

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Shawn W. Skibber, :  
Appellant :  
v. : No. 1991 C.D. 2007  
: Submitted: June 12, 2008  
Stroud Township Zoning Hearing :  
Board :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE PELLEGRINI

FILED: July 8, 2008

Shawn W. Skibber (Property Owner) appeals an order of the Court of Common Pleas of Monroe County (trial court) affirming the Stroud Township Zoning Hearing Board's (Zoning Board) denial of his application for a modification of an existing special exception limiting the number of cars that could be parked outside his auto repair shop. Because the Zoning Board did not abuse its discretion in denying the modification, we affirm.

Property Owner is the owner of an auto repair shop located at 1951 West Main Street in Stroud Township. The property is located in a C-2 General Commercial District that allows auto repair shops as a special exception which was granted with conditions in November 2000 to the prior owner. The conditions

imposed were that the property only be accessed from a 30-foot unnamed private street to the rear of the building (and not the main business route) and that the outdoor parking be limited to nine spaces. In June 2002, Property Owner filed an application with the Zoning Board seeking modification of those conditions by allowing an additional 21 spaces to park cars in need of repair and to allow him direct access to the main route, Business Route 209, from his property.

At the hearing on his modification request to allow access directly to Route 209, Property Owner presented evidence that established that he had a legal right-of-way from his property to the business route. As to the increase in parking requirements, Property Owner maintained that if he were to be granted the additional parking spaces, he would be able to alleviate the concerns of the Protestants that the property resembled a “junk yard.” Additionally, Property Owner submitted a site plan showing the location of the parking spaces, but it failed to include an explanation of how he would satisfy the requirements of the zoning ordinance to operate an auto repair business in a C-2 zoning district, particularly with regard to buffering and screening requirements. He also admitted that he had violated the special exception conditions by allowing as many as 18 to 30 vehicles to be parked on the property.

A number of neighboring residents testified that the operation of the business interfered with their quiet use and enjoyment of their homes and the surrounding residential neighborhood because the parcel often resembled a junk yard filled with cars that were inoperable. They also testified that they were concerned about the inoperable vehicles leaking toxic fuels onto the ground that

would harm nearby properties. In addition, one resident indicated that he had observed burning piles of trash and tires on the property.

Because Property Owner established that he had a legal right-of-way giving him direct access to Route 209, the Zoning Board granted full right-of-way access for the property without any exceptions. However, it denied the modification to allow the increase in parking spaces because Property Owner failed to produce sufficient evidence to indicate the need for a large increase in the number of parking spaces or that he maintained the necessary landscaping, screening, buffers and setbacks as required by the zoning ordinance.<sup>1</sup> Property

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<sup>1</sup> Under Sections 4.820-827 of the zoning ordinance, a special exception:

§4.821 – shall not cause substantial injury to the value of other property where it is located.

§4.822 – shall conform with regulations applicable to the District where located or shall conform to the more specific standards listed in Article V of this Ordinance and shall conform to the intent of the District.

§4.823 – shall be compatible with adjoining development

§4.824 – shall provide landscaping and screening to protect and enhance adjoining areas. Adequate landscaping and screening may include a landscaped buffer yard(s) and buffer strip(s) as defined by Section 6.200 and Section 6.300 as deemed necessary by the Zoning Hearing Board.

§4.825 – shall provide off-street parking and loading and access in keeping with this Ordinance so as to minimize interference with traffic on local streets.

§4.826 – shall not jeopardize the public health, safety, welfare and convenience.

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

Owner then appealed to the trial court which, without taking additional evidence, affirmed, and this appeal followed.<sup>2</sup>

To obtain a modification, an owner has to establish that there is (1) a change in circumstances that make the condition inappropriate, and (2) that the grant of relief will not injure the public. *Ford v. Zoning Hearing Board of Caernarvon Township*, 616 A.2d 1089 (Pa. Cmwlth. 1992). The only argument that Property Owner advances to show that he met this standard is that the parking limitation to nine spaces was imposed because more parking spaces would result in an increase of traffic and cause too much traffic on the unnamed private road, and this concern was now alleviated because Property Owner now has direct access to the main business route, Route 209. However, Property Owner never raised that argument or proffered evidence before the Zoning Board to indicate that was the reason for the imposition of the parking space limitations and that direct access

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**(continued...)**

§4.827 – such Special Exceptions which are authorized by the Board may be subject to any additional conditions and safeguards established by the Zoning Hearing Board in each case which may be warranted by the character of the areas in which such cases are proposed or by other special factors and which are necessary to implement the purposes of this Ordinance.

<sup>2</sup> Where the trial court reviews a zoning board decision without taking additional evidence, our review is limited to determining whether the zoning board abused its discretion, committed an error of law, or made findings of fact not supported by substantial evidence of record. *Accelerated Enterprises, Inc. v. The Hazle Township Zoning Hearing Board*, 773 A.2d 824 (Pa. Cmwlth. 2001).

ameliorated the need for that condition; therefore, we will not consider it on appeal.

Based on the arguments made before and the evidence offered to the Zoning Board, it properly denied the modification request to increase parking. Property Owner offered no evidence establishing a change in circumstances that would justify the elimination of the parking restriction or that the increase in parking – to store automobiles awaiting repair – was compatible with the surrounding residential neighborhood, or that the parking area that was proposed complied with the screening and buffering requirements of the zoning ordinance. Because Property Owner failed to meet his burden to obtain a modification of the conditions imposed when the auto repair facility was granted as a special exception, the Zoning Board did not abuse its discretion in denying Property Owner’s application to modify the parking conditions, and the order of the trial court is affirmed.

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DAN PELLEGRINI, JUDGE

