed project is the minimum that will afford relief. North Chestnut Hill Neighbors v. Zoning Board of Adjustment, 977 A.2d 1196, 1203 (Pa. Commw. 2009). Among the factors to be considered, the zoning hearing board should consider whether the project as designed will have the least impact on the surrounding land uses. Id. at 1202. So long as the record demonstrates that there was no manifest abuse of discretion, the judgment of the zoning hearing board should receive deference. Id. at 1203.

¹² This Court recognizes that the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L.805, as amended, 53 P.S. §§10101-11202, is not applicable in Philadelphia; however, the requirements set forth in Section 910.2(a) of the MPC, added by the Act of December 21, 1988, P.L. 1329, are applicable to variances sought in Philadelphia pursuant to Section 14-1802 of the Philadelphia Code. Society to Reduce Urban Blight (SCRUB) v. Zoning Board of Adjustment of the City of Philadelphia, 772 A.2d 1040 (Pa. Cmwlth.), petition for allowance of appeal denied, 574 Pa. 778, 833 A.2d 146 (2001).

Pa. 550, 462 A.2d 637 (1983). Variances should be granted sparingly and only under exceptional circumstances. O'Neill v. Zoning Board of Adjustment, 434 Pa. 331, 254 A.2d 12 (1969). A variance should not be granted simply because such a grant would permit the owner to obtain a greater profit from the use of the property. A.R.E. Lehigh Valley Partners v. Zoning Hearing Board of Upper Macungie Township, 590 A.2d 842 (Pa. Cmwlth. 1991). Mere economic hardship is insufficient to justify a variance. Hill District Project Area Committee, Inc. However, financial hardship and economic detriment may be considered to justify aspects of a dimensional variance. Hertzberg v. Zoning Board of Adjustment, 554 Pa. 249, 721 A.2d 43 (1998).

An applicant seeking a variance bears a heavy burden of proof. Polonsky v. Zoning Hearing Board of Mount Lebanon, 590 A.2d 1388 (Pa. Cmwlth. 1991). The showing of unnecessary hardship is an indispensable requirement to the granting of a variance, and often the most difficult element to establish. Jacobs v. Philadelphia Zoning Board of Adjustment, 273 A.2d 746 (Pa. Cmwlth. 1971).

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 must show that the hardship is unique or peculiar to the property as

distinguished from a hardship arising from the impact of zoning regulations on the entire district.¹³ Id.

Herein, MNC argues that the Zoning Board failed to make necessary findings of fact to support the granting of the use/zoning variances. MNC appears to argue that in order to properly find unnecessary hardship, the Zoning Board was required first to make specific findings of fact to support the finding of unnecessary hardship. In other words, MNC contends that the Zoning Board was required first to find (1) a unique hardship, (2) no detriment to the public, and (3) a minimum variance, which it failed to do. MNC further argues that the Zoning Board was also required to make specific findings regarding the twenty (20) applicable criteria set forth in the Philadelphia Code, relating to requests for variances in Philadelphia.

MNC contends further that without the threshold finding of fact that the property was subject to an unnecessary hardship, the granting of the variance represents an error of law and must be reversed. MNC asserts that the Board made none of the relevant findings of fact and gave no reason for its decision. Rather, the findings simply recite undisputed facts and do not address the focus of a variance hearing—i.e., the criteria and facts which support the decision to grant a variance and an explanation of the Board’s reasoning.

We agree with MNC’s assertions that the Zoning Board failed to make all necessary findings of fact. As noted herein, the MPC is the source of

¹³ See Manayunk Neighborhood Council v. Zoning Board of Adjustment of the City of Philadelphia, 815 A.2d 652, 656-57 (Pa. Cmwlth. 2002), petition for allowance of appeal denied, 574 Pa. 777, 833 A.2d 145 (2003)(“Where an applicant demonstrates that compliance with a zoning ordinance would render the property virtually useless, the applicant demonstrates unnecessary hardship. Where, as here, zoning regulations prohibit any reasonable use of the property absent variance relief, the requisite hardship is proven.”).

zoning power for all municipalities, except Pittsburgh and Philadelphia. Home Rule legislation is the source of zoning power for Pittsburgh and Philadelphia. Procedurally, Pittsburgh and Philadelphia are controlled by the Local Agency Law, 2 Pa. C.S. §§ 551-555, 751-754. Section 554 of the Local Agency Law provides that “all adjudications of a local agency shall be in writing, shall contain findings and the reasons for the adjudication.” 2 Pa. C.S. §554.

Here, the Zoning Board merely summarized the issues and testimony without providing any specific details as to the substance of the testimony. The Zoning Board failed to provide any finding of fact that addresses any of the criteria supporting the decision to grant a variance. The Zoning Board did not provide any explanation for its reasoning. Instead, it merely issued a conclusory finding that hardship existed. While the Zoning Board’s decision recognized the legal framework for granting variances, it did not make any factual findings regarding the specific evidence it heard or explain how those facts led it to determine that unnecessary hardship exists, that there is no public detriment, and that Applicant sought the minimum variance required in order to obtain relief. Such a cursory adjudication is insufficient for purposes of the Local Agency Law.

In Turner v. Civil Service Commission, 462 A.2d 306, 307 (Pa. Cmwlth. 1983), while considering an adjudication by the Civil Service Commission, this Court explained the need for findings that support more than a conclusory determination, as follows:

While the Commission's opinion thoroughly recites the testimony from each of the parties and reviews the applicable law, it then merely concludes that Turner's dismissal was for just cause without any findings regarding which testimony was found credible, which of the Department's charges were found to be substantiated by the evidence, or what facts presented were found to constitute just cause. Absent such necessary findings, we

must remand. *Danner v. Bristol Township Civil Service Commission*, [], 440 A.2d 702 ([Pa. Cmwlth.] 1982).

Although Turner did not involve zoning, the principles set forth therein are applicable to the case at hand.

Furthermore, although the MPC is not applicable in this instance, it does provide some guidance as to the details required in zoning matters. In Taliaferro v. Darby Township Zoning Hearing Board, 873 A.2d 807, 816 (Pa. Cmwlth.), petition for allowance of appeal denied, 585 Pa. 692, 887 A.2d 1243 (2005), we discussed the requirements for an adjudication under the MPC as follows:

Where an application for zoning relief is contested, the board's decision must be accompanied by findings of fact and conclusions, as well as the reasons for the findings. *See Section 908(9) of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. § 10908(9)*. “[T]he [MPC] mandates that the Board issue an opinion, as distinguished from its order or decision disposing of the matter, setting forth the essential findings of fact, conclusions of law, and sufficient rationale to demonstrate that its action was reasoned and not arbitrary.” *Allied Servs. for the Handicapped, Inc. v. Zoning & Hearing Board of the City of Scranton*, [], 459 A.2d 60, 61 ([Pa. Cmwlth.] 1983). *See also Tranguch v. Zoning Hearing Bd. of Borough of Emmaus*, [], 505 A.2d 410 ([Pa. Cmwlth.] 1986). A zoning board's opinion is sufficient if it provides an adequate explanation of its resolution of the factual questions involved, and sets forth its reasoning in such a way as to show its decision was reasoned and not arbitrary. *Borough of Youngsville v. Zoning Hearing Bd. of Borough of Youngsville*, [], 450 A.2d 1086 ([Pa. Cmwlth.] 1982).

Where a zoning board's decision is clear and substantially reflects application of the law governing variances the decision is sufficient to enable effective review. *In re Avanzato*, [], 403 A.2d 198 ([Pa. Cmwlth.] 1979).

Contrary to Objectors' assertions, there is no requirement that a zoning board cite specific evidence in support of each of its findings.

We note that the trial court engaged in a thorough analysis of this matter on appeal. The trial court set forth the general case law and examined the record, including testimony, and laid out the facts or circumstances justifying findings of (1) unique hardship, (2) no detriment to the public, and (3) minimum variance required for relief. However, the trial court was not sitting as a finder of fact when it did so. Therefore, while it appears that the trial court put much effort into the matter, the Zoning Board, nevertheless, failed to perform its function as fact finder, thereby preventing the trial court and this Court from performing effective *appellate* review.

In SCRUB, 804 A.2d at 150, we explained the proper fact-finding roles of the Zoning Board and trial court under the Local Agency Law, as follows:

The dispositions of zoning appeals in Philadelphia are governed by Section 754 of the Local Agency Law, 2 Pa. C.S. §754. *Mulberry Market, Inc. v. City of Philadelphia, Board of License & Inspection Review*, 735 A.2d 761 (Pa.Cmwlth. 1999). Pursuant to Section 754(b), the court must affirm the decision of the local agency when it has developed a complete record, as here, unless the court determines that necessary findings of fact are not supported by substantial evidence, that constitutional rights were violated, that an error of law was committed or that the procedures followed before the agency were contrary to statute. *Public Advocate v. Philadelphia Gas Commission*, 544 Pa. 129, 674 A.2d 1056 (1996). Under Section 754(a), when a full and complete record is not made before the local agency, the court may hear the appeal de novo or remand to the agency to make a full and complete record or further disposition in accordance with the court's order.

In another case also governed by Section 754, *Frey v. Zoning Board of Adjustment of City of Pittsburgh*, [], 459 A.2d 917 ([Pa. Cmwlth.] 1983), this Court held that the trial court had exceeded its scope of review by making its own factual findings based on the zoning board's record. In that case, like the instant case, the zoning board had failed to make findings of fact to support its decision. The Court explained that the proper procedure was instead to remand the matter back to the zoning board to obtain the essential factual determinations and that only when the zoning board fails to make a full and complete record may the trial court conduct a hearing to take additional evidence and make its own findings of fact. Nowhere in Section 754 is the reviewing court given general authority to make its own findings of fact and conclusions of law when the local agency has developed a full and complete record but omitted making its findings of fact and conclusions of law. *See also Brighton Enterprises, Inc. v. City of Philadelphia*, [], 505 A.2d 1084 ([Pa. Cmwlth.] 1986) (holding that a trial court exceeded its scope of review by making a finding of fact not made by the zoning board without receiving additional evidence).

Therefore, since the trial court did not take any additional evidence subsequent to the Board's decision, the trial court's scope of review was limited to determining whether the Board committed a manifest abuse of discretion or an error of law in granting the use/zoning variance. As noted herein, an abuse of discretion will only be found where the Board's findings are not supported by substantial evidence. Hill District Project Area Committee, Inc.

Accordingly, we are compelled to vacate the trial court's order and remand this matter to the Zoning Board for more detailed findings of fact based upon the evidence presented at the October 24, 2007, public hearing.¹⁴

JAMES R. KELLEY, Senior Judge

¹⁴ Based on our disposition of this issue, we need not address MNC's remaining arguments that the zoning hearing board's findings are not supported by substantial evidence and that the zoning hearing board failed to certify the record to the trial court. We do note, however, that it appears from the trial court's opinion, that the trial court had the benefit of the entire certified record when it rendered its decision.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Manayunk Neighborhood Council, Inc. :
and Kevin Smith, :
Appellants :
v. : No. 2094 C.D. 2009
City of Philadelphia Zoning Board :
of Adjustment and Daniel Neducsin :

ORDER

AND NOW, this 30th day of June, 2010, the order of the Court of Common Pleas of Philadelphia County dated September 8, 2009, at December Term, 2007, No. 2382, is vacated and this matter is remanded to the Court of Common Pleas for further remand to the City of Philadelphia Zoning Board of Adjustment for proceedings in accordance with the foregoing opinion.

It is further ordered that upon consideration of Appellants' Rule 2501 Post Hearing Submission Letter and the Response of Appellee Daniel Neducsin thereto, Appellants' request that this Court take judicial notice of certain adjudicative and legislative facts is denied.

Jurisdiction relinquished.

JAMES R. KELLEY, Senior Judge