Miley Citrus

Brief/Case law

1. Will Miley Citrus who lives about a half of mile on the same road as the proposed Shwawa, and runs a roadside fruit and vegetable stand, be able to intervene in the hearing before the Zoning Hearing Board because she is worried for her safety?

DISCUSSION

1. Standing

In Pennsylvania, a party seeking judicial resolution of a controversy "must establish as a threshold matter that he has standing to maintain the action." Fumo v. City of Philadelphia, 601 Pa. 322, 972 A.2d 487, 496 (Pa. 2009). The doctrine of standing is a prudential, judicially created principle designed to winnow out litigants who have no direct interest in a judicial matter. For standing to exist, the underlying controversy must be real and concrete, such that the party initiating the legal action has, in fact, been aggrieved. The core concept of standing is that a person who is not adversely affected in any way by the matter he seeks to challenge is not aggrieved; thereby, and has no standing to obtain a judicial resolution to his challenge. A party is aggrieved for purposes of establishing standing when the party has a substantial, direct and immediate interest in the outcome of litigation. A party's interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; finally, a party's interest is immediate when the causal connection with the alleged harm is neither remote nor speculative. Fumo, 972 A.2d at 496; see also Johnson v. Am. Std., 607 Pa. 492, 510, 8 A.3d 318, 329, 2010 Pa. LEXIS 2592, 24-25, CCH Prod. Liab. Rep. P18,526 (Pa. 2010)

Unlike the federal courts, which derive their standing requirements from Article III of the United States Constitution, standing for Pennsylvania litigants has been created judicially. Fumo, at 500 n.5 "The core concept of standing is that a person who is not adversely affected in any way by the matter he seeks to challenge is not aggrieved thereby and has no standing to obtain a judicial resolution to his challenge." Id. (citing Wm. Penn Parking Garage, 346 A.2d at 280-81).

ZHB Hearings

The conduct of ZHB hearings is governed by Section 908 of the MPC, 53 P.S. § 10908, which includes numerous procedural requirements. Public notice as well as a written notice posted on the affected tract of land is required before a hearing. Section 10908(1). At the hearing, all parties have the right to be represented by counsel, and to present evidence and arguments. Section 908(5). A stenographic record must be kept of the proceedings. Section 908(7). The MPC also includes a mechanism for determining who is a party before the ZHB, stating:

The parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of record before the board, and any other person including civic or community organizations permitted to appear by the board. The board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the board for that purpose. Section 908(3). Generally, the MPC provides that ZHB hearings are on the record, and with prescribed rules and procedures. Thus, the rule that those who may wish to be parties to a subsequent appeal are required to appear at the ZHB hearing serves both judicial economy and is fair to all interested parties. Miravich v. Twp. of Exeter, 6 A.3d 1076, 1079-1080, 2010 Pa. Commw. LEXIS 570, 6-9 (Pa. Commw. Ct. 2010); Miravich. Whitehall Manor, Inc. v. Planning Comm'n, 79 A.3d 720 Com Ct 2013).

1. Proximity

It is well established that a property owner in close proximity to a zoning matter at issue has a substantial interest and therefore has standing to intervene. In Re: Appeal of Broad Mt. Dev. Co., LLC from the decision of the Butler Twp. Zoning Hearing Bd., 17 A.3d 434, 440 (Pa. Cmwlth. 2011), Laughman v. Zoning Hearing Bd. of Newberry Twp., 964 A.2d 19, 22 (Pa. Cmwlth. 2009). It is clear that property adjacent to or abutting the zoning area in question is in “close proximity” for the purposes of standing, but that property owners one-half mile or more away from the zoning area have been deemed not to be in “close proximity” Laughman v. Zoning Hearing Bd. of Newberry Twp., 964 A.2d 19, 22 (Pa. Cmwlth. 2009). However, the actual distance required for standing may depend on the interest asserted by the intervenor. See, Spahn v. Zoning Bd. of Adjustment, 922 A.2d 24, 31 (Pa. Cmwlth. 2007) (holding, that owning property one and a half blocks away from the site in question does not constitute close proximity for the purposes of standing because no interest other than one common to all citizens was asserted).

Here, Miley Citrus lives about one-half mile from the proposed Shwawa. Miley is concerned for her safety while she is working in her roadside fruit and vegetable stand due to the possible increased traffic and possible DUI related incidents on Crosby Road. Typically, one-half mile from the site in question is too remote to be considered close proximity for the purpose of having a substantial interest to intervene. Additionally, Crosby Road is the main thoroughfare in Kendall Township and nearly every township resident travels on Crosby Road during the week. Miley’s interest in safety concerns due to increase traffic and DUI related accidents may be considered to be common to all citizens and again, Miley may not have standing to intervene.

1. Zoning- Success?

It’ll be no surprise that there is plenty of case law supporting grants and denials of applications for variances that do not meeting frontage requirements. It is well settled that above all else an applicant for a variance must show:  (1)unnecessary hardship unique or peculiar to the property;  (2) and the variance is not contrary to public safety, morals or general welfare.  Society Created to Reduce Urban Blight v. Zoning Bd. of Adjustment for the City of Philadelphia, 772 A.2d 1040(Pa. 2001), E. Torresdale Civic Ass'n v. Zoning Bd. of Adjustment of Philadelphia Cnty., 639 A.2d 446 (Pa. 1994), Appeal of Oswald, 438 A.2d 1029 (Cmwlth. 1982);  Rees v. Zoning Hearing Bd. of Indiana Tp., 315 A.2d 317 (Cmwlth. 1974). The applicant additionally must prove the variance will represent the minimum variance that will afford relief at the least modification possible, however this element doesn’t have to be addressed by the zoning board if either of the first two elements are not met. See, E. Torresdale Civic Ass'n v. Zoning Bd. of Adjustment of Philadelphia Cnty., 639 A.2d at447.

A zoning ordinance is presumed valid and one challenging the constitutionality of an ordinance bears the burden to overcome that presumption. The challenging party must clearly establish that the ordinance provisions are arbitrary and unreasonable and have no relation to the public health, safety, morals and general welfare and if the validity is debatable the legislative judgment is allowed to control. Schubach v. Silver, 336 A.2d 328 (Pa. 1975) ("Schubach II").

Assuming Miley will be granted standing to intervene, Miley will do best to attack Shawn’s application for a variance as being contrary to public safety, morals and general welfare. Miley will highlight concerns the café will increase traffic and affect her safety because her stand is next to the road. The proposed location of the Shwawa is in an R2 (often medium density residential), however the additional traffic could/ will affect Miley’s safety and the safety of the public. This fact could be used to prove a specific, particular harm to Miley, or it may be used to infer the safety concerns are representative of public concerns. She must argue the increased access to beer will increase DUIs and again threaten her safety and the safety of the general public. The increased access to alcohol will also increase the likelihood minors gaining access to alcohol and therefore will corrupt the morals of the youth and community.

PART II- If Miley did not intervene at the ZHB, can you file an appeal?

A person who wishes to contest a zoning approval can initiate an appeal or challenge if he is a "person aggrieved." Section 913.3 of the MPC. To establish "aggrieved" status for purposes of standing, a party must have a substantial, direct, and immediate interest in the claim sought to be litigated. Laughman v. Zoning Hearing Bd. of Newberry Twp., 964 A.2d 19 (Pa. Cmwlth. 2009). In order to have a substantial interest, there must be some discernible adverse affect to some interest other than the abstract interest of all citizens in having others comply with the law. Pilchesky v. Doherty, 941 A.2d 95 (Pa. Cmwlth. 2008). The interest must be immediate and not a remote consequence of the judgment. Id. A person has standing where he has suffered or will suffer "injury in fact" and the interest he seeks to protect is arguably within the zone of interest sought to be protected or regulated by the statute or constitutional guarantee in question. William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975).