

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The Lofts at Logan :  
 :  
 v. :  
 : No. 1742 C.D. 2008  
 Zoning Board of Adjustment and City : Argued: November 9, 2009  
 of Philadelphia :  
 :  
 Appeal of: James and Carol Johnson and :  
 St. Michael Neighbors :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge<sup>1</sup>  
HONORABLE KEITH B. QUIGLEY, Senior Judge

*OPINION NOT REPORTED*

MEMORANDUM OPINION  
BY SENIOR JUDGE QUIGLEY

FILED: January 7, 2010

James and Carol Johnson and St. Michael Neighbors (Appellants) appeal from the July 31, 2008 order of the Court of Common Pleas of Philadelphia County (trial court) reversing the decision of the Zoning Board of Adjustment (Board) of the City of Philadelphia (City) that denied a variance to The Lofts at Logan (Owner) to convert a vacant building into a six-unit apartment house in an area zoned R-9A Residential. The question raised is whether Owner satisfied its burden of proving that strict enforcement of the City's Zoning Code (Code) would result in an unnecessary hardship. We reverse.

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<sup>1</sup> This case was decided before Senior Judge McCloskey's retirement on December 31, 2009.

Owner owns a two-story building at 34 E. Logan Street in an area of the City zoned R-9A. The building has been vacant for some twenty-five years. Owner seeks to convert the building to a six-unit apartment house, but multi-family dwellings are not permitted in the R-9A zoning district. Thus, Owner's application to the City's Department of Licenses and Inspections for a building permit was denied. Owner filed a request with the Board for a variance. After a hearing, at which neighbors, including Appellants, objected to the proposal, the Board denied the request on the ground that Owner did not satisfy its burden of showing that there is no adequate use available for the property that does not require a variance. Owner appealed to the trial court, which took no additional evidence, but reversed. The trial court ruled that the Board abused its discretion in stating that an adequate use exists for the property that does not require a variance, explaining that the building has been vacant for twenty-five years and conversion of the building to a single-family dwelling was not feasible.

Appellants now appeal to this court.<sup>2</sup> They contend there was no evidence supporting the trial court's determination that it would not be feasible to use the property under the present zoning and, therefore, that Owner would suffer hardship if not granted a variance. We agree.

A party seeking a variance has the burden of proving that unnecessary hardship will result if the variance is denied, and that the proposed use will not be contrary to the public interest. *Valley View Civic Ass'n v. Zoning Board of Adjustment*, 501 Pa. 550, 462 A.2d 637 (1983). The hardship must be unique or

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<sup>2</sup> Where, as here, the trial court takes no additional evidence, our review is limited to determining whether the zoning hearing board committed an abuse of discretion or an error of law. *Richards v. Borough of Coudersport Zoning Hearing Board*, 979 A.2d 957 (Pa. Cmwlth. 2009).

peculiar to the property as distinguished from a hardship arising from the impact of zoning regulations on an entire district. *Id.* To establish unnecessary hardship, an applicant must show that, due to the property's physical characteristics, it cannot be used under the current zoning for any permitted purpose, can conform to such purpose only at a prohibitive expense, or that the property has either no value or only distress value for any permitted purpose. *Arter v. Philadelphia Zoning Board of Adjustment*, 916 A.2d 1222 (Pa. Cmwlth.), *appeal denied*, 594 Pa. 691, 934 A.2d 75 (2007).

We have carefully reviewed the record and find no evidence whatsoever indicating that the building, due to its physical characteristics, cannot be used for any permitted purpose under the current zoning, can conform to such purpose only at a prohibitive expense, or has either no value or only distress value for any permitted purpose. The bare fact that the building was vacant for twenty-five years in and of itself does not establish hardship in the absence of evidence tying that extended period of vacancy to the building's physical characteristics.<sup>3</sup> *Arter*. Thus, there is no basis for disturbing the Board's determination that Owner did not satisfy its burden of proof.

Accordingly, we reverse the order of the trial court.

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KEITH B. QUIGLEY, Senior Judge

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<sup>3</sup> We note that, pursuant to section 14-205 of the City's Code, property in the R-9A zoning district can be used for (1) single-family dwellings, (2) residential related uses or (3) non-residential uses. Section 14-203 of the Code lists residential related and non-residential uses that are permitted in an R-9A zoning district. The trial court never considered whether, based on the building's physical characteristics, it was feasible for Owner to convert the building to any of those uses, considering only whether it was feasible for Owner to convert the building into a single-family dwelling.

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***ORDER***

AND NOW, this 7th day of January, 2010, the July 31, 2008 order of the Court of Common Pleas of Philadelphia County hereby is reversed.

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KEITH B. QUIGLEY, Senior Judge