IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Washington Terrace, LLC, Appellant	:	
v.	:	No. 1528 C.D. 2009
	:	Argued: December 7, 2009
Washington Township Zoning Hearing Board and Washington Township	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER,** President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER **FILED:** January 13, 2010

Washington Terrace, LLC (Washington Terrace) appeals from an order of the Court of Common Pleas of Northampton County that affirmed the decision of the Zoning Hearing Board of Washington Township (Board) to disallow Washington Terrace to construct more than one townhouse or garden apartment building on each proposed lot. Washington Terrace argues that when Section 4.1 of the Washington Township Zoning Ordinance (Ordinance) limiting one "principal use" per lot is construed in conjunction with other relevant provisions of the Ordinance, the Ordinance permits construction of more than one townhouse or garden apartment building per lot.

Washington Terrace owns two unimproved parcels consisting of 60.47 acres in Washington Township, Northampton County. The property is

currently zoned R-2 Medium Density Residential.[1] In 2008, Washington Terrace submitted a sketch plan to the Township zoning officer, proposing to subdivide the two parcels into five lots to construct townhouse and garden apartment buildings: three townhouse buildings on one lot, eleven townhouse buildings each on two lots, fourteen townhouse buildings on one lot and six garden apartment buildings on one lot. A "townhouse"[2] is one of the "principal uses" permitted by right in the R-2 zoning district, "provided that the use, type, dimensional, and all other applicable requirements of [the] Ordinance are satisfied." Section 3.8.B.6 of the Ordinance. A "garden apartment"[3] is also listed as one of the "principal uses" permitted by special exception in the R-2 zoning district. Section 3.8.C.4. Townhouses and garden apartments must not exceed three stories and must comply with the specific lot area, width, building coverage and height regulations set forth in Section 3.8.E.

Section 4.1 of the Ordinance provides that "[n]o more than one (1) *principal use* shall be permitted on a lot, unless specifically permitted by this Ordinance." (Emphasis added.). The term "principal use" is defined as "[t]he single dominant use or single main use on a lot." Section 2.1.B.137. In September 2008, the Township zoning officer determined that each proposed building on a

[1] The Board previously approved Washington Terrace's 2004 application seeking to rezone the parcels from Agricultural to R-2 Medium Density Residential.

[2] A "[t]ownhouse" is defined as "[a] Low-Rise Multiple Family Building that does not contain more than eight (8) dwelling units, in which each dwelling unit extends from ground to roof and contains two (2) points of independent outside access." Section 2.1.B.62.c.(1)(b) of the Ordinance.

[3] A "garden apartment" is defined as "[a] Low-Rise Multiple Family Building that does not contain more than twelve (12) dwelling units, in which individual dwelling units are entirely separated by vertical walls or horizontal floors, unpierced except for access to a common cellar and in which each dwelling unit has an independent outside access." Section 2.1.B.62.c.(1)(a).

subdivided lot constitutes a separate "principal use" and that Washington Terrace was required to obtain a variance from Section 4.1 to construct more than one townhouse or garden apartment building on each subdivided lot. The zoning officer further determined that the proposed development constitutes a "planned development,"[4] which is not permitted in the R-2 zoning district.

Washington Terrace appealed the zoning officer's determination to the Board and, in the alternative, sought a variance. It argued that the Ordinance permits one "principal use" and more than one "principal building" per lot. The Ordinance defines a principal building as "[t]he building in which the principal use of a lot is conducted." Section 2.1.B. 136. The zoning officer reiterated that "each building is an independent principal use in the R-2 zoning district." Notes of Testimony at 13; Reproduced Record (R.R.) at 24a. Washington Terrace subsequently withdrew the request for variance.

The Board agreed with the zoning officer's interpretation of Section 4.1 as prohibiting more than one townhouse or garden apartment building per lot. The Board expressed its concern about "having *multiple uses of the same permitted use* on a property within a zoning district, the degree of use per lot, and the uncontrolled development without Township supervision." Board's Decision at 9; R.R. at 80a (emphasis added). The Board suggested that Washington Terrace "could place an individual townhouse on a separate lot, or, in the alternative, …

[4] A "planned development" is "[a]n area of land under single ownership containing any combination of two (2) or more principal *uses* permitted by right or as a special exception in the district in which the development is proposed …." Section 2.1.B.133 of the Ordinance (emphasis added). A planned development is permitted by special exception in the Rural Center, Commercial and Industrial zoning districts. Sections 3.9.C.27, 3.10.C.11 and 3.11.C.3. Therefore, the proposal at issue could be a "planned development" only if we agree that each building constitutes a separate use.

could come before this Board to request a zoning variance." *Id.* Washington Terrace appealed the Board's decision to the trial court, and the Township intervened in the appeal.

The trial court concluded that "[o]ne cannot logically apply the plural to the terms [sic] 'principal use' or 'single' as used in Sections 4.1 and 2.1.B.137 [the definition of principal use] of the Ordinance." Trial Court's Opinion at 4. The court recognized that Section 4.2.B requires "[t]wo (2) or more principal buildings on a lot" to comply with the standards set forth in the Subdivision and Land Development Ordinance and with the dimensional requirements of the Ordinance that "would apply to each building if each were on a separate lot." The court nonetheless determined that Section 4.2.B "is still limited by Section 4.1." Trial Court's Opinion at 5. The court stated:

> To hold otherwise, or to take the appellant's argument to its logical extension, would allow any landowner to build multiple single family homes on a single lot. We cannot imagine that the Ordinance was drafted to allow such a result. In this regard, we are mindful that in interpreting a zoning ordinance, we must presume that the drafters did not intend a "result that is absurd, impossible of execution or unreasonable."

Id. [quoting *McCoy v. Zoning Hearing Bd. of Radnor Twp.*, 387 A.2d 1332, 1334 n. 2 (Pa. Cmwlth. 1978)]. The court further concluded that the proposed development is a planned development, which is not permitted in the R-2 zoning district. Washington Terrace's appeal to this Court followed.[5]

[5] The relevant factual findings made by the Board are undisputed. The only dispute on appeal concerns the proper interpretation of the Ordinance, which is a question of law. *Reid v. City of Philadelphia*, 598 Pa. 389, 957 A.2d 232 (2008). Accordingly, our review is plenary and limited to determining whether the Board committed an error of law in its interpretation. *1700 Columbus Assocs. v. City of Philadelphia, Zoning Bd. of Adjustment*, 976 A.2d 1257 (Pa. Cmwlth. 2009).

Washington Terrace argues that the use of the singular term "townhouse" or "garden apartment" under Section 3.8.B.6 and C.4 of the Ordinance, permitted as a principal use in the R-2 zoning district, includes "townhouses" or "garden apartments." Washington Terrace maintains that Section 4.1 limits a lot to one principal use, not to one principal building, and that the Board and the trial court disregarded the distinction between a "principal use" and a "principal building" under the Ordinance. Washington Terrace interprets Section 4.1 as prohibiting only a mixed group of townhouse and garden apartment buildings on a lot. The Township counters that the interpretation urged by Washington Terrace would be inconsistent with the purpose of the Ordinance promoting "proper density of population" and preventing "overcrowding of land." Section 1.2.B.1 and 2. The Township also relies on the purpose of the R-2 zoning district providing for "low to moderate density … residential areas … so as to maintain these areas as attractive living environments and to promote the orderly development of the Township." Section 3.8.A. The Township insists that an application of the statutory construction rules to this case would be inconsistent with the legislative intent.[6]

The object of statutory interpretation is to ascertain and effectuate the legislative intent. Section 1921(a) of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1921(a). When the statutory language is clear and free from doubt, it is

[6] Invoking the principle of laches, the Township argues that Washington Terrace should be precluded from asserting its entitlement to develop multiple-family dwellings on the property because in the rezoning proceeding, it was told by the zoning officer that such development would not be permitted in the rezoned property. Washington Terrace, however, did not seek interpretation of Section 4.1 of the Ordinance in the previous proceeding. Moreover, the Township has waived the issue due to its failure to raise it before the Board and the trial court. *See In re McGlynn*, 974 A.2d 525 (Pa. Cmwlth. 2009).

presumed to be the best indication of legislative intent. *Reid v. City of Philadelphia*, 598 Pa. 389, 957 A.2d 232 (2008). In addition, statutes and parts of statutes are in pari materia when they relate to the same persons or things or to the same class of persons or things and, as such, they must be construed together. 1 Pa. C.S. § 1932; *Fairview Twp. v. Fairview Twp. Police Ass'n*, 795 A.2d 463 (Pa. Cmwlth. 2002), *aff'd*, 576 Pa. 226, 839 A.2d 183 (2003). The statutory construction rules apply equally to the interpretation of zoning ordinance. *Steeley v. Richland Twp.*, 875 A.2d 409 (Pa. Cmwlth. 2005).

Here, the Ordinance clearly contemplates more than one principal building per lot. Section 4.2.B provides:

> **4.2 PRINCIPAL BUILDINGS**
>
> ….
>
> **B. Two or More on a Lot**
>
> *Two (2) or more principal buildings* on a lot shall conform to:
>
> 1. the requirements of this Ordinance which would apply to each building *if each were on a separate lot* and
>
> 2. the standards and improvements required for a *land development* by the Subdivision and Land Development Ordinance. [Emphasis added.]

Section 2.1.B.90 of the Ordinance adopts Section 107(a) of the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. § 10107(a), defining the term "land development" to include *"[t]he improvement of one lot* … for any purpose involving … *[a] group of two or more residential … buildings*." (Emphasis added.)

Moreover, Section 3.8.B.6 and 3.8.C.4 of the Ordinance permits "townhouse" and "garden apartment" in the R-2 zoning district as "principal uses." Section 2.1.A.2 of the Ordinance provides that "[t]he singular shall include the

plural, and the plural shall include the singular." *See also* 1 Pa. C.S. § 1902 ("[t]he singular shall include the plural, and the plural, the singular"). Consequently, the principal uses of "townhouse" and "garden apartment" permitted by Section 3.8.B.6 and 3.8.C.4 include multiple units of such dwellings. The only proposed use on each subdivided lot is for "townhouse" or "garden apartment," which will be "[t]he single dominant use or single main use on a lot." Section 2.1.B.137. Washington Terrace's proposal, therefore, falls within the definition of "principal use" and complies with Section 4.1 of the Ordinance. *Compare Smerconish v. Warwick Twp. Bd. of Supervisors*, 71 Bucks L. Rep. 660, 661 (C.P. Pa. 1998) (the proposal to place on the property three separate principal uses, consisting of a McDonald's restaurant with a drive-through window, a gasoline station with a convenience store, and a retail store, violated the zoning ordinance, which provided that "only (1) principal use shall be permitted" on any property, parcel or land).

It is well-settled that the court may not disregard "a statutory definition or other statutory language" or choose "to give effect to one provision, but not to another." *Pa. Associated Builders & Contractors, Inc. v. Commonwealth Dep't of Gen. Servs.*, 593 Pa. 580, 594, 932 A.2d 1271, 1280 (2007). Further, the clear and unambiguous language in a statute may not be disregarded "under the pretext of pursuing its spirit." 1 Pa. C.S. § 1921(b). Section 4.1 limits a lot to one "principle use," not to one "principal building," which is a separate and distinct concept under the Ordinance. The proposed buildings will contain the principal uses of townhouses and garden apartments and, thus, meet the definition of "principal building," i.e., "[t]he building in which the principal use of a lot is conducted." Section 2.1.B.136. In concluding that each

proposed townhouse or garden apartment building on a lot constitutes a principal use, the Board and the trial court disregarded and failed to give effect to the distinction made by the Ordinance between a "principal use" and a "principal building."

This case is clearly distinguishable from *Marshall Township Board of Supervisors v. Marshall Township Zoning Hearing Board*, 717 A.2d 1, 3 (Pa. Cmwlth. 1998), in which the zoning ordinance specifically provided that "a lot may accommodate no more than one (1) *principal building*." (Emphasis added.) In that case, the applicant proposed to erect an antenna and light pole on the parking lot of the bulk mail facility, a principal use. The Court found that the proposed pole was an accessory use and did not create another principal use or principal building. *See also Seipstown Vill., LLC v. Zoning Hearing Bd. of Weisenberg Twp.*, 882 A.2d 32, 35 (Pa. Cmwlth. 2005) (the proposal to construct twelve separate apartment buildings on a contiguous lot failed to comply with the requirement that "[a] plot plan shall show a separate lot for each dwelling"); *South Whitford Assocs. v. Zoning Hearing Bd. of West Whiteland Twp.*, 630 A.2d 903 (Pa. Cmwlth. 1993) (nine buildings were not allowed on a lot under the zoning ordinance limiting a lot to one building).

Unlike in those cases, the Ordinance does not contain any provision prohibiting more than one principal building per lot. To accept the interpretation of the Board and the trial court that Section 4.1 limits a lot not only to one principal use but also to one principal building would violate the well-established construction rule that "courts may not supply words omitted by the legislature as a means of interpreting a statute." *Rogele, Inc. v. Workers' Comp. Appeal Bd. (Mattson)*, 969 A.2d 634, 637 (Pa. Cmwlth. 2009).

As Washington Terrace acknowledges, the proposed buildings must comply with the land development standards set forth in the Subdivision and Land Development Ordinance and the various dimensional requirements under the Ordinance, which would apply if each building were on a separate lot. The Board admits that "if [Washington Terrace] subdivided the property into individual lots containing no more than one building per lot, [it] would still be able to get the same density of development that it desires." Board's Brief at 6. During argument, the Township's counsel conceded that the interpretation of Section 4.1 adopted by the Board and the trial court cannot be reconciled with the unambiguous language of Section 4.2.B regulating more than one principal building on a lot.

Finally, Section 603.1 of the MPC, added by Section 48 of the Act of December 21, 1988, P.L. 1329, 53 P.S. § 10603.1, provides:

> In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

See also Beers v. Zoning Hearing Bd. of Towamensing Twp., 933 A.2d 1067, 1069 (Pa. Cmwlth. 2007), *appeal denied*, 596 Pa. 748, 946 A.2d 689 (2008) ("[z]oning ordinances are to be liberally construed to allow the broadest possible use of land"). When Sections 4.1 and 4.2.B of the Ordinance are construed together in favor of Washington Terrace, it is clear that the Ordinance permits Washington Terrace to construct more than one townhouse or garden apartment building on each subdivided lot. Because the Board's interpretation of the Ordinance is "clearly erroneous," its interpretation is not entitled to deference and weight.

McIntyre v. Bd. of Supervisors of Shohola Twp., 614 A.2d 335, 337 (Pa. Cmwlth. 1992).[7]

Accordingly, the trial court's order affirming the Board's decision is reversed.

BONNIE BRIGANCE LEADBETTER,
President Judge

[7] Because we have held that under the plain language of the Ordinance multiple buildings of the same type are not multiple "uses," the proposed development does not constitute a planned development under Section 2.1.B.133, and it is unnecessary to further address this question. *See* n. 4 above.

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O R D E R

AND NOW, this 13th day of January, 2010, the order of the Court of Common Pleas of Northampton County in the above-captioned matter is hereby REVERSED.

BONNIE BRIGANCE LEADBETTER,
President Judge