

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Alexios Kotretsos and Vassiliki :  
Kotretsos, his wife, :  
Appellants :  
v. : No. 2165 C.D. 2007  
Zoning Hearing Board of Stroud : Submitted: June 12, 2008  
Township :

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

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
SENIOR JUDGE FLAHERTY

FILED: July 16, 2008

Alexios Kotretsos and Vassiliki Kotretsos (Appellants) appeal from an order of the Court of Common Pleas of Monroe County (trial court) which affirmed the decision of the Zoning Hearing Board of Stroud Township (Board) denying Appellants' request for a zoning permit because Appellants did not submit an approved land development plan with their request. We affirm.

Appellants are the owners of property which is located at 1947 W. Main Street, in Stroud Township, wherein they operate Triplett's Family Diner. Appellants purchased the property and diner, located in the C-2 zoning district, in 2005. In 2006, Appellants tore down a wood shed on the property, which had been used for storage. Appellants then erected a new shed which contains an office and bathroom and is also used for storage. Additionally, Appellants placed a walk-in freezer/cooler (cooler) on the property.

After the shed and cooler were already erected, Appellants applied for a zoning permit for the shed and cooler construction. The Township Planning Administrator/Zoning Official denied the application, concluding that construction of the shed and cooler constitutes land development for which submittal and approval of a land development plan was required.<sup>1</sup> Appellants appealed the decision to the Board, which conducted a hearing.

The testimony at the hearing, which was credited by the Board, revealed that the shed and cooler are somehow attached to the existing diner. The shed measures 8 feet by 20 feet. According to Appellants, the shed was erected on the blocks of the old shed that had been removed. The shed is not directly accessible from the diner. The pre-fabricated walk-in cooler measures 9 ½ feet by 19 feet. One of the doors opens directly into the diner. The other door opens to the outside. From there, the shed can be accessed by walking up a ramp.

The Board determined that Appellants erection of the shed and cooler constituted land development under Article 6 of the Subdivision and Land Development Ordinance (SALDO). As such, the Board concluded that the zoning officer properly determined that a zoning permit could not be issued absent a land development plan.<sup>2</sup>

On appeal, the trial court affirmed. The trial court determined that the new structures constituted an addition to the diner. The trial court cited to Stack v. Episcopal Residences, Inc., 285 A.2d 925 (Pa. Cmwlth. 1972), wherein the issue

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<sup>1</sup> In accordance with Section 11.100 of the Zoning Ordinance, when considering a permit application, the zoning officer is to determine if subdivision and/or land development approval is required and has been obtained.

<sup>2</sup> The original plan submitted to the zoning officer showed that the shed and cooler were accessible from the diner. Appellants thereafter modified the plan so that only the cooler is directly accessible from the diner.

was whether a proposed addition to a building was an extension or a separate building, which under the city's ordinance, required a separate lot. This court determined that the proposed addition was an extension of the existing building, rather than a separate building, because "the existing structure and the proposed wing are to be physically connected to each other, have internal access by hallways, share many common facilities, as well as a common fire alarm system." Stack, 285 A.2d at 927. In this case, because the new structures were physically attached to the diner and the cooler was directly accessible to the diner, the trial court reasoned that the Board did not err in concluding that the shed and cooler constituted an addition for which a land development plan was required. This appeal followed.<sup>3</sup>

On appeal, the issue before this court is whether the construction of the shed and walk-in cooler constitute land development. Appellants argue that the definition of land development, set forth in the SALDO, expressly excludes the addition of accessory buildings subordinate to an existing principal structure on the same lot. Appellants maintain that the shed and cooler are accessory structures and, as such, no land development plan is required.

"Land Development" is defined under Article 6 of the SALDO to include:

- A. The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:

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<sup>3</sup> Where, as here, the trial court does not take additional evidence, our review is limited to determining whether the Board committed an abuse of discretion or error of law. Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Cmwlth. 2001).

1. a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
2. the division or allocation of land or space, whether initially or cumulatively, between; or
3. among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.

Article 6 of the SALDO further provides:

C. The definition of “Land Development” as contained herein shall be deemed to exclude each of the following:

...

2. the addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building....

An accessory use or structure is defined under Section 2.202 of the Zoning Ordinance as “[a] building or use customarily incidental to the use of the principal building and located on the same lot as the principal building or use.”

Here, Appellants claim that the shed and cooler are accessory to the diner, which is the primary use. Appellants argue that even though the cooler can be accessed directly from a door in the diner, it does not follow that the cooler and shed are an addition. Appellants argue that the facts in Stack are distinguishable,

because in Stack, there was ready access from one part of the structure to another and thus, such constituted an addition rather than a separate accessory use.

The Board responds that the new additions are not accessory structures and that Appellants' intentions are to expand space within the restaurant. Both the shed and cooler are a substantial change to the use of the previous shed that Appellants demolished. The new shed, in addition to providing storage space, also contains a bathroom and an office. We agree with the Board that the bathroom and office are not incidental to the primary use, nor are they accessory in nature. The shed, which contains an office and a bathroom along with the cooler constitute 'improvements' which are considered land development in accordance with the SALDO.

In addition, both structures are not accessory, inasmuch as the Board credited testimony that the improvements are somehow attached to the diner. As in Stack, the cooler and office are physically connected to the restaurant. Thus, they are not accessory buildings separate from the diner, but rather, are a part of the principal building. Additionally, as determined by the Board, the cooler is directly accessible to the diner. As the shed and cooler are not accessory structures, the Board was correct in determining that their construction constituted land development.

In accordance with the above, the decision of the Board is affirmed.

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JIM FLAHERTY, Senior Judge

