

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Youth Services Agency :  
 :  
 v. :  
 :  
 Langhorne Borough, : No. 1404 C.D. 2011  
 Appellant : Argued: October 15, 2012

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
 HONORABLE RENÉE COHN JUBELIRER, Judge  
 HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
 BY JUDGE McGINLEY

FILED: January 24, 2013

Langhorne Borough (Borough) appeals from an order of the Court of Common Pleas of Bucks County (common pleas court) that reversed the decision of the Langhorne Borough Zoning Hearing Board (Zoning Hearing Board) and granted the appeal of the Youth Services Agency (Youth Services).

The Zoning Hearing Board made the following pertinent findings of fact:

1. Flyers were distributed to the public advertising that Yoga-Cise Family Health Center . . . would be offering yoga classes at all levels from basic beginner to advanced for individuals, youths, tots and seniors . . . .
2. Yoga-Cise Family Health Center advertises on its website many yoga classes for the general public, the price listed for the general public and that classes are conducted six (6) days a week . . . .

3. Yoga-Cise Family Health Center advertises on its website that in addition to yoga classes, massages are performed at the location . . . . (emphasis added).

4. In 1977 Youth Services . . . submitted an application to the . . . Zoning Hearing Board for a special exception to establish a temporary shelter for runaway youth under Article IV, Section 404 and 405 subsections (C4) and B6) . . . . (emphasis added).

5. In 1977 the . . . Zoning Hearing Board denied the application . . . . (emphasis added).

6. In 1977 the Bucks County Court of Common Pleas overruled the order of the . . . Zoning Hearing Board and granted the requested special exception . . . . (emphasis added).

7. Subsection (C4) in effect in 1977 stated that the following uses are allowable by the grant of a special exception as long as the use is not conducted as a Private gainful business: Auditorium, community center, adult education center or other similar facility operated by an educational, philanthropic, or religious institution.

8. The Applicant's Attorney argued at the hearing that the property is permitted to be used as a community center and auditorium per the order of . . . Court of Common Pleas . . . . (emphasis added).

9. The Applicant's Attorney further argued that Youth Services is providing yoga as part of its program and that Youth Services is providing yoga instruction to the public a few times per week . . . . (emphasis added).

10. The Borough Solicitor argued that the order of the . . . Court of Common Pleas did not state that the property was permitted to be used as a community center and auditorium and that the Court only granted the requested

special exception to establish a temporary shelter for runaway youth.

11. The Borough Solicitor further argued that in 1977 Youth Services . . . did not appeal key Findings of Fact of the Zoning Hearing Board . . . which establishes that the Court only granted the requested special exception to establish a temporary shelter for runaway youth.

12. Finding of Fact Number 17 [of the 1977 Zoning Hearing Board's decision] stated that the "proposed facility does not intend to conduct any adult education courses on the premises, and, in fact, education for the minors residing therein would usually be provided by transporting them to their respective school districts for the continuation of their educational process." . . . .

13. Finding of Fact Number 18 [of the 1977 Zoning Hearing Board's decision] stated that "the facility would not be open to all members of the general public and no general community activities of any nature are planned." Exhibit LB-2.

Zoning Hearing Board's Adjudication, January 14, 2010, Findings of Fact (F.F.) Nos. 1-13 at 2-4. The Zoning Hearing Board concluded that the "Bucks County Court of Common Pleas [1977 Order] only granted the requested special exception to establish a temporary shelter for runaway youth." Zoning Hearing Board's Adjudication, Conclusion of Law at 5. The Zoning Hearing Board denied Youth Services' appeal.

On February 9, 2010, Youth Services filed a land use appeal and alleged:

. . . .  
3. On September 22, 2009, Langhorne Borough, through its zoning officer, Rosemarie Curran ("Curran"), issued a

Notice of Violation to Youth Services' alleging the following:

a. Pursuant to Article II, Section 200 of the Ordinance a sign permit was required prior to the erection of a sign.<sup>[1]</sup>

b. Pursuant to Article X, Section 1008 of the Ordinance, a certificate of occupancy was required because there had been a change in occupancy by deed, lease or other agreement and because there had been a change in use of the existing building.

c. Pursuant to Appendix A, Section 9(j)(2) of the Ordinance, no sign may be erected in the historical district until the Historical Architectural Review Board reviews the application and the Borough Council issues a certificate of appropriateness.

4. Curran alleges that because Youth Services is now offering yoga classes to youths involved in its programs and to members of the community that there has been a change in occupancy and change in use requiring Youth Services to obtain a certificate of occupancy. (emphasis added).

5.<sup>[2]</sup> . . . Youth Services asserts that they have the right to use the property as a C4 Community Center and B6 Residential Conversion and the use of the property as a yoga studio qualifies as a Community Center use as that term is defined in the Ordinance.

. . . .

8. In 1977, Youth Services requested a special exception under Sections 405(B)(6), Residential Conversion and 405(C)(4), Community Center/Auditorium of the

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<sup>1</sup> Youth Services does not challenge the Borough violation that it was required to obtain a sign permit.

<sup>2</sup> Youth Services incorrectly referred to this paragraph as number four. This Court will refer to the remaining paragraphs according to the correct sequential numbers.

Ordinance. The Zoning Hearing Board denied the special exceptions . . . .

9. On December 1, 1977, the Honorable William Hart Rufe issued an order overturning the Zoning Hearing Board and granting the requested special exceptions.

10. Neither party appealed Judge Rufe’s Order.

. . . .

14. The Zoning Hearing Board’s conclusion is not supported by any evidence that there has been a change in use, requiring the application and issuance of a new certificate of occupancy. The Decision relies upon Findings of Fact in the Zoning Hearing Board’s decision that were [sic] expressly overturned by Judge Rufe . . . .

. . . .

17. The following evidence of record establishes that there has not been a change in use:

. . . .

d. The record establishes that Youth Services has established a yoga program as a part of its continuing treatment and education of youths enrolled in their [sic] various programs . . . .

e. The Ordinance has no designation for a yoga studio, however, Curran testified that it would qualify as a C4 use except for the fact that Youth Services is allegedly not a “private institution” . . . . Since Youth Services is the same entity that Judge Rufe determined could operate a C4 use in 1977, they meet [sic] this criterion. As such the yoga classes are a use consistent with the C4 Community Center use and do not represent a change in “classification” as required under Section 1008.

Land Use Appeal, February 9, 2010, Paragraphs 3-5, 8-10, 14, and 17 at 2-5, Certified Record at 1.

On February 24, 2010, the Zoning Hearing Board filed an answer and requested that its decision be affirmed.

The common pleas court, without taking additional evidence, reversed the Zoning Hearing Board's decision and concluded:

The plain language of that 1977 Order unambiguously imposed no conditions on Youth Services' right to operate the Property as a C4 Community Center and B6 Residential Conversion. Further, at the ZHB hearing, the Zoning Officer even admitted that Youth Services was permitted to use the property under either the C4 or B6 classifications. Therefore, the evidence before the ZHB established that Youth Services was not limited to operating only a temporary shelter on the Property, as the ZHB erroneously found. Instead, the evidence established that Youth Services was free to use the Property in any way consistent with either the C4 or B6 classifications. As a result, the ZHB's sole conclusion of law was not supported by substantial evidence and this Court properly granted Youth Services' appeal.

....

... As long as Youth Services' use of the Property remained within either of these classifications, Youth Services was not required to obtain an occupancy permit under the Occupancy Permit Ordinance. The ZHB, however, made no attempt to classify Youth Services' proposed use of the Property as a yoga studio under C4 Community Center recognized special exception. Further, the ZHB made no findings of fact or conclusions of law on the issue, whatsoever. Therefore, the ZHB abused its discretion in failing to determine whether Youth Services' proposed use of the Property fell within the C4 Community Center recognized special exception and this Court properly granted Youth Services' appeal. (footnotes omitted).

Opinion of the Common Pleas Court, October 12, 2011, at 9-11.

## **Whether The Common Pleas Court Erred As A Matter Of Law When It Reversed The Findings Of The Zoning Hearing Board?**

Initially, the Borough contends<sup>3</sup> that a certificate of zoning and occupancy is required pursuant to Section 2-27 (Permit) of the 1995 Langhorne Borough Zoning Ordinance (1995 Ordinance) whenever the ownership or the principle use of a property changes. The Borough asserts that this requirement is even more important when the property is being operated under a special exception.<sup>4</sup> Essentially, the Borough argues that the issue before this Court is not whether Youth Services might ultimately be entitled to the use, but whether they were required to submit an application for a zoning and occupancy permit.

In response, Youth Services argues that it had the unrestricted right to operate the Property under Section 405(B6) (Residential Conversion) and Section 405(C4) (Community Center) of the 1976 Langhorne Borough Zoning Ordinance (1976 Ordinance) pursuant to the 1977 Order of the court of common pleas which

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<sup>3</sup> This Court's review of a zoning decision where the common pleas court does not take any additional evidence is whether the zoning hearing board committed an abuse of discretion or an error of law. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998). "Moreover, [t]he [z]oning [b]oard as factfinder is the sole judge of credibility with power to resolve conflicts in testimony and to reject even uncontradicted testimony that it finds to be lacking in credibility." In Re Petition of Dolington Land Group, 576 Pa. 519, 526, 839 A.2d 1021, 1026 (2003) (citing Nettleton v. Zoning Board of Adjustment, 574 Pa. 45, 828 A.2d 1033 (2003)). An abuse of discretion will only be found where the zoning hearing board's findings are not supported by substantial evidence. Smith v. Zoning Board of Huntingdon, 734 A.2d 55, 57 n.2 (Pa. Cmwlth. 1999). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Id. at 57 n.2 (citing Teazers, Inc. v. Zoning Board of Adjustment of the City of Philadelphia, 682 A.2d 856 (Pa. Cmwlth. 1996)).

<sup>4</sup> The Borough states that it is inconsequential that there was no change in the occupancy of the Property because it is the change in the use that is critical for a certificate of zoning and occupancy.

granted Youth Services a special exception. As a result, Youth Services contends that the Borough failed to establish that there was a change in the prior use of the Property under Section 1008(c) of the 1995 Ordinance.

The following Ordinances and Court Order are stated:

A. The 1995 Ordinance.

Section 201(2-27) of the 1995 Ordinance provides:

Permit-A document issued to an applicant under the authority of this Ordinance or any other Ordinance of Langhorne Borough.

A. Occupancy permit: A required permit allowing occupancy of a building or structure.

B. Zoning Permit: A required permit issued prior to the establishment of a proposed use or the erection, razing, construction, reconstruction, restoration, alteration, conversion, or installation of a sign. (emphasis added).

Section 201 (2-27) (Definitions) of the 1995 Langhorne Borough Zoning Ordinance.

Section 1004 (Permits Required) of the 1995 Ordinance provides:

A. Zoning Permits:

1. No use may be established, altered, enlarged, extended or changed; no structure shall be erected, constructed, reconstructed, altered, razed, removed . . . and, no building shall be used, occupied, or changed in use, until a Zoning Permit has been secured from the Zoning Officer. Upon completion of changes in use or construction, reconstruction, alteration or moving of structures, the applicant shall notify Zoning Officer of the



completion. No permit shall be considered complete or permanently effective until the Zoning Officer has noted on the permit that the work or occupancy and use have been inspected and approved. (emphasis added).

Section 1004 (Permits) of the 1995 Langhorne Borough Zoning Ordinance at 10-4.

Section 1008(C.) (Requirement for Certificate of Occupancy) of the 1995 Ordinance provides that “[a] certificate of occupancy shall be required prior to occupancy or use of any building, structure, or land under the following circumstances . . . [a]ny change in use of an existing building, structure or use or portion thereof to a use of a different classification.” (emphasis added). Section 1008(C.) (Requirements) of the 1995 Langhorne Borough Zoning Ordinance at 10-9.

#### B. 1976 Ordinance.

Section 405(B6) (Residential Conversion) of the 1976 Ordinance provides:

Conversion of an existing building to a greater number of dwelling units subject to the following provisions:

(a) Table of Dimensional Requirements . . . .”

. . . .

(d) Residential Conversions shall meet the requirements of Section 405 B5 (a)<sup>[5]</sup> and (c)<sup>[6]</sup>.

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<sup>5</sup> Section 405(B5)(a) of the 1976 Ordinance provides “[a] dwelling used for the housing of two (2) roomers, boarders, lodgers or tourist are subject to the following conditions: (a) [f]ire detection devices approved by the Underwriters Laboratories . . . .”

<sup>6</sup> Section 405(B5)(c) of the 1976 Ordinance provides “Parking: One (1) off-street-parking space per room offered for rent in addition to the two (2) off-street parking spaces required of each single-family residence.”

1976 Langhorne Borough Zoning Ordinance at 36-37; Reproduced Record (R.R) at 216a-17a.

Section 405 (Use Regulations) of the 1976 Ordinance provides:

C4 Auditorium, community center, adult education center or other similar facility operated by an educational, philanthropic, or religious institution, subject to the following provisions (emphasis added):

(a) The use shall not be conducted as a private gainful business. (emphasis added).

(b) No outdoor recreation area shall be located nearer to any lot line than the required front yard depth.

Parking: Refer to Use C1.<sup>[7]</sup>

1976 Langhorne Borough Zoning Ordinance at 38-39; R.R. at 218a-19a.

C. 1977 Order Of The Court Of Common Pleas.

The common pleas court stated that “after argument before the above court en banc, the order of the Langhorne Borough Zoning Hearing Board denying the requested special exception is hereby overruled, and the said special exception is hereby approved and granted.” 1977 Order, December 1, 1977, at 1; R.R. at 182a.

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<sup>7</sup> Section 405(C1) (Parking) of 1976 Ordinance provides:

One (1) space per five (5) seats, or at least (1) space for every three hundred (300) square feet of floor area intended to be used by patrons, guests, members, parishioners, clients, or customers whichever required the greater number of off-street parking spaces, plus one (1) space per two (2) employees on the premises at any one time.

1976 Langhorne Borough Zoning Ordinance, Section 405(C1) at 38.

In the present controversy, Rosemarie Curran (Curran), Borough Manager, Secretary, and Zoning Officer, testified that in 1977 Youth Services applied for a special exception in order to operate a temporary runaway shelter for girls in an R-2 zoning district.<sup>8</sup> Curran stated that in the 1976 application Youth Services outlined that the “[t]he proposed facility does not intend to conduct any adult education courses on the premises and, in fact, education for minors residing

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<sup>8</sup> Catherine Ann Porter, attorney for the Borough, to Curran:

**Q:** And what was the application for?

**A:** It was an appeal to the zoning hearing board to establish [a] temporary runaway shelter for Youth and Friends School.

**Q:** They were asking for a special exception?

**A:** Yes.

**Q:** What is the zoning district for, the property?

**A:** R-2.

**Q:** Residential?

**A:** Residential.

**Q:** And are commercial or nonresidential uses permitted?

**A:** Not in R-2.

....

**Q:** . . . In their application Youth Services asked for a special exception. And they applied under Sections 405 (c) (4) and (b) (6)?

**A:** Yes.

therein will usually be provided by transporting them to their respective school districts for the continuation of their educational process.”<sup>9</sup> H.T. at 19; R.R. at 46a.

Additionally, Curran testified the Mayor of the Borough told her that he received a complaint from a resident “about work being done at the property and [the mayor] wanted to be sure that whatever work was being done had the proper permits.” H.T. at 23; R.R. at 50a. Curran visited Youth Services’ Property and observed that “the work that was done . . . appeared to be cosmetic, the walls had been painted, hardwood floors had been restored . . . [a]nd the room was completely vacant.” H.T. at 23; R.R. at 50a. Curran was informed by Roger Dawson (Dawson), Director of Youth Services, that “there were no girls presently residing at Youth Services and hadn’t been there for some time . . . [a]nd they thought that this was a good time, a good opportunity for them to renovate the building.” H.T. at 24; R.R. at 51a. Dawson “expected to have girls coming back shortly and that they were going to provide as part of rehabilitation yoga classes, and he indicated that they wanted to open them up to the public.” H.T. at 24; R.R. at 51a. Curran informed Dawson that she “did not think they could do that because the zoning classification and because of what they were zoned for” and left. H.T. at 24; R.R. at 51a.

Curran received an additional complaint from a Borough resident that Youth Services planned on opening a yoga studio to the general public. H.T. 25; R.R. at 52a. When Curran arrived at the Property a second time, she observed a “man putting a sign up” with the name “Yoga-Cise” and as a result “I wrote them a

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<sup>9</sup> Curran stated that “[i]nitially, the shelter will be restricted to females only . . . that the average quote stay . . . will be approximately five to seven days.” H.T. at 16; R.R. at 43a.

notice of violation stating that they needed to get a change of use and occupancy permit or change of use in the building.” H.T. at 25; R.R. at 52a.

Youth Services did not present any witnesses before the Zoning Hearing Board and rested on the closing arguments of Gavin Laboski (Laboski), attorney for Youth Services. Laboski argued that the 1977 order granted it a special exception and did not impose any conditions or limitations on the use of the Property by Youth Services. Laboski concluded that Youth Services operated the Property pursuant to Section 405(C4) of the 1976 Zoning Ordinance for thirty-two years without being cited by the Borough for any violations and that the only evidence of a change in the use of the Property was when Youth Services attempted to erect the Yoga-Cise sign.

The Zoning Hearing Board rejected Youth Services’ arguments and determined that the evidence established the Property was no longer being used as a temporary shelter for runaway youth but as a yoga studio opened to the general public.

When considering this question, this Court must give deference to the Zoning Hearing Board’s conclusion that Youth Services was required to apply for a permit. City of Hope v. Sadsbury Township Zoning Hearing Board, 890 A.2d 1137, 1143 (Pa. Cmwlth. 2006). It is well settled that “a zoning hearing board’s interpretation of its own zoning ordinance is entitled to great weight and deference. Such deference is appropriate because a zoning hearing board, as the entity charged with administering a zoning ordinance, possesses knowledge and expertise in interpreting that ordinance.” City of Hope, 890 A.2d at 1143 (citations omitted).

Here, the evidence clearly established that the common pleas court's 1977 order granted a special exception to Youth Services to operate a temporary shelter for runaway youth, and not, to offer yoga classes and massages for the general public.<sup>10</sup> Youth Services contention that the 1977 order of the common pleas court granted it a special exception to operate a "community center"<sup>11</sup> under

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<sup>10</sup> Yoga-Cise was advertised to the general public as follows:

Mission Statement:

Coordinating healthy alternatives for families, individuals and youth to enhance their way of life through the living art of Yoga and other wellness modalities . . . .

Every person has a unique style and individuality. You will find a variety of Yoga styles to choose from that are perfect for you. Yoga-Cise staff are dedicated professionals who are equipped to acknowledge each persons [sic] uniqueness and will work to provide a nurturing environment where comfort and growth are encouraged.

Our goal is to provide the best experience for each individual and to teach practitioners how to overcome physical limitations, to bring them into a better balance with themselves and the world, to increase mental awareness through meditation and relaxation exercises . . . .

Massage is highly recognized as one of the oldest, most effective therapeutic techniques known to humanity . . . .

Massage therapy is based on the fact that soft tissue-muscles, tendons, ligaments & fascia (connective tissue)-responds to touch. Recent research suggests that massage provides many health-promoting benefits . . . .

Yoga-Cise Advertisement at 1-2; R.R. at 189a-190a.

<sup>11</sup> The term "community center" is not defined under the 1976 Ordinance. However, the term "community center" is defined under Section 201(10) of the 1995 Ordinance as:

A public, quasi-public, or privately maintained institution devoted to a variety of group activities such as civic, social, recreational, educational, or cultural activities and the premises and facilities appropriate to such activities; provided, however, that the said premises shall not include living quarters for persons other than

**(Footnote continued on next page...)**

the 1976 ordinance is without foundation. In the 1977 order, the common pleas court, sitting en banc, provided no explanation or cited any legal authority as to why Youth Services was entitled to a special exception either under Section 405(B6) or Section 405(C4) of the 1976 Ordinance.<sup>12</sup> It clearly stated that Youth Services was only entitled to a special exception<sup>13</sup> to use the Property as a temporary shelter for runaway youth.<sup>14</sup>

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**(continued...)**

those engaged in the conduct and/or maintenance of the institution.  
(emphasis added).

<sup>12</sup> In fact, Section 405(B6) and Section 405(C4) of the 1995 Ordinance almost read identical to Section 405(B6) and Section 405(C4) of the 1976 Ordinance.

<sup>13</sup> The term “special exception” is not defined under the 1976 Ordinance. However, Section 201(36) of the 1995 Ordinance defines the term “special exception” as:

A use listed in Section 404 may be permitted as a Special Exception in any District noted by the letter ‘S’, provided the Zoning Hearing Board authorizes the issuance of a zoning permit, subject to the requirements of Sections 405 and 1103 and such further restrictions that the Board may establish.

<sup>14</sup> The Zoning Hearing Board rejected Youth Services argument that it was entitled to a special exception under Section 405 of the 1976 Ordinance:

The applicant has been unable to present any evidence that its proposed use would come within the purview of either uses C4 or B6. It is a condition precedent to the right to seek a special exception that the proposed use fall within those uses permitted by special exception. This Board cannot accept the applicants [sic] [Youth Services] characterization of the proposed use as either a facility similar to an auditorium, community center or adult education center or as the conversion of an existing building into residential dwelling units for members of an family.

.....

Since the applicants [Youth Services] proposed facility fails to fall within the purview of either use B6 or use C4, this application must be denied.

Langhorne Borough Zoning Hearing Board Decision, May 2, 1977, at 12 and 14; R.R. at 172a and 174a.

Without an application for an occupancy and zoning permit under Section 1008(C.) (Requirements for Certificate of Occupancy) and Section 1004(A.) (Zoning Permits) of the 1995 Ordinance, there was no evidence presented by Youth Services concerning the necessities to operate the Property as a yoga instruction class and massage studio.<sup>15</sup> Therefore, the Zoning Hearing Board did not abuse its discretion or commit an error of law when it determined Youth Services was required to file an application for a zoning and occupancy permit.

Accordingly, the decision of the common pleas court is reversed.

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BERNARD L. McGINLEY, Judge

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<sup>15</sup> For instance, Youth Services did not establish the number of class participants, the number of teachers, the hours of operation, and parking. Additionally, Youth Services did not provide evidence regarding the possibility Youth Services would again provide temporary shelter for runaway youth. Such information would be invaluable when determining the impact on the Borough.



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Youth Services Agency :  
 :  
 v. :  
 :  
 Langhorne Borough, : No. 1404 C.D. 2011  
 Appellant :

**ORDER**

AND NOW, this 24th day of January, 2013, the order of the Court of Common Pleas of Bucks County in the above-captioned matter is reversed.

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BERNARD L. McGINLEY, Judge