IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PENNSYLVANIA

CIVIL DIVISION

COUNTRY LANE FURNITURE and, ANNVILLE ASSOCIATES, LP, Appellants,	:	
v.	:	No. 2024-CV-0637
NORTH ANNVILLE TWP. ZONING HEARING BOARD, Appellee.	:	

ORDER

AND NOW, this 31st day of October 2024, upon careful consideration of the record and briefs submitted by the parties, it is hereby **ORDERED** that Appellants' Land Use Appeal is **DENIED**.

BY THE COURT:

_____, J.
CHARLES T. JONES, JR.

cc: Andrew J. Race, Esq., Esquire // 101 Erford Road, Suite 300, Camp Hill, PA 17011
Roberta J. Santiago, Esquire

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PENNSYLVANIA

CIVIL DIVISION

COUNTRY LANE FURNITURE and, ANNVILLE ASSOCIATES, LP, Appellants,	:	
v.	:	No. 2024-CV-0637
NORTH ANNVILLE TWP. ZONING HEARING BOARD, Appellee.	:	

APPEARANCES:

Andrew J. Race, Esquire	For Appellants
Roberta J. Santiago, Esquire	For Appellee

OPINION BY JONES, JR., J.:

The matter before this Court is whether the North Annville Township Zoning Hearing properly denied Appellants' petition for a variance.

FACTUAL AND PROCEDURAL HISTORY

Annville Associations, LP, is the legal owner of a 6.98 acre property located at 10 Nathan Lane, Annville, PA 17003 (hereinafter "Property"). Country Lane Furniture is a family-owned business that sells furniture and operates a retail store at the Property. The Property is located in the C General Commercial District and operating a retail store is an approved use of the property within its current zoning. (North Annville Township Zoning Ordinance, Chapter IV, Section 404.1(a)). The

existing Property is improved and has an existing building containing 61,649 square feet.

Appellants proposed two building additions, one being 24,750 square feet on the north side and the second being 4,983 square feet on the west side of the existing structure. They also proposed to pave 8,311 square feet on the northeast side. Appellants sought a dimensional variance from North Annville Township Zoning Ordinance, Article IV, Section 404.3, Lot and Yard Requirements to allow the maximum lot coverage to be 60.2% over the maximum lot coverage allowance of 50%. The proposed additions would put the lot coverage at 182,954 square feet, which is 30,906 square feet over the maximum coverage area permitted by ordinance. Under the local ordinance, maximum lot coverage is defined as "a percentage of lot area which may be covered by impervious material including roofs, drives, patios, walls, etc." **North Annville Township Zoning Ordinance Article II, Section 201.4, Definitions, Specific Terms**.

A Hearing was held before the North Annville Township Zoning Hearing Board on February 6, 2024, regarding the Petition for Variance submitted by Appellants. At the Hearing, Appellants presented three witnesses. The first witness, Scott Weaver, who is part-owner of County Lane Furniture, testified to the proposed additions and stated that the purpose of the requested expansion is because his company is projecting growth. The second witness presented by Appellants was Anthony Hostetter, who was previously involved in expansion work for County Lane Furniture in 2018. Mr. Hostetter testified that the proposed expansion would use the same materials and would match the height of the existing building. The third witness presented was Joshua Weaver, a professional engineer, who testified that he had prepared a Zoning Variance Plan for the Property, which was entered as an exhibit at the Hearing. Mr. Weaver testified that stormwater management was taken into consideration prior to the development of the Property and that the existing

stormwater management could handle the proposed expansion. Mr. Weaver also testified that the existing lot coverage for the Property is at 49.4% and that the proposed expansion would increase the lot coverage to 60.2%. Appellants admitted that the variance criteria could not be met but argued that the request was one of a *de minimis* nature.

At the conclusion of the Hearing, the North Annville Zoning Hearing Board denied the variance. A written decision reflecting the denial of the variance was entered on March 14, 2024. Appellants filed a timely Notice of Land Use Appeal with this court on April 11, 2024. All parties have submitted briefs on the issue. The matter is now ripe for disposition.

DISCUSSION

Appellants argue that the North Annville Township Zoning Hearing Board abused its discretion and/or committed an error of law in denying its application for a dimensional variance. Appellants also argue that the Zoning Hearing Board erred in its application of the *de minimis* variance standard.

Appellee argues Appellants have not established all the elements necessary to be entitled to a variance under the Pennsylvania Municipality Planning Code. Appellee also argues that the Zoning Board found that the proposed deviation sought was not a minor one and therefore the matter was outside the scope of a *de minimis* variance.

When reviewing the Zoning Hearing Board's decision, where the trial court did not take any additional evidence, appellate review is limited to determining whether the board committed an abuse of discretion or a legal error. ***Marshall v. City of Philadelphia***, 626 A.3d 323, 331 (Pa. 2014). "An abuse of discretion occurs when the board's findings are not supported by substantial evidence in the record. Substantial evidence is that relevant evidence which a reasonable mind would accept

as adequate to support the conclusion reached." ***Borough of Fleetwood v. Zoning Hearing Bd. Of Borough of Fleetwood***, 649 A.2d 651, 653 (Pa. 1994).

The Zoning Hearing Board is the sole judge of the credibility of witnesses and the weight afforded their testimony. ***Manayunk Neighborhood Council v. Zoning Bd. Of Adjustment of the City of Phila.***, 815 A.2d 652 (Pa. Cmwlth. Ct. 2002), *appeal denied*, 833 A.2d 145 (2003). Assuming the record contains substantial evidence, a court is bound by the Zoning Hearing Board's findings that result from resolutions of credibility and conflicting testimony. ***Taliaferro v. Darby Twp. Zoning Hearing Bd.***, 873 A.2d 807 (Pa. Cmwlth. Ct. 2005). A court may not substitute its interpretation of the evidence for that of the Zoning Hearing Board. ***Id.***

In this case, the Court finds substantial evidence was presented to the Zoning Hearing Board to support the denial of Appellant's variance. Furthermore, Appellants, by way of their own admission, stated that they would not be able to establish all the elements necessary to be entitled to a variance under the Pennsylvania Municipalities Planning Code or under the North Annville Zoning Ordinance. Three (3) witnesses testified at the hearing, including a part-owner of County Lane Furniture. Attorneys for all parties were also present. In addition, seven (7) exhibits were entered into the record including a Site Plan. Therefore, sufficient evidence was submitted at the hearing to support the Zoning Hearing Board's ultimate decision.

Next, the Court must determine if the denial of the variance was appropriate. A variance should only be granted sparingly and under exceptional circumstances. ***Laurento v. Zoning Hearing Bd. Of Borough of West Chester***, 638 A.2d 437, 439 (Pa. Cmwlth. Ct. 1994). The reasons for granting a variance must be substantial, serious, and compelling. ***Wilson v. Plumstead Tp. Zoning Hearing Bd.***, 936 A.2d 1061, 1065 (Pa. 2007) citing ***Valley View Civic Assoc. v. Zoning Bd. Of Adjustment***, 462 A.2d 637, 640 (Pa. 1993). Granting a variance should not be

granted simply to permit the owner to obtain greater profit from the use of the property. ***Laurento***, at 439.

A variance should only be granted when the following criteria are met: (1) an unnecessary hardship will result if the variance is denied, due to the unique physical circumstances or conditions of the property; (2) because of such physical circumstances or conditions the property cannot be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property; (3) the hardship is not self-inflicted; (4) granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and (5) the variance sought is the minimum variance that will afford relief. ***Tri-Cnty. Landfill, Inc. v. Pine Twp. Zoning Hearing Bd.***, 83 A.3d 488, 520 (Pa. Cmwlth. Ct.), appeal denied, 101 A.3d 788 (Pa. 2014); **Pennsylvania Municipalities Planning Code, § 910.2, 53 P.S. § 10910.2.** "A dimensional variance involves a request to adjust zoning regulations to use the property in a manner consistent with regulations, whereas a use variance involves a request to use property in a manner that is wholly outside zoning regulations. The same criteria apply to use and dimensional variances." ***Dunn v. Middletown Township Zoning Hearing Board***, 142 A.3d 494, 501 (Pa. Cmwlth. 2016.) In order to show hardship, an applicant must prove either that: (1) the physical characteristics of the property are such that it could not in any case be used for any permitted purpose or that it could only be arranged for such purposes at prohibitive expense; or (2) the characteristics of the property are such that the lot has either no value or only distressed value for any purpose permitted by the ordinance. ***Griffith v. Zoning Hearing Bd. Of Exeter Twp.***, 531 A.2d 121, 123 (Pa. Cmwlth. Ct. 1987).

Here, Appellants have not shown a substantial, serious, or compelling reason for this Court to grant a variance. First, there are no unique physical circumstances or conditions that are peculiar to the Property. Appellants also presented no evidence

that the property was irregular, narrow, or shallow in lot size or shape that results in unnecessary hardship. The prior use of the property also fails to show unnecessary hardship to justify granting a variance to Appellants. Instead, Appellants focused their hardship argument on their inability to expand their retail space and warehousing space to grow the company. In accordance with case law, a variance sought for the sole purpose of potentially increasing profitability or maximizing developmental potential is not compelling. Thus, Appellants' argument that the hardship created is an inability to grow one's business does not satisfy the criteria of hardship.

Second, the Property has already been developed and is already being used for its intended purpose. The Property is already developed after the expansion in 2018 to a lot coverage of 49.4% under a Zoning Ordinance that establishes a maximum lot coverage of 50%. Furthermore, the Court is in agreement with the Zoning Hearing Board that the requested variance to increase the maximum lot coverage to 60.2%, instead of the maximum lot coverage allowance of 50%, did not represent the minimum variance that would provide relief and the least modification possible to the regulation in question. As a result, Appellants have failed to establish all of the elements necessary to be entitled to a dimensional variance.

The decision of whether to grant a *de minimis* variance is left to the discretion of the local zoning board. ***Alpine, Inc. v. Abington Township Zoning Hearing Board***, 654 A.2d 186, 191 (Pa. Cmwlth. 1995). *De minimis* variance doctrine is a narrow exception to the heavy burden of proof involved in seeking a variance and applies only where: (1) minor deviation from dimensional requirements of zoning ordinance is sought, and (2) rigid compliance with zoning ordinance is not necessary to protect public policy concerns inherent in ordinance. ***Dunn v. Middletown Township Zoning Hearing Board,*** at 506.

In the instant case, the proposed expansion sought would be 10.2% over the allowable 50% maximum lot coverage allowed by the local zoning ordinance. The percentage over the 50% coverage limitation is equivalent to 30,906 square feet. The Zoning Hearing Board did not believe that the proposed deviation that was greater than 10% was de minimis in nature. The Zoning Hearing Board also determined that the requested deviation required compliance in order to preserve the public interests safeguarded by the ordinance. Although there is no precise mathematical percentage that marks the dividing line between *de minimis* and significant deviations,[1] we find that the 10.2% deviation from the zoning ordinance's lot coverage requirement, which would create a non-compliant lot, is not *de minimis*. Therefore, the North Annville Township Hearing Board did not err in its application of the *de minimis* variance standard.

CONCLUSION

For the reasons stated above, the Zoning Hearing Board did not abuse their discretion or commit an error of law in denying Appellants' variance. As such, Appellants' Land Use Appeal is denied. Appellants' may continue to operate the property as a furniture retail operation, along with some warehousing/storage space as the Zoning Ordinance allows.

---

[1] ***Dunn v. Middletown Township Zoning Hearing Board***, 142 A.3d 494, 501 (Pa. Cmwlth. 2016.) citing ***Swemley v. Zoning Hearing Bd. of Windsor Twp.***, 698 A.2d 160 (Pa.Cmwlth.1997).