IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL DIVISION

IN RE: APPEAL OF MICHAEL P. FINK AND CRYSTAL M. FINK 8315 INTERCHANGE ROAD, LEHIGHTON, PENNSYLVANIA,	:	**No. 19-3738**

Jason Ulrich, Esquire	Counsel for Appellants, Michael P. Fink and Crystal M. Fink
Jenny Y.C. Cheng, Esquire	Counsel for Appellee, Towamensing Township Zoning Hearing Board

MEMORANDUM OPINION

Matika, J. – October 22, 2020

Before this Court is the Appeal of Michael P. Fink and Crystal M. Fink (hereinafter "Finks" or "the Finks") to the decision of the Towamensing Township Zoning Hearing Board (hereinafter "ZHB") wherein the ZHB issued an interpretation adverse to the request by the Finks. For the reasons stated herein, this Court denies this Appeal.

FACTUAL AND PROCEDURAL BACKGROUND

The Finks are owners of real estate consisting of 1.851 acres, located at 8315 Interchange Road, Lehighton, Pennsylvania and in the township of Towamensing. The Finks also own a construction business which is located off-site. At present and situated on this parcel are two existing structures, a 1236.9 square foot block

garage and an additional 281.4 square foot framed building. The Finks wish to construct an additional structure on this parcel[1] consisting of a 4800 square foot pole building for purposes of storage for the construction business. According to the testimony, Finks' employees would load up their trucks in the morning and return at the end of the date. Additionally, the existing buildings were too small to satisfy the needs of the business.

On December 5, 2018, the Finks filed a zoning permit application. The Zoning Officer denied this permit application on December 27, 2018. In denying the application, the Zoning Officer cited to Section 705(E)(2) of the Towamensing Township Zoning Ordinance (hereinafter "Ordinance") which reads:

> (E2) Service Business
>
> Service businesses include barber, beautician, laundry and dry cleaning, shoe repair, tailor, photographer, travel agency, contractors, taxidermy, electricians, plumbers and similar uses. **In the LC district, the floor area may not exceed 5000 square feet.** (emphasis ours)

After receiving this denial, the Finks filed a timely appeal to the ZHB. In that appeal, the Finks sought two forms of relief: 1) a more favorable interpretation of §705(E)(2); and 2) in the alternative, a variance from the requirements of that section. After due notice, the first of two hearings was held on March 4, 2019. During that hearing, the Finks withdrew their variance

[1] This parcel is located in an LC (light commercial) zoning district as set forth in the township's zoning ordinance.

request, however, at the second hearing held on November 19, 2019, that request for a variance was reinstated.[2]

After that hearing, the ZHB granted the variance, but agreed with the Zoning Officer's interpretation of §705(E)(2) in that gross floor area was to be interpreted to apply to the entirety of the subject property and not just as to the structure in question.

On December 13, 2019, the Finks filed the instant appeal. In this appeal, they have requested that this Court find that the ZHB erred in its interpretation of §705(E)(2). Specifically, the Finks argue that "floor area" as referenced is §705(E)(2) should not be interpreted as "gross floor area" as that term is defined in §201 of the ordinance.[3]

After argument held and briefs lodged, this matter is now ripe for disposition.

LEGAL DISCUSSION

When tasked with reviewing a decision of a zoning hearing board where no additional evidence is taken, the scope of the trial court's review is limited to whether a zoning hearing board abused its discretion or committed an error of law. *In Re: Petition of*

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[2] According to the record, the Finks waived the time constraints within which the hearings were to be concluded.

[3] Section 201 of the Zoning Ordinance defines gross floor area as follows: "**The sum of the gross horizontal areas of the several floors of a building and its accessory buildings on the same lot**, excluding cellar and basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls and to the centerline of party walls." (emphasis ours)

Dolington Land Group, 839 A.2d 1021(2003); *Landon v. Zoning Hearing Board of Adjustment of the City of Pittsburgh*, 672 A.2d 286 (1996). Abuse of discretion occurs when the findings of the ZHB are not supported by substantial evidence. Substantial evidence is defined as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Bailey v. Upper Southampton Township*, 690 A.2d 1324 (Pa. Cmwlth. 1997); *Valley View Civic Association v. Zoning Board of Adjustment*, 462 A.2d 637 (1983). "A zoning hearing board's interpretation of a zoning ordinance is entitled to great weight, and it is the practice of the [court] "to defer to a zoning board's interpretation of the zoning ordinance it is charged to enforce."" *Broussard, v. Zoning Board of Adjustment of the City of Pittsburgh*, 831 A.2d 764, 770 (Pa. Cmwlth. 2003). Courts are to give great deference and weight to a zoning board's interpretation of the zoning ordinance that it is charged to interpret. *Tink-Wig Mountain Lake Forest Property Owners Association v. Lackawaxen Township Zoning Hearing Board*, 986 A.2d 935, 941 (Pa. Cmwlth. 2009); *Ruley v. West Nantmeal Township Zoning Hearing Board*, 948 A.2d 265, 269 (Pa. Cmwlth. 2008). "Although a municipal legislative body is entitled to deference in the interpretation of the zoning ordinance, it is axiomatic that an undefined term must be interpreted in accordance with the common and approved usage and that any doubt concerning the meaning of an undefined term should be resolved in favor of

the landowner and the least restrictive use. Where possible, an ordinance must be construed to give effect to all of its provisions." *In Re: Richboro CD Partners, L.P.*, 89 A.3d 742, 747 (Pa. Cmwlth. 2014); *See also* Section 1921 of the Statutory Construction Act of 1972, 1 Pa.C.S. §1921. (internal citations omitted).

Under Section 1921(a) of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1921(a), "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effects to all its provisions." When the words of a statute are not ambiguous, courts may not stray from the plain language of the statute "under the pretext of pursuing its spirit." 1 Pa.C.S. §1921(b). These "rules of statutory construction apply to [zoning] ordinances as well as statutes." *In re Appeal of Holtz*, 8 A.3d 374, 378 (Pa. Cmwlth. 2010)."

"However, case law has provided additional rules to be used to determine the meaning of zoning ordinances. Although the Statutory Contruction Act of 1972, 1 Pa.C.S. §§ 1501-1991, is not expressly applicable to the construction of local ordinances, the rules of statutory construction are applicable to statutes and ordinances alike. *See Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Bd.*, 207 A.3d 886, 899 (2019) (Slice of Life); *Trojnacki*

v. Bd. Of Supervisors of Solebury Twp., 842 A.2d 503, 509 (Pa. Cmwlth. 2004). As we have stated:

> One of the primary rules of statutory construction is that an ordinance must be construed, if possible, to give effect to all of its provisions. An interpretation of an ordinance which produces an absurd result is contrary to the rules of statutory construction. *Geerling Florists, Inc. v. Board of Supervisors of Warrington Township*, 226 A.3d 670, 675-676 (Pa. Cmwlth. (other internal citations omitted).

With these principles in mind we turn to the case *sub judice*. In this case the Finks argue that the ZHB misinterpreted §705(E)(2) insofar as it equated "floor area[4]" with "gross floor area", the latter being defined in §202 of the ordinance along with a definition for "floor area-habitable." Nowhere did the drafters of this ordinance define the general term "floor area" without a qualifier such as "gross" or "habitable." Thus, the Finks argue that this Court shall give the term its broadest meaning, that being, that the 5000 square foot maximum limit applies to as many 5000 square foot structures that can fit on a given parcel of land.

Conversely, the ZHB determined, in rendering its decision, that "floor area" did in fact equate to "gross floor area" and to

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[4] Section 201 of the Zoning Ordinance, captioned Rules of Interpretation suggests that "words not herein defined shall have the meanings given in Webster's unabridged dictionary and shall be interpreted so as to give this ordinance its most reasonable application or the Latest illustrated book of Development Definitions (H.S. Moskowtiz and C.G. Lindbloom, Rutgers, the Sate University of New Jersey, 2004)." Unfortunately for the discussion, the phrase "floor area" is not defined in either publication.

accept Finks' argument would lead to an absurd result. In this case, Finks' argument misses the mark.

This Court agrees with the ZHB that "floor area" equates to "gross floor area" absent the qualifying word "gross." In reviewing the zoning ordinance in an attempt to understand that legislative intent of the governing body (Towamensing Township) in enacting this ordinance, this Court found another definition which limits as opposed to expands upon dimensional concerns such as this. For example, pursuant to the zoning ordinance, "building area" is defined as "the total of areas taken on a horizontal plane at the average grade level of the principal building and all accessory buildings, exclusive of uncovered porches, awnings, terraces, and steps. (Emphasis ours). This definition takes into consideration the area of all structures on a given parcel not to one structure. While this Court cannot speculate that had the zoning ordinance included a definition of floor area, this Court can see no plausible reason why the legislative intent would be any different in considering the area of all structures on the parcel versus a single parcel as argued by the Finks.

Additionally, the Court believes it was the legislative intent to have §705(E)(2) refer to "gross" floor area when describing the limitations of service businesses. While when interpreting an ordinance, errors should be held against the scrivener of that ordinance, this Court sees no other way to define

"floor area." Thus, this Court sees no reason to question the intent of the municipal body and create an unintended result.

It is also absurd to imagine any other result other than to limit the floor area to 5000 square feet for a service business. In looking at the types of businesses listed under §705(E)(2), this Court notes that these types of businesses are not such that they would be operated in multiple structures on a given parcel of land as opposed to under one roof. Thus, it is further evidence that the intent of the legislative body was to limit the size of building of these businesses. While multiple buildings could be construed to reach 5000 square feet under "gross floor area", it would not seem probable when talking about the specific service businesses referenced in this section.

Thus, should the Court adopt Finks' interpretation of floor area without due consideration of other definitions involving "area", it would suggest that the Finks could construct approximately one dozen 4800 square foot buildings on the 1.851 acre of land, taking into consideration setbacks and distances from buildings as prescribed by the ordinance. Taking into consideration that the zoning ordinance includes such other factors as building coverage, lot coverage, impervious areas, to ignore those factors in favor of the Finks' interpretation would lead to an absurd result.

"The job of the reviewing court is to give meaning and effect to a legislative construct and avoid absurd results." *Cellco Partnership v. North Annville TP Coning Hearing Board*, 939 A.2d 430, 437 (Pa. Cmwlth. 2007).

CONCLUSION

In light of the Towamensing Township Zoning Hearing Board's interpretation[5] of §705(E)(2) of the ordinance and specifically "floor area", this Court finds no discernable abuse of discretion. Accordingly, this Court enters the following order:

[5] Notwithstanding our decision, there is nothing preventing the Finks from seeking similar relief in the future should they decide to increase the number of buildings on this parcel simply be seeking another variance. That will, once again, come before and be decided by the governing body and/or its agents.

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ORDER OF COURT

AND NOW, this 22nd day of October, 2020, upon consideration of the "Appeal of the Zoning Decision of the Towamensing Township Zoning Hearing Board Dated December 5, 2019", the brief lodged in support thereof, and the brief of the Towamensing Township Zoning Hearing Board lodged in opposition thereto, it is hereby **ORDERED and DECREED** that said appeal is **DENIED.**

BY THE COURT:

Joseph J. Matika, J.