

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Placido Calantoni and Maria Calantoni, :
Appellants :

v. :

Williams Township Zoning Hearing :
Board :

v. :

Williams Township Board of :
Supervisors and The Township of :
Williams :

No. 325 C.D. 2009
Argued: November 5, 2009

BEFORE: HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge
HONORABLE JAMES R. KELLEY, Senior Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge (P)

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: December 15, 2009

Placido Calantoni and Maria Calantoni (Calantonis) appeal from the January 22, 2009, order of the Court of Common Pleas of Northampton County (trial court), which denied the Calantonis’ challenge to the Williams Township (Township) Zoning Hearing Board’s (ZHB) interpretation of section 1501.D of the Township’s Zoning Ordinance. We reverse.

The Calantonis own 26.6 acres located within the Township’s low density residential zoning district. In May of 2006, the Calantonis submitted a development plan, proposing to subdivide the property into nine lots, with each lot containing a single-family dwelling. However, the Township Engineer advised the

Calantonis that, in calling for nine lots, their plan did not properly apply section 1501.D of the Zoning Ordinance, which provides:

The natural constraints on a given property shall be identified and deducted from the lot area prior to determining available developable area, resulting in an adjusted tract area. The maximum number of permitted dwelling units shall be determined by multiplying the Adjusted Tract Area of the site by the density factor. The Adjusted Tract Area equals the gross tract area minus the constrained land.

(Trial ct. op. at 2-3.) According to the Township Engineer, this section requires that natural land constraints be deducted from each individual lot as well as from the gross tract area to determine the amount of developable land.

The Calantonis then requested an interpretation of section 1501.D from the Township's Zoning Officer, who issued a letter setting forth the following interpretation:

The natural constraints on a given property shall be identified and deducted from the entire parcel. The same calculation shall be applied to individual lots. Both the entire parcel and the individual lots will have an Adjusted Tract Area. The Adjusted Tract Area equals the gross area of the entire parcel or the individual lots minus the Constrained Land. The maximum number of permitted dwelling units shall be determined by multiplying the Adjusted Tract Area by the density factor.

(Trial ct. op. at 3.) The Zoning Officer stated that this interpretation had recently been codified in Ordinance 2007-2, which was enacted after the Calantonis submitted their plan for review.

The Calantonis appealed to the ZHB, arguing that section 1501.D was ambiguous and, thus, must be construed in their favor. In support of their position, the Calantonis presented the testimony of the chairperson of the Township's Board of Supervisors (Board). The chairperson testified that section 1501.D caused some confusion with regard to its interpretation and application and that the Board enacted Ordinance 2007-2 to clarify the Board's intention with regard to section 1501.D. Scott P. McMackin, who prepared the Calantonis' subdivision plan, testified that, in his opinion, section 1501.D was poorly written and ambiguous at best. The Township's Zoning Officer testified that, although a prior appeal raised the same issue as the Calantonis about section 1501.D, indicating that there was some ambiguity, he always applied the provision to both the overall tract and the individual lots.

After considering the matter, the ZHB concluded that section 1501.D of the Zoning Ordinance unambiguously applies to lots as well as the overall tract because the first sentence specifically refers to the lot. The Calantonis appealed to the trial court, which affirmed. The Calantonis now appeal to this court.

The Calantonis argue that section 1501.D of the Zoning Ordinance is ambiguous as to its applicability to individual lots and, thus, should be interpreted in a manner favorable to the Calantonis, i.e., so that section 1501.D only applies to the property as a whole and does not apply to individual lots. We agree.

Section 1501.D of the Zoning Ordinance, relating to environmental preservation, requires that the number of permitted dwelling units be determined by

multiplying the Adjusted Tract Area of the site by the density factor. The Zoning Ordinance defines a “tract” as “the minimum amount of land required to be approved ... in a preliminary subdivision or land development plan **prior to subdivision into allowed lots** smaller than the minimum tract size.” (R.R. at 12a) (emphasis added). Given this definition, one could reasonably interpret section 1501.D as requiring a developer seeking to subdivide property to determine permitted dwelling units by multiplying the adjusted area of the land “prior to [its] subdivision” by the density factor.

Certainly, section 1501.D does **not** clearly and unambiguously provide that the developer must also deduct the natural constraints for each individual lot proposed by the subdivision plan. Indeed, the chairperson of the Township’s Board acknowledged that the Board enacted a new ordinance to clarify the meaning of section 1501.D and to reduce existing confusion. Moreover, the Township’s Zoning Officer testified that there was some ambiguity in the provision.¹ Under these circumstances, we conclude that section 1501.D is ambiguous with respect to individual lots.

Courts are to interpret ambiguous language in an ordinance in favor of the property owner and against any implied extension of a restriction. *Isaacs v. Wilkes-Barre City Zoning Hearing Board*, 612 A.2d 559 (Pa. Cmwlth. 1992). Thus,

¹ In concluding that section 1501.D was unambiguous, the ZHB considered various factors for ascertaining the intention of the lawmaker. However, it is only when the language of an ordinance is **ambiguous** that there is a need to consider various factors to ascertain the intention of the lawmaker. *See* section 1921(c) of the Statutory Construction Act of 1972, 1 Pa. C.S. §1921(c) (stating that the intention of the General Assembly may be ascertained by considering various factors “[w]hen the words of the statute are not explicit”).

here, we must interpret section 1501.D so that it applies to tracts prior to their subdivision but does not apply to the individual lots.

Accordingly, we reverse.

ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 15th day of December, 2009, the order of the Court of Common Pleas of Northampton County, dated January 22, 2009, is hereby reversed.

ROCHELLE S. FRIEDMAN, Senior Judge