

The Property consists of three three-story row homes that are consolidated into one building, comprising 3,192 square feet. Gould sought to redevelop the Property by demolishing the existing structures and constructing one three-story structure, intended to house a minimum of two commercial use units on the first floor, and three residential use units on the second and third floors. Gould intended to sell the three residential units as condos to distinct and separate owners.

In pursuing his redevelopment plan, Gould submitted an application to the Board seeking various relief from the Ordinance. The Board held hearings thereafter, and issued a Decision and Order dated April 5, 2010, denying Gould's application. In its concomitant findings and conclusions, the Board found, *inter alia*, thirteen variances from the Ordinance necessary for the proposed development, which number Gould disputed.¹

¹ The Board found the following Ordinance Sections would require Gould to obtain certain variances for his development:

Section 27-401 – permitting only one use at the subject property;

Section 27-320.1.1G – permitting one dwelling unit as part of the structure, which includes one residential use, under one ownership;

Section 27-320.1.G(1) – requiring that residential units have an average area of at least 1,200 square feet;

Section 27-320.1.G(6) – requiring each residential unit to have one off-street parking space for each one-half unit;

Section 27-710.1.E – requiring one handicapped parking space for every one to twenty-five parking spaces, and one additional handicapped parking space for every additional one to twenty-five parking spaces;

(Continued....)

Gould appealed from the Board's Order to the Trial Court, which did not receive additional evidence and affirmed by Opinion and Order filed March 9, 2011. Gould now appeals to this Court. When the trial court does not take additional evidence, this Court's scope of review is limited to determining whether the zoning hearing board committed an abuse of discretion or an error of law in denying the variance. Goldstein v. Zoning Hearing Board of the Township of Lower Merion, 19 A.3d 565 (Pa. Cmwlth. 2011).

Gould presents four issues for review: 1.) whether the Board erred in concluding that Gould's proposal was not allowed by right under Section 27.320.1.G of the Ordinance, permitting mixed use buildings in the TC-Town

Section 27-701.2.B – requiring warranted reduction, plan, and agreement with the Borough if conditions for special exception regarding conditional reduction in off-street parking are not met;

Section 27-702.5 – requiring off-street parking spaces to be on the same lot as the permitted use premises (unless the requirements of Section 27-701.3.B are met);

Section 27-703.1.C – requiring that no parking areas shall be designed or constructed which require vehicles to back onto a public street (unless those spaces for residential use, with individual driveways, provide the required off-street parking spaces);

Sections 27-703.2(B), (C), (D), (E), and (G) regarding design standards for parking lots (where proposed parking is considered a parking lot and not a driveway for individual residential uses);

Section 27-701, and Table 7.1 – regarding proposed commercial use of property (which proposed use has not been provided with the instant application);

Section 28-309.7.B.1 – requiring that all sidewalks along street frontages have a minimum width of eight feet, and;

Section 27-406.C.2 – requiring setback of two hundred feet from a public street intersection for each point of vehicular access to and from the subject property.

Center District; 2.) whether the Board erred in not granting Gould's application based on his agreement that he could abide by the Board's Ordinance interpretation restricting him to one nonresidential unit; 3.) whether the Board sufficiently stated its grounds for denial of Gould's application, and; 4.) whether the Trial Court erred in affirming the Board's Order and Decision by depending on rationales not stated within the Board's Decision.

To the extent that Gould argues, in his fourth stated issue, that the Trial Court relied upon grounds not stated within the Board's Decision, our thorough review of the record and both Decisions herein reveal no merit to Gould's argument on this point. Additionally, the Board's denial of Gould's application on the sole basis of the sheer number of variances required under his proposal, as supported by the evidence of record offered by Gould, was proper in that Gould did not meet the variance burden required by Section 910.2 of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §10910.2, added by the Act of December 21, 1988, P.L. 1329 (MPC). We note that Gould's failure to satisfy his burden under Section 910.2 of the MPC is correct notwithstanding the Board's error regarding the number of permitted residential units under the Ordinance, as noted by the Trial Court.

The Trial Court's Decision aptly addressed all three of the remaining issues raised by Gould in the appeal *sub judice*, and we find no error in its

reasoning. Accordingly, the order of the Trial Court is affirmed based on the cogent and well-reasoned opinion of the Honorable Wallace H. Bateman, Jr., in David F. Gould, III v. The Zoning Hearing Board of Bristol Borough and Bristol Borough (Docket No. 10-03576, filed March 9, 2011).

JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David F. Gould, III,	:
Appellant	:
	:
v.	: No. 46 C.D. 2011
	:
Zoning Hearing Board of Bristol	:
Borough and Bristol Borough	:

ORDER

AND NOW, this 24th day of August, 2011, the order of the Court of Common Pleas of Buck County filed March 9, 2011, at No. 10-03576, is affirmed.

JAMES R. KELLEY, Senior Judge