[Cite as *Miller v. Allen Twp. Bd. of Zoning Appeals*, 2010-Ohio-805.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Tim Miller	Court of Appeals No. OT-09-020
Appellant	Trial Court No. 08CV386F
v.	
Allen Township Zoning Board of Appeals	**DECISION AND JUDGMENT**
Appellee	Decided: March 5, 2010

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Michael Bassett, for appellant.

Mark E. Mulligan Ottawa County Prosecuting Attorney, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Ottawa County Court of Common Pleas which affirmed the Allen Township Board of Zoning Appeals' ("BZA") denial of appellant's request for a zoning variance to construct a nonconforming accessory building. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Tim Miller, sets forth the following three assignments of error:

{¶ 3} "1. THE TRIAL COURT ERRED IN FINDING THAT THE RECORD CONTAINED A PREPONDERANCE OF RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE SUPPORTING THE DECISION.

{¶ 4} "2. THE TRIAL COURT ERRED IN DISREGARDING THE FACT THE BOARD'S DECISION CONSTITUTED UNREASONABLE AND ARBITRARY ENFORCEMENT OF THE ORDINANCE.

{¶ 5} "3. THE TRIAL COURT ERRED IN DISREGARDING THE FACT THAT A TYPOGRAPHICAL ERROR IN THE NOTICE OF THE BOARD'S MEETING WAS AN IMPORTANT FACTOR IN DECIDING TO DENY THE VARIANCE."

{¶ 6} The following undisputed facts are relevant to the issues raised on appeal. On May 7, 2008, appellant filed a written request with Allen Township seeking approval and issuance of a zoning variance permit. Appellant's property that is the subject of the zoning request is zoned A-1 agricultural.

{¶ 7} Appellant's zoning variance request sought approval to erect an accessory building encompassing 8,200 square feet. The relevant township zoning regulation allowing for the conditional construction of such structures expressly and unambiguously establishes that accessory buildings in an agricultural district, "shall not exceed 3000 square feet."

{¶ 8} On June 4, 2008, the BZA conducted the requisite public hearing to consider appellant's zoning request. Notice of the hearing published in the Port Clinton Herald mistakenly understated in appellant's favor the size of the structure requested to be 6,200 square feet. Appellant's actual request was for an 8,200 square-foot structure, exceeding the permissible maximum size nearly threefold.

{¶ 9} In addition to the facially impermissible magnitude of the structure under the relevant zoning provision, appellant's own testimony during the zoning hearing was contradictory on fundamental points. Appellant initially represented to the BZA that one of the purposes of the proposed structure was to store equipment for his company. Appellant testified, "I have a company that I have a lot of equipment, and I also own two race cars, and right now at the other house where I am at, everything is there." Moments later, appellant contrarily testified, "I don't actually have a business. I own heavy equipment and (inaudible) at people's places of business."

{¶ 10} Shortly thereafter, appellant was asked whether he was presently operating a business from a residential location and replied, "I am right now." Significantly, appellant was also asked how many people his business employed and he responded, "I just got me and two others right now. It is hard to find people to work (inaudible) hours." The transcript of proceedings from the BZA hearing is replete with fundamental contradictions regarding the actual rationale of appellant's proposed accessory building.

{¶ 11} As the hearing progressed, appellant accused the board members of having pre-judged his case. The members promptly refuted the contention and noted the

objective fact that appellant's request sought a structure of a proposed magnitude three times larger than that permissible by the zoning variance regulations. The BZA denied appellant's zoning variance request. The denial was appealed to the common pleas court.

{¶ 12} On July 10, 2009, the trial court affirmed the BZA denial. In its decision, the court emphasized both the deferential standard of its review of administrative decisions and, more significantly, that appellant's request sought permission to construct an accessory building nearly three times the size of that permitted by the zoning regulations. Timely notice of appeal was filed.

{¶ 13} In his first assignment of error, appellant argues that the trial court erred in finding that the record contained a preponderance of substantial evidence supporting the BZA decision. As a preliminary matter, we note that appellant misstates the actual conclusion of the trial court. Appellant asserts that the trial court made an affirmative finding of a preponderance of evidence in support of the BZA decision. This is not the proper standard nor is it the standard that was applied by the trial court.

{¶ 14} It is well-established that a trial court will review BZA determinations pursuant to a highly deferential standard. The board's decisions are presumed valid and may only be reversed in those scenarios in which a denied applicant demonstrates to the trial court that the zoning variance decision was arbitrary, capricious, unreasonable, or unsupported by the preponderance of the evidence on the record. *Flewelling v. Danbury Twp. Bd. of Zoning Appeals*, 6th Dist. No. OT-02-026, 2003-Ohio-2790.

{¶ 15} In conformity with the above-described guiding legal principles, the trial court stated in its decision in pertinent part, "it was appellant's responsibility to demonstrate, with reliable, probative and substantial evidence, the lack of a negative impact on the surrounding property. Accordingly, this court finds the presumption of validity and reasonableness enjoyed by an administrative agency's decision was not overcome."

{¶ 16} In his first assignment of error, appellant mistakenly contends that the trial court affirmatively concluded that the BZA decision was supported by a preponderance of the evidence. On the contrary, the record clearly reflects that the court concluded, consistent with pertinent legal parameters, that appellant failed to successfully rebut and overcome the mandatory presumption of legal propriety of the administrative zoning denial.

{¶ 17} Regardless of the above-described discrepancy, the record clearly reflects that appellant's zoning variance request was explicitly for an accessory building to be constructed on an agriculturally zoned parcel of a size nearly three times that permitted under the relevant zoning provision. The record clearly establishes that appellant failed to demonstrate that the board's decision to deny a facially non-conforming variance request was nevertheless unconstitutional, arbitrary, capricious, unreasonable or unsupported by the evidence. We find appellant's first assignment of error not well-taken.

{¶ 18} In appellant's second assignment of error, he restates his first assignment in an alternative fashion. Appellant argues in his second assignment that the trial court erred in "disregarding the fact that the board's decision constituted unreasonable and arbitrary enforcement of the ordinance."

{¶ 19} In the course of our consideration of appellant's first assignment, we determined that appellant failed to demonstrate that the BZA acted unreasonably or arbitrarily. Appellant's second assignment of error is rooted in an analogous legal premise as the first assignment of error. As such, we find appellant's second assignment of error not well-taken.

{¶ 20} In appellant's third assignment of error, he argues that the trial court erred in not concurring with appellant's contention that the typographical error in the BZA hearing notice somehow contributed to the denial of appellant's variance request.

{¶ 21} The record demonstrates that throughout the course of this case appellant has proffered repeated allegations of bias or maltreatment by the board underlying its denial of his variance request. We have carefully reviewed and considered the entire record of evidence and find that it contains no indicia of any improper deliberations, maltreatment, or injurious conduct in connection to appellant. Such allegations continue to be wholly based upon appellant's subjective interpretation of events in which he received an adverse response and not rooted in legally relevant evidence.

{¶ 22} On the contrary, the record reflects that the board clearly reassured appellant that he was being given full and fair consideration and specified the objective legal necessity of their denial of his request.

{¶ 23} With respect to appellant's assertion that the typographical error in the public notice of the zoning hearing improperly or adversely affected appellant's request, we note that the error substantially understated the amount of excess square footage sought by appellant. As such, one could conversely speculate that the effect of the error accrued to the benefit of appellant via reduced public opposition of a structure stated in the notice to be far less nonconforming than was actually the case.

{¶ 24} We find that appellant's third assignment of error is based in unsupported conjecture and has no foundation in objective evidence or law. We find appellant's third assignment of error not well-taken.

{¶ 25} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas is affirmed. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
JUDGE

Keila D. Cosme, J. _____
CONCUR.
JUDGE