IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Milton Phelps, et ux	:	
	:	
v.	:	No. 33 C.D. 2008
	:	
The Zoning Hearing Board of the Township of Ridley and Township of Ridley	:	Argued: June 9, 2008
	:	
Milton Phelps and William Phelps, Appellants	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: December 5, 2008

Milton and William Phelps (Landowners) appeal the order of the Court of Common Pleas of Delaware County (trial court) denying their appeal of the decision of the Zoning Hearing Board of the Township of Ridley (Board). The Board's decision sustained the enforcement notice issued by the Township of Ridley's (Township) Zoning Enforcement Officer directing Landowners to cease parking oil delivery trucks and storage trailers, and the use of existing storage sheds on their property in the Township. We affirm.

In 1950, Leo Ketchell acquired the subject property located in the Township in Delaware County. On October 6, 1952, the Township issued a

Certificate of Occupancy to Ketchell to use a building on the property as a "Private Garage & Storage Space", and indicated that the property was located in an industrial zoning district at that time.

On March 5, 1956, the Township issued a Certificate of Occupancy to Ketchell permitting two 10,000-gallon fuel oil storage tanks and racks to be used on the property, and stated that it was for "Retail Business only. Not for the wholesale or bulk distribution to other retailers or distributors." The Certificate indicated that the property was located in a D-Residential zoning district.

By ordinance dated December 3, 1958, the zoning district in which the property was located was changed back to an industrial zoning district. On May 25, 1977, the zoning district in which the property is located was changed to a C-Residential zoning district in which only residential uses are permitted.[1]

---

[1] With respect to the permitted uses in the C-Residential zoning district, Section 325-21 of the Township's Zoning Ordinance provides:

> A structure may be erected or used and a lot may be used or occupied for any of the following uses and no other:
>
> A. Uses permitted in the A and B Residential Districts, subject to the regulation of these districts.
>
> B. Two-family attached or semidetached dwellings.

In turn, with respect to the permitted uses in the A-Residential zoning district, Section 325-13 of the Ordinance provides, in pertinent part:

> A structure may be erected, altered or used and a lot or premise may be used for any of the following purposes and for no other:
>
> A. Single-family detached dwelling.
>
> B. Churches and similar places of worship.
>
> C. Public grounds.
>
> D. General gardening and the growing of trees and nursery stock….
>
> E. Public utility structures….

(Continued....)

The Ketchell Oil Company maintained its heating oil retail distribution business on the property from 1950 to 1991[2] when its customer list was sold to the Sun Oil Company and the oil storage tanks were removed. At the time that the zoning was changed to C-Residential in 1977, the Ketchell Oil Company was parking three oil delivery trucks on the site, and maintained an office and two 10,000-gallon storage tanks on the property.

Beginning in 1985, the Ketchell heirs granted a license to John Sperratore to park Spear Oil Company oil trucks on the premises. From 1985 to

---

> F. Customary accessory uses and buildings incidental to any permitted uses….

Finally, with respect to the permitted uses in the B-Residential zoning district, Section 325-17 of the Ordinance provides:

> A structure may be erected or used and a lot may be used or occupied for any of the follow uses and no other
>
> A. Uses permitted in the A Residential Districts, subject to the regulations of the A Residential Districts.
>
> B. Customary accessory uses and buildings incidental to any of the above permitted uses, including those specified in the A Residential Districts.
>
> C. Municipal recreation areas.

[2]Section 325-101 of the Township's Zoning Ordinance provides, in pertinent part, that "[t]he lawful use of land or buildings existing at the date of the adoption of this chapter may be continued, although such use … does not conform to the regulations specified by this chapter for the zone in which such land or building is located…." In addition, Section 325-105.A. of the Zoning Ordinance provides, in pertinent part:

> Upon application for special exception, the [Board] may approve the expansion or alteration of a use of land or buildings which is not in conformance with the provisions of this chapter, provided such expansion or alteration of use is restricted to an additional area not exceeding 35% of those existing buildings, structures, parcels, lot or tracts of land devoted to the nonconforming use and existing on the effective date of this chapter … creating the nonconformity….

the present, Spear Oil has parked two, and sometimes three, of its retail heating oil distributions trucks on the property. In 2001, Domestic Oil Company was also permitted to park two of its oil trucks on the property.

On August 11, 2004, the Ketchell heirs subdivided the property and sold Landowners a 1.66-acre plot. In addition to the heating oil distribution use, Landowners were also parking four of their trailers on the property. Landowners intended to continue to rent space to Spear Oil to park its trucks and trailer, to store three of their own flatbed trailers, and to park five or six additional boxed trailers on the property for storage. Landowners also intended to demolish two old frame sheds and to replace them with a one-story steel storage building covering the same area for additional storage.

In March of 2005, Landowners received the instant enforcement notice from the Township's zoning officer ordering them to remove all debris and junk from the property, to cease parking oil delivery trucks or storage trailers on the property, and to cease all commercial activity on the property because it was located in the C-Residential zoning district. Landowners appealed the zoning officer's enforcement notice to the Board, asking the Board, inter alia, to recognize their vested right to continue their nonconforming use of the property to park oil delivery trucks, to park storage trailers, and to continue using storage sheds located on the property.[3]

[3] Landowners also sought a special exception to demolish the old frame sheds and to replace them with the one-story steel storage building.

On August 9, 2006, following hearings, the Board issued a decision disposing of Landowners' appeal of the enforcement notice.[4] In its decision, the Board stated the following, in pertinent part:

> [I]t is clear that the Leo Ketchell heirs began the practice of leasing the premises to other oil trucks in or about 1985 which was after the rezoning of the property to C-Residential. Specifically, Spear Heating and Domestic Oil were permitted to park their trucks and maintain storage on the property beginning at a time after the zoning change in 1977. Clearly, on this record, these uses were not in existence at the time of the change of zoning for the parcel.
>
> The nonconforming use which is within the orbit of protection of the law and the Constitution is that nonconforming use which exists at the time of the passage of the Zoning Ordinance or the change in the use district under the Zoning Ordinance, not a new or different nonconforming use.
>
> * * *
>
> Here, the owner of the parcel had the vested right to continue to operate his heating oil distribution business. That business concluded in 1991. A few years prior to the termination of the owner's business, he began permitting other heating oil distribution companies to park trucks on his parcel. The record on remand clearly demonstrates that this leasing activity instigated in or about 1985 occurred after the Board of Commissioners had rezoned the property to C-Residential in 1977. Therefore, this business activity of renting space to other commercial truck enterprises occurred at a time when the property was zoned C-Residential. This clearly was not a

[4] Initially, the Board issued a decision disposing of Landowners' appeal on August 10, 2005. However, following an appeal to the trial court, the matter was remanded to the Board by the trial court on May 22, 2006 to clarify the history of the zoning classification of the subject property.

> natural expansion of the [Ketchell] Oil Company business but rather a new business of renting the facilities for other industrial users in violation of the Zoning Ordinance.

Board Decision on Remand at 3-4 (citations omitted). As a result, the Board issued an order sustaining the enforcement notice. See Id. at 5. Landowners appealed the Board's decision to the trial court.

On December 4, 2007, following the submission of an agreed statement of the facts based on the record before the Board, the trial court issued an opinion and order disposing of the appeal. In the opinion, the trial court stated the following, in pertinent part:

> [T]he record in this matter established that prior to May, 1977, a home heating oil business was operated on the subject property, and that after May, 1977, it continued to operate at the site as a non-conforming use until 1991, when the business ceased operations. The record fails to show, however, that at any time prior to May, 1977, the subject property was used as a rental site for oil delivery and other commercial vehicles, the use for which [Landowners] currently seek to utilize the property. Since the law protects the continuation of a pre-existing non-conforming use or the natural expansion of such a use, but offers no such protection to a different or second non-conforming use, the record supports the findings and conclusions of the [Board] that [Landowners' appeal] from the determination of the Zoning Enforcement Officer was without merit.

Trial Court Opinion at 4-5. As a result, the trial court issued the instant order denying their appeal of the Board's decision. See Id. at 6. Landowners then filed the instant notice of appeal.[5]

[5] This Court's scope of review in zoning cases, where, as here, the trial court did not receive additional evidence, is limited to determining whether the Board committed an error of

(Continued....)

In this appeal, Landowners claim[6] that the trial court erred in affirming the Board's decision because: (1) the Board abused its discretion by ignoring or overlooking uncontradicted evidence showing separate and distinct industrial or commercial nonconforming uses on the property; (2) the Board abused its discretion and erred in determining that the industrial or commercial nonconforming uses on the property were new and different from the existing nonconforming use; and (3) the Board erred in determining that all nonconforming uses on the property were abandoned when Ketchell Oil Company ceased operations in 1991.

Landowners first claim that the trial court erred in affirming the Board's decision because the Board abused its discretion by ignoring or overlooking uncontradicted evidence showing separate and distinct industrial or commercial nonconforming uses on the property. More specifically, Landowners contend that the Board erred in ignoring "[t]he uncontradicted and unchallenged evidence show[ing] that there was an industrial painting company, a hardwood flooring company and two (2) auto repair shops renting space … in May 1977…" and that "[t]hese industrial/commercial users shared the space with Ketchell Oil Company." Brief of Appellants at 13.

However, it is well settled that a zoning hearing board, as fact-finder, is the sole judge of the credibility and weight of the evidence presented. Nettleton v. Zoning Board of Adjustment of the City of Pittsburgh, 574 Pa. 45, 828 A.2d 1033 (2003); Valley View Civic Asssociation v. Zoning Board of Adjustment, 501

law or manifestly abused its discretion. Evans v. Zoning Hearing Board of the Borough of Spring City, 732 A.2d 686 (Pa. Cmwlth. 1999).

[6] In the interest of clarity, we reorder the claims raised in the instant appeal.

Pa. 550, 462 A.2d 637 (1983); Taliaferro v. Darby Township Zoning Hearing Board, 873 A.2d 807 (Pa. Cmwlth.), petition for allowance of appeal denied, 585 Pa. 692, 887 A.2d 1243 (2005). As a result, a zoning hearing board is free to reject even uncontradicted evidence that it finds lacking in credibility, Nettleton, Valley View Civic Asssociation, including the testimony of an expert witness. Taliaferro. This Court's review of a zoning hearing board's factual findings is limited to determining whether the board's findings of fact are supported by substantial evidence. Nettleton; Valley View Civic Asssociation; Taliaferro.

Based on the foregoing, it is clear that the Board was free to reject the purportedly uncontradicted and unchallenged evidence indicating that there were multiple commercial/industrial tenants on the property both before and after the zoning change in 1977. As a result, we will not accede to Landowners request that this Court reevaluate and reweigh this evidence as such an endeavor is clearly beyond this Court's limited scope of appellate review. Nettleton; Valley View Civic Asssociation; Taliaferro. In short, Landowners allegation of error in this regard is patently without merit.

Landowners next claim that the trial court erred in affirming the Board's decision because the Board abused its discretion and erred in determining that the industrial or commercial nonconforming uses on the property were new and different nonconforming uses from the existing nonconforming use. More specifically, Landowners contend that there is ample evidence to prove that the owner of Ketchell Oil Company and his heirs not only operated the oil delivery business, but also had leased the space to the industrial/commercial tenants on the property for the ten-year period of 1975 to 1985, prior to the enactment of the Ordinance in 1977. In addition, following the enactment of the Ordinance, the heirs started leasing space to Spear Oil in 1985 to park its oil trucks. Thus,

Landowners claim that, contrary to the Board's conclusion, the proposed use of the property is consistent with the prior nonconforming industrial/commercial uses and does not constitute a new or different nonconforming use from the pre-existing nonconforming oil delivery use.

In general, a pre-existing nonconforming use arises when a lawful existing use is later barred by a change in a zoning ordinance. Hager v. West Rockhill Township Zoning Hearing Board, 795 A.2d 1104 (Pa. Cmwlth. 2002). The right to maintain a pre-existing nonconformity is available only for uses that were lawful when they came into existence and which existed when the ordinance became effective. Id. The party proposing the existence of the nonconforming use must prove its existence and legality before the enactment of the ordinance at issue. Id.

In addition, as the Pennsylvania Supreme Court has noted:

> The use of the property which the ordinance protects, or "freezes", is the use which was in existence at the time of the passage of the ordinance or the change of a use district but it offers no protection to a use *different* from the use in existence when the ordinance was passed…. The nonconforming use which is within the orbit of protection of the law and the Constitution is the nonconforming use which exists at the time of the passage of the zoning ordinance or the change in a use district under a zoning ordinance, not a *new* or *different* nonconforming use….

Hanna v. Board of Adjustment of Borough of Forest Hills, 408 Pa. 306, 313-314, 183 A.2d 539, 543-544 (1962) (citations omitted and emphasis in original). Likewise, "[a]n accessory use can not be the basis for the establishment of a nonconforming principal use…." Stokes v. Zoning Board of Adjustment, 402 Pa. 508, 510-511, 167 A.2d 316, 317 (1961). See also Hager, 795 A.2d at 1112 n.14 ("[T]here is no constitutionally protected right to change a nonconforming use to

another use not allowed by the zoning ordinance, nor may an additional nonconforming use be appended to an existing nonconformity. Therefore, to qualify as a continuation of an existing nonconforming use, a proposed use need not be identical to the existing one, but it must be sufficiently similar to the nonconforming use so as not to constitute the creation of a new or different use….") (citations omitted).

With respect to the purported industrial/commercial tenants on the property, as argued by Landowners above, the Board did not find that such a use existed on the property in spite of evidence that purportedly supports such a finding. Thus, as a threshold matter, Landowners failed to sustain their burden of demonstrating that this industrial/commercial rental use existed prior to the enactment of the Ordinance in 1977. See, e.g., Hager, 795 A.2d at 1110-1111 ("[A]lthough [the landowner] successfully proved that the Campground was operating prior to the adoption of the [ordinance prohibiting long-term rentals], [the landowner] did not present evidence sufficient to prove that the Campground included seasonal or permanent renters in advance of the [ordinance's] adoption…. Therefore, with regard to the Campground's operation, the ZHB justifiably determined that long-term campsite rental was lawful but nonexistent prior to the adoption of the [ordinance], whereas long-term campsite rental existed but was unlawful after the adoption of the [ordinance]. Accordingly, the ZHB properly held that [the landowner] failed to meet his burden of proving legal nonconforming status with regard to the time restrictions of the [ordinance].").[7]

[7] Mr. Evans, the former manager of Ketchell Oil Company, testified, in pertinent part, as follows regarding the other commercial/industrial tenants on the property:

> Q. Now, what other types of tenants or occupiers were on the property over the years that you are personally aware of?

(Continued....)

A. Well, I only have had several automotive garages in there.

There was a guy that had a flooring business in there. Danny Cavno.

Q. Did he have a building that he used for his business?

A. Yes.

The out-building is still there that he normally used to store his floor sanding equipment.

Q. How about a painting company?

A. P&C Painting. The gentleman is present here. The owner.

Q. The owner of P&C Painting is here tonight, correct?

A. Yes.

Martin Columbraros.

Q. And what did he have there?

A. He stored painting equipment. Many vehicles. Sand blasting equipment. Paints. Whatever.

You know, whatever they used in the painting business.

Q. So, he had a lot of different commercial or industrial vehicles?

A. Yes.

Q. Did he have any large storage boxed trailers there?

A. Well, he utilized the trailers that were there. Yes.

Q. And how long was he there and what was the time period that he was present on that location?

A. It was about a ten year period give or take.

I'm not exactly sure.

Q. You said there were a couple different automobile repair shops.

A. Paul Delusiano.

Q. How long was he there?

A. Ten, fifteen years or better he was there I would say.

Q. And did he have a building that he used for the automobile

(Continued....)

repair shop?

A. Well, he utilized the office that Mr. [Ketchell] used.

He used that, and he used one of the garages that was there.

Q. Okay.

A. And there was an automotive business.

I think it's still visible on the plans that they used to work on the cars.

* * *

Q. Okay.

Now, when you sold the piece of land to the Phelps brothers, can you tell the Board what was the condition of the land when you sold it?

In other words, what was on that property at that time?

A. The out-buildings that were there had been neglected. I had tenants take stuff in the buildings.

They had just left the stuff and never, my agreement with most of them were if they wanted to store stuff in there, they had to upkeep the buildings, and most of the people who had stuff in there when the Phelps came in had just abandoned the buildings. No upkeep on them. They were in bad shape.

Q. How many buildings were on the property when you sold it to them?

A. Four buildings.

Q. All right.

And were there any boxed storage trailers on the property when you sold it to them?

A. Yes.

Q. How many?

A. Four boxed storage trailers….

* * *

Q. Now, was [Ketchell] actively delivering oil up until you closed the business in March of 1991?

(Continued....)

A. Yes, it was.

Q. And [Spear] has been there continuously since the mid eighties, right?

A. That's correct.

Q. All of these out-buildings that are there the sheds or the things that are on the property, who is the last tenant that you had that utilized them?

Do you remember?

A. The last tenant in the sheds was probably Paul Delusiano who passed away, I think, in like '93-'94. Maybe even later than that.

Q. So, basically, the sheds were not being utilized from 1993 or 1994 until you sold it to the Phelps'.

Is that right?

A. Other than storage, I had been using them, the one shed, the garage, for storage of vehicles.

N.T. 6/8/05 at 41-46, 51-52.

Thus, even if it is assumed that the foregoing evidence supports a finding of such a nonconforming use, and even if it is assumed that such a use is the same type of nonconforming use as the acknowledged heating oil distribution use, the industrial/commercial rental use admittedly ceased ten years before Landowners purchased the property in 2004. See N.T. 6/8/05 at 51-52. As a result, any such use is presumed to have been abandoned under the relevant provisions of the Township's Zoning Ordinance prior to the Landowners' purchase of the property. See Section 325-102 of the Zoning Ordinance ("[A] nonconforming use shall be adjudged as terminated when there occurs an abandonment of any such use or activity by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within a period of six months from the date of cessation or abandonment…."); Section 325-108 of the Zoning Ordinance ("[A]ll nonconforming … junk storage areas, storage areas and similar nonconforming use of open land not involving a substantial investment in permanent buildings, when abandoned … shall not be continued…."). See also Latrobe Speedway, Inc. v. Zoning Hearing Board of Unity Township, 553 Pa. 583, 592, 720 A.2d 127, 132 (1998) ("[F]ailure to use the property for a designated time provided under a discontinuance provision is evidence of the intention to abandon. The burden of persuasion then rests with the party challenging the claim of abandonment. If evidence of a contrary intent is introduced, the presumption is rebutted and the burden of persuasion shifts back to the party claiming abandonment….") (citation omitted).

With respect to Spear Oil's lease of space to park its oil trucks, as noted above, in 1956 the Township issued a Certificate of Occupancy to Ketchell to use a building on the property as a "Private Garage & Storage Space". In addition, in 1958, the Township issued a Certificate of Occupancy permitting two 10,000-gallon fuel oil storage tanks and racks to be used on the property, and stated that is was for "Retail Business only. Not for the wholesale or bulk distribution to other retailers or distributors." In addition, at the time Spear Oil starting leasing space to park its trucks on the property in 1985, Ketchell was using the property for its oil delivery business and the existing parking on the property was an accessory use to that nonconforming oil delivery use.[8] Thus, the leasing of

[8] Mr. Sperratore, the owner of Spear Oil testified, in pertinent part, as follows regarding the oil delivery trucks parked on the property:

> Q. Where do you keep your oil delivery trucks and your equipment?
>
> A. In Crum Lynne.
>
> Q. On the property owned by Milton and William Phelps?
>
> A. Yes.
>
> Q. And how long have you been parking your oil trucks and keeping your equipment at that location?
>
> A. Around '85, 1986.
>
> Q. That's when you started there?
>
> A. Yes.
>
> * * *
>
> Q. Were there any other oil delivery trucks there when you started storing your trucks there?
>
> A. Chuck Evans had a couple of his trucks.
>
> Q. He had a couple of his trucks?
>
> A. Yes.

(Continued....)

parking space on the property did not exist prior to the enactment of the Ordinance in 1977, and it was a new and different use from the nonconforming oil delivery use in existence at that time. As a result, the Board did not abuse its discretion or err in determining that Landowners' proposed use of the property was a use different from the pre-existing nonconforming oil delivery use. See, e.g., Appeal of Yocom, 15 A.2d 687, 689 (Pa. Super. 1940) ("[T]he Board of Adjustment … properly recognized a wide difference between the incidental parking of automobiles in connection with the use of the premises as a rooming house, prior to the adoption of the ordinance in 1923, and the present and proposed use of all of appellants' land, including that upon which the [rooming house] buildings formerly stood, as a public automobile parking lot. Use of premises primarily for profit for the accommodation of roomers, bears little, if any, relationship to use of all of the

---

Q. Is that correct?

A. Yes.

Q. Owned by him?

A. Yes.

Q. And what did he do with those?

A. Well, one is still there. I don't know whatever happened to the others.

* * *

Q. And did he deliver oil with his other truck then?

A. Yes.

He had his own oil delivery business.

Q. Was that part of [Ketchell]'s?

A. Yes.

Transcript of the Board Hearing of June 8, 2005 (N.T.6/8/05) at 26, 30, 31.

same land for a commercial parking business….").[9,10] In short, Landowners' allegations of error in this regard are likewise without merit.

Finally, Landowners claim that the Board erred in determining that all nonconforming uses on the property were abandoned when Ketchell Oil Company ceased operations in 1991. Again, Landowners base this assertion upon the "[a]mple unchallenged evidence that the property owner allowed … [Spear Oil], to park its trucks and store its equipment on the property long after Ketchell went out

---

[9] See also Cape Resorts Hotels, Inc. v. Alcoholic Licensing Board of Falmouth, 385 Mass. 205, 223, 431 N.E.2d 213, 223 (1982) ("[T]he change in use of the annex [of the hotel] is analogous to the change in use in *Lexington v. Bean*, 272 Mass. 547, 172 N.E. 867 (1930). It was held there that '(t)he use of (a building) … for the commercial purpose of repairing motor vehicles for hire is "substantially different" (under the relevant by-law) from (the prior valid nonconforming) use of it by a person residing on the premises for the purpose of repairing motor vehicles belonging to him as incidental to his trucking and express business and the occasional permissive use of it by persons storing automobiles on the premises.' *Id.* at 553, 172 N.E. 867. In the case of the annex, the building was formerly used as lodgings for employees, a use incidental to the operation of the main building as a hotel. Now the annex is being operated as a commercial venture in its own right. In effect, [the landowner] has expanded the use of the annex by adding a new service. Such an expansion has been held to constitute a change in use….").

[10] But cf. Merion Park Civic Association, Inc. v. Zoning Hearing Board of Lower Merion Township, 530 A.2d 968, 970-971 (Pa. Cmwlth. 1987) ("The next issue raised by Appellants is whether the installation of an employee parking lot in place of the razed greenhouses constitutes a change in use rather than continuation of an accessory use. The apparent basis for Appellants' argument is their contention that [the landowner] already has three parking lots and the addition of a fourth lot would create a new principal nonconforming use as a commercial parking lot. The record is clear, however, that the additional parking spaces are to be used in connection with [the landowner]'s business [as a florist shop and nursery] and constitute an accessory use as that term is defined in … the zoning ordinance. The fact that the parking needs of [the landowner] have increased over time as its retail business has grown and that an increasing portion of its property has been devoted to that need does not alter the essential nature of the accessory use. We believe that nonconforming use status clearly protects changes in business needs such as that raised by the facts of this case. Appellants' efforts to carve [the landowner]'s nonconforming use into several 'sub-uses', each of which may then be subjected to prevailing theories of expansion and abandonment, is simply unavailing.") (footnote omitted).

of business…", and that "[t]hey also continued to allow other commercial/industrial users to store their equipment and materials in the storage sheds and storage trailers long after Ketchell ceased operations…." Brief of Appellants at 14.

However, as outlined above, Landowners failed to sustain their initial burden of demonstrating that either of these uses lawfully existed on the property prior to the enactment of the Ordinance in 1977. In particular, Landowners failed to establish either that the commercial/industrial tenant use existed, or that the leasing of parking space to Spear Oil was a continuation of the pre-existing nonconforming oil delivery use. As a result, the Board did not err in sustaining the Enforcement Officer's enforcement notice in this case. See, e.g., Hager.

Accordingly, the order of the trial court is affirmed.

_____

JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Milton Phelps, et ux	:	
	:	
v.	:	No. 33 C.D. 2008
	:	
The Zoning Hearing Board of the Township of Ridley and Township of Ridley	:	
	:	
Milton Phelps and William Phelps, Appellants	:	

O R D E R

AND NOW, this 5th day of December, 2008, the order of the Court of Common Pleas of Delaware County, dated December 4, 2007 at No. 05-10491, is AFFIRMED.

_____

JAMES R. KELLEY, Senior Judge