

IN RE: ROBERT L. WRIGHT and : IN THE COURT OF COMMON PLEAS OF  
KATHY WRIGHT, Variance Denial : LYCOMING COUNTY, PENNSYLVANIA  
Appeal of Robert L. Wright :  
And Kathy Wright, : CIVIL ACTION - LAW  
: NO. 98-01,772

**MEMORANDUM OPINION and ORDER**

The matter before this Court concerns the Notice of Land Use Appeal, filed November 6, 1998, by Robert L. Wright and Kathy Right (hereinafter “Appellants”). Appellants appeal the September 30, 1998, decision of the Woodward Township Zoning Board (hereinafter “ZHB”), denying their request to place an 8’ by 12’ concession stand on their property. Appellants argue the zoning designation is a commercially zoned area, the use meets the definition of “accessory use” under the Woodward Township Zoning Ordinance, a variance is not required for the requested use, the structure did or could meet all supplemental regulations and the ZHB committed an error of law, or acted arbitrarily or capriciously in denying their request. Documents of record were submitted by the ZHB December 8, 1998. On March 29, 1999, Appellants filed a Brief in support of their appeal. The ZHB’s Brief was filed April 28, 1999.

This Court was advised an evidentiary hearing was not required in this matter. Where a common pleas court does not take new evidence in a zoning appeal case, its scope of review is limited to a determination whether the local zoning agency committed an error of law and whether its necessary findings are supported by substantial evidence. *Nascone v. Ross Township Zoning Hearing Board*, 473 A.2d 1141 (Pa.Cmwlth. 1984); *Ramondo v. Zoning Hearing Board of Haverford Township*, 434 A.2d 204 (Pa.Cmwlth. 1981). By Order of Court

dated April 16, 1999, the matter was scheduled for argument June 3, 1999.<sup>1</sup> After argument and consideration of the record, this Court is now prepared to render its decision. We must conclude that the ZHB's decision be affirmed.

Appellants' property is located in a C-Commercial District. It presently contains a single family dwelling and a used car business. The used car business consists of an outdoor display area for vehicles and a building containing offices and a garage. Appellants' intention was to locate a concession stand on their property to attract customers to their used car business. They argue it would be somewhat similar to other promotional activities or attractions used by businesses, such as a clown or a car situated upside down. As to the basic nature of the proposed concession stand, Appellants argue in their brief that Appellant Kathy Wright testified at the ZHB hearing the concession stand would be permanent. However, counsel for Appellant, at oral argument, argued Appellants wished to add a "mobile" stand for permanent use. The Court is unclear as to the relevance of the distinction. In any event, Appellants assert the intent of the addition is not a concession stand, but rather a restaurant, which is a permitted use under the Woodward Township Zoning Ordinances. Under the definition section of the Woodward Township Zoning Ordinance, "restaurant" is defined as: "An establishment where food is prepared and served for either on or off-premises consumption."

The ZHB argues there are already two principal uses on the subject property- single family dwelling and used car sales. *See* ZHB Brief p. 5. This Court notes a document presented to it, identified as "Permit Application," dated November 18, 1996. This application,

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<sup>1</sup> Prior to argument, we requested the ZHB provide copies of relevant ordinance sections, which were presented to the Court for inclusion in the record.

by Appellant Robert L. Wright, requested a change of use from single family dwelling with accessory garage to an auto sales facility with accessory associated residential use, plus signs. The permit, initially rejected, was approved December 16, 1996. Therefore, it would appear the subject property currently contains one principal building- the auto sales facility garage- and one accessory structure – the residence. The definition of an accessory use, according to the Ordinance, is:

A use subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. (See also Article 4). If no principal use exists on a lot with a lawful accessory use, then such accessory use shall be considered a principal use.

*See* Definition section of Zoning Ordinance, Woodward Township. We note that under §404, “residential uses associated with a commercial activity” is a permitted accessory use and structure.

Zoning Ordinance 601(C) provides there shall not be more than one principal building and its accessory structures on one lot, except in the case of multi-family housing developments, mobile home parks, or other *approved* land developments.

Under §404 of the Ordinance, restaurants are considered principal permitted uses. Agreeing, *arguendo*, that the concession stand falls under this category, Appellants would still need a variance to place the concession stand on their property, because the effect would be two principal uses on the property, the auto sales garage and the “restaurant.”

Appellants contend, alternatively, that the proposed concession stand falls under the category of a permitted accessory use and structure. The Zoning Ordinance defines an Accessory Building as a “detached, subordinate building or structure located on the same lot as

the principal building, serving a purpose customarily incidental and subordinate to the use of the principal building.”

Generally, accessory uses include activities which are a part of or incident to the principal use. For example, a car wash is a use accessory to and of the same general character as a garage or repair shop, gas and oil service station...

An accessory use is simply a use subordinate to the principal use and which is customarily incidental to the principal use. Once something is defined as an accessory use, it is allowed by right.

***Sateach v. Beaver Meadows Zoning Hearing Board***, 676 A.2d 747, 749-750 (Pa.Cmwlth. 1996) (citations omitted). In its Findings of Fact, the ZHB found the proposed concession stand was not an accessory use. Findings of Fact Number 3. Appellants have presented no authority, nor can we find any, nor is it a matter of common practice (as indicated by the ZHB finding) that a restaurant is customarily incidental to an auto sales facility. We must find the concession use cannot be allowed by right as an accessory use; once again, a variance is necessary.

The remaining question, then, is whether the ZHB improperly denied Appellants’ request for a variance to operate the concession stand.

It is well settled that the reasons for granting a variance must be substantial, serious and compelling. The party seeking the variance bears the burden of proving that (1) unnecessary hardship will result if the variance is denied; and (2) the proposed use will not be contrary to the public interest. The hardship must be shown to be unique or peculiar to the property as distinguished from a hardship arising from the impact of zoning regulations on an entire district. *A variance will not be granted solely because the applicant will suffer an economic hardship if he does not receive one.*

***Sotereanos, Inc. v. Zoning Board***, 711 A.2d 549, 551 (Pa.Cmwlth. 1996) (citations omitted) (emphasis supplied). Here, Appellants have not met their burden and are not entitled to the

variance. No evidence was presented that Appellants would suffer other than a possible economic hardship if the variance request was denied. Evidence of this economic hardship is not sufficient for this Court to reverse the determination of the ZHB, particularly where, as here, the property is being fully utilized with both a principal and accessory use. Finding of Fact Number 1; Conclusions of Law 2(b),(c).

As stated, *supra*, our review is limited to a determination of whether the ZHB committed an error of law and whether its findings are supported by substantial evidence. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Eichlin v. Zoning Hearing Board of New Hope Borough*, 671 A.2d 1173 (Pa.Cmwlth. 1996).

Here, the ZHB properly concluded, based on the record, that the concession stand would be neither a permitted use nor an accessory use, based on the current uses of the property. *See* ZHB Findings of Fact Number 3. Moreover, the ZHB did not err in finding Appellants have not met the criteria for a use variance.<sup>2</sup> *See* ZHB Conclusions of Law.

Based upon the record, we cannot say the decision of the ZHB committed an error of law, nor that its findings were unsupported by substantial evidence. Accordingly, we enter the following Order:<sup>3</sup>

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<sup>2</sup> We note further that a resident, Kathy Huling, voiced a concern at the hearing before the ZHB in regard to traffic safety. Finding of Fact Number 8; September 30, 1998, N.T. 17, 18. Traffic safety was an issue considered by the ZHB in making its decision. September 30, 1998, N.T. 8, 14-15, 20.

<sup>3</sup> Based upon the foregoing, we do not reach the related issue of an advertising sign variance, also denied by the ZHB.

**ORDER**

*AND NOW*, this 30<sup>th</sup> day of July, 1999, the Appeal of Robert L. Wright and  
Kathy Wright is HEREBY DISMISSED.

BY THE COURT,

Date: August 2, 1999

William S. Kieser, Judge

cc: Court Administrator  
Richard A. Gahr, Esquire  
Michael E. Groulx, Esquire  
Judges  
Nancy M. Snyder, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)