

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MAUREEN K. WHITE, and)
WAYNE A. WHITE,)
)
Appellants,)
)
v.) C.A. No. 01A-08-005 HLA
)
ZONING BOARD OF)
ADJUSTMENT OF THE CITY OF)
WILMINGTON and MCCLAFFERTY)
PRINTING, INC.,)
)
Appellees.)

Date Submitted: April 12, 2002

Date Decided: April 16, 2002

ORDER

**UPON APPELLANTS' APPEAL FROM THE
ZONING BOARD OF ADJUSTMENT OF THE CITY OF WILMINGTON**

DENIED

Francis J. Trzuskowski, Esq., Trzuskowski, Kipp, Kelleher & Pearce, P.A., Wilmington, Delaware, Attorney for Appellant.

Rosamaria Tassone, Esq., Assistant City Solicitor, City of Wilmington Law Department, Wilmington, Delaware, Attorney for Defendant Zoning Board of Adjustment of the City of Wilmington.

Melanie K. Sharp, Esq., Young Conaway Stargatt & Taylor, LLP, Wilmington, Delaware, Attorney for Defendant McClafferty Printing, Inc.

ALFORD, J.

On this 16th day of April 2002, upon consideration of Appellant's Motion for Reargument, it appears to the Court that:

(1) On March 28, 2002, the Court denied Appellant's appeal from the Zoning Board of Adjustment of the City of Wilmington. Appellant raised three arguments in their appeal: (1) the Board improperly granted the variance because McClafferty failed to seek a variance under Wilmington Code § 48-445, which makes parking inadequate; (2) the Board erred in granting the variance because the addition will be detrimental to the health and welfare of the neighborhood, exacerbate existing parking problems and depreciate existing property values; and (3) the license between McClafferty and Lynam's Service Station is facially inadequate, thus the Board erred in relying on it. The Court in applying the correct standard of review determined that all three of Appellant's contentions failed.¹ As a result of its review, the Court found that substantial evidence supported the Board's decision with no legal error contained therein.²

¹ The correct standard of review for an appeal from the Zoning Board of Adjustment of the City of Wilmington is for the Court only to determine whether substantial evidence supports the decision below and the decision contains no legal error. *Kirkwood Motors, Inc. v. Bd. of Adjustment of New Castle County*, C.A. 99A-12-009, 2000 WL 710085, at *2 (Del. Super. May 16, 2000). The Court will affirm the decision if "the record shows substantial evidence upon which the Board could properly have based its decision, while correctly applying the law to the facts." *Richards v. Turner*, 336 A.2d 581, 583 (Del. Super. 1975); *Marrantonis v. Bd. of Adjustment*, 258 A.2d 908 (Del. Super. 1969).

² *White v. Zoning Bd. of Adjustment, et al.*, C.A. No. 01A-08-005, Alford, J. (March 28, 2002) (Mem. Op.).

(2) “On motion for reargument the only issue is whether the [C]ourt overlooked something that would have changed the outcome of the underlying decision.”³ “A motion for reargument is not intended to rehash arguments already decided by the [C]ourt.”⁴ Nor is it “a device for raising new arguments or stringing out the length of time for making an argument.”⁵ “A party seeking to have the Court consider the earlier ruling must demonstrate newly discovered evidence, a change in the law or manifest injustice.”⁶

(3) The issues raised in Appellant’s Motion for Reargument were considered by the Court in making its original decision. These contentions are mere restatements of the arguments raised in Appellant’s Appeal and are not proper for the Court to consider in ruling on a Motion for Reargument; as they have been considered and rejected by the Court.⁷

For the forgoing reasons, Appellant’s Motion for Reargument is hereby **DENIED**.

³ *McElroy v. Shell Petroleum, Inc.*, Del. Super., No. 375, 1992, Moore, J. (Nov. 24, 1992) (ORDER).

⁴ *Id.*

⁵ *Eisenmann Corp. v. General Motors Corp.*, C.A. No. 99C-07-260, Quillen, J. (Feb. 24, 2000) (Letter Op.).

⁶ *State v. Spicer*, Del. Super., C.A. Nos. 98M-12-008, 98M-12-009, Stokes, J. (May 11, 1999) (ORDER) (quoting *E.I. duPont de Nemours Co. v. Admiral Ins.. Co.*, Del Super., 711 A.2d 45, 55 (1995)).

⁷ *McElroy*, at *1.

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IT IS SO ORDERED.

ALFORD, J.

Prothonotary's Office - Civil Div.