

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mark R. Aungst,	:
	: No. 1803 C.D. 2013
Appellant	: Argued: March 10, 2014
	:
v.	:
	:
Zoning Hearing Board of the	:
Borough of South Williamsport	:
and Borough of South Williamsport	:

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: April 16, 2014

Mark R. Aungst appeals from the September 11, 2013, order of the Court of Common Pleas of Lycoming County (trial court), affirming the decision of the Zoning Hearing Board (ZHB) of the Borough of South Williamsport (Borough), which determined that a structure on Aungst’s property (Property) violates section 16.2.2.2(1) of the Borough’s zoning ordinance (Ordinance).¹ We affirm.

¹ Section 16.2.2.2(1) of the Ordinance provides that “[a]ccessory structures, which are not attached to a principal structure, may be erected within one (1) of the side yards or within the rear yard, but not in the front yard. . . .”

Aungst purchased the Property, which is located at 521 Fairmont Avenue in the R-1 residential district, in 2007. Thereafter, Aungst erected a large wooden structure on the Property's front yard.

On October 15, 2012, the Borough zoning officer sent Aungst an enforcement notice stating that the structure violates section 16.2.2.2(1) of the Ordinance because it is a prohibited, unattached accessory structure. Aungst appealed to the ZHB.

On December 17, 2012, the ZHB held a hearing, at which Aungst testified that he relied on section 16.2.2.3 of the Ordinance when he constructed the structure.² Aungst characterized the structure, which runs the majority of the length of the Property's front yard and part of the side yard as a flower box. Aungst testified that the flower box is approximately 35 feet long and 2 feet wide and is used only for planting.³ Aungst testified that the flower box does not have a solid roof but instead has lattice at a height of 4 ½ to 5 ½ feet above it. The lattice crosses over the walkway to Aungst's house at a height of 7 ½ feet. The flower box abuts the front sidewalk. The flower box does not have a footer and is not cemented into the ground.

² Section 16.2.2.3 of the Ordinance (emphasis added) provides that “[l]amp posts, flagpoles, mailboxes, exterior lighting fixtures, *flower boxes*, lawn ornaments, signs for home occupations permitted in accordance with this ordinance, basketball hoops, and access structures to aid the handicapped *shall be exempt from Sections 16.2.2.2 (1) and (3) [of the Ordinance].*”

³ The ZHB found that the Property has 71 ½ feet of street frontage along Fairmont Avenue and because the flower box extends along the majority of the frontage, Aungst underestimated the length of his structure. (ZHB's Findings of Fact, No. 11.)

It is constructed with landscaping timbers attached with rebar. The flower box is not attached to Aungst's house. (ZHB's Findings of Fact, Nos. 3, 9, 11, 12, 15-16, 18.)

Aungst's daughter testified that the flower box was a project that she and Aungst undertook so that she could plant a garden. She further stated that she grows different flowers and vegetables in the flower box. (*Id.*, Nos. 22, 21[b].)⁴

Aungst's neighbor testified that he had a survey conducted of the Property that indicates that the structure is located within the street right-of-way and may be encroaching on the neighbor's property line. The neighbor complained that the structure significantly hinders the line of sight for vehicles exiting from his driveway onto Fairmont Avenue.⁵ (*Id.*, Nos. 20-21, 22[b].)

The ZHB concluded that the unattached structure meets the definition of both "structure" and "accessory structure" in the Ordinance.⁶ The ZHB further

⁴ We note that the ZHB's decision mistakenly includes two sets of Findings of Fact Nos. 21 and 22. The first two findings are on page eight of the decision and the second two findings are on page nine. We will reference the second two findings on page nine of the decision as 21[b] and 22[b].

⁵ Section 16.2.1.1 of the Ordinance provides that an accessory structure shall comply with the following: "[i]n any residential district fences, hedges and walls not exceeding three and one-half (3 ½) feet in height may be erected, altered and maintained in the front yard of the principal structure." Further, section 16.2.1.4 of the Ordinance states that fences, hedges and walls must not impede the vision of motor vehicle operators "at intersecting streets or driveways." Section 16.2.1.6 of the Ordinance provides that "[w]alls, fences, signs or other structures shall not be erected or altered and hedges, trees or other vegetative material shall not be planted or maintained, which project or may project onto an adjacent property in different ownership."

⁶ A "Structure" is defined in section 2.2 of the Ordinance as: "[a]ny man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land, **(Footnote continued on next page...)**

concluded that the structure does not fall within any of the exemptions in section 16.2.2.3 of the Ordinance. The ZHB considered the 3 ½ foot height limitation for fences in the R-district and noted that the size and purpose of the exemptions in section 16.2.2.3 of the Ordinance are not similar to that of the structure. The ZHB determined that the structure is not a “flower box” or a “lawn ornament.” (ZHB’s Conclusions of Law, Nos. 17, 18, 20, 22, 23(a)-(b).)

The ZHB further concluded:

(c) the mere fact that [Aungst] called his structure a “flower box” does not make it one under any plain or ordinary common use or definition of a flower box – even if the [ZHB] were to accept [Aungst’s] testimony of the dimensions of the structure, it is of such dimension and sheer size that, in the opinion of the [ZHB] in interpreting and constructing the Zoning Ordinance, it would greatly transcend the purpose of the exemptions and definitely negate the intent of permitting an exemption of a flower box under Section 16.2.2.3 to find that the structure fits within one of the stated exemptions;

* * *

(f) given the dimensions and sheer size of the structure, to allow it to be maintained under the exemptions afforded pursuant to Section 16.2.2.3 would simply negate the purpose and intent of Section 16.2.2.2(1) to avoid

(continued...)

including buildings, sheds, fences . . . but excluding poles, playground equipment, mailboxes, lawn ornaments and other similar objects.” An “Accessory Use or Structure” is defined as “[a] use or structure subordinate to, and located on the same lot as the principal use or building and serving a purpose customarily incidental to the use of the principal building.” (Ordinance, § 2.2.)

unattached accessory structures in the front yards of properties located in the Borough's residential zoning districts; and,

(g) When read in conjunction with other provisions in Section 16.2 in general, the purpose and intent of Section 16.2.2.2(1) is to maintain not only a certain aesthetic for front yards in residential districts within the Borough but also prevent any impediments to the vision of motor vehicle operators^[7]

⁷ Section 16.6.2 of the Ordinance provides for unobstructed views where a driveway meets the public street. There must be "a clear sight triangle of ten (10) feet measured from the point of intersection of the street line (curb lines) and the edge of the driveway shall be maintained within which vegetation and other visual obstructions shall be limited to height of not more than thirty (30) inches above the street grade." (Ordinance, §16.6.2.) A "Clear Sight Triangle" is defined in section 2.2 of the Ordinance as "[a]n area of unobstructed vision at street intersections or street and driveway intersections defined by lines of sight between points at a given distance from the intersection of street and/or driveway lines." (Ordinance, §2.2.)

Section 16.12.1.9 of the Ordinance provides in pertinent part:

Planting and other landscape treatments (i.e. architectural masonry walls, fences, berms) shall be appropriately located, clustered and spaced at strategic locations along all property lines, road frontage and within parking areas to provide the maximum screening, buffering and aesthetic appeal.

* * *

(2) Landscape plantings shall be installed in such a manner as to provide clear sight distance triangles at all road and driveway intersections.

(*Id.*, Nos. 23(c), (f) and (g).) The ZHB affirmed the zoning officer’s determination that Aungst violated section 16.2.2.2(1) of the Ordinance.⁸ Aungst appealed to the trial court, which affirmed. Aungst now appeals to this court.⁹

Aungst contends that the trial court erred in affirming the ZHB’s decision because Aungst’s structure should be recognized as an exemption to the front-yard, accessory-use prohibition because it is a flower box and/or a lawn ornament.¹⁰ Specifically, Aungst argues that all boxes holding flowers are flower boxes and the Ordinance does not limit the size of a flower box.

Aungst argues that the structure’s sole function is to house flowering plants and, without the attached lattice, which is there to guide the vines of the plants, the structure would only be 2 ½ feet high. Further, a flower box is specifically allowed in the front yard and the Borough has permitted front-yard flower boxes of different shapes and sizes at other properties throughout the Borough.

Section 16.2.2.2 of the Ordinance states that unattached accessory structures in the R-districts are not permitted in the front yard. However, section

⁸ The ZHB also determined that it is “likely that the structure is located both in the right-of-way of Fairmont Avenue which is not permissible and also likely encroaches onto the neighbor’s property.” (ZHB’s Conclusions of Law, No. 24.)

⁹ Our review where the trial court takes no additional evidence is limited to determining whether the ZHB abused its discretion or committed an error of law. *Tri-County Landfill, Inc. v. Pine Township Zoning Hearing Board*, 83 A.3d 488, 504 n.4 (Pa. Cmwlth. 2014).

¹⁰ We note that Aungst’s argument before this court focuses on the flower box exemption, not the lawn ornament exemption.

16.2.2.3 of the Ordinance provides that certain accessory structures, such as “flower boxes [and] lawn ornaments,” are exempt from the front yard prohibitions of section 16.2.2.2 of the Ordinance. Flower boxes and lawn ornaments are not defined in the Ordinance.

Aungst argues that *Walker v. Ehlinger*, 544 Pa. 298, 676 A.2d 213 (1996), is on point. In that case, Walker applied for a fence permit with the borough seeking to place 8 concrete barriers, each 8 to 10 feet long, 3 feet high, and 1 foot wide along his property line. *Id.* at 299, 676 A.2d at 214. The borough denied the permit, finding that the barriers were structures, which required a building permit. *Id.* The Supreme Court disagreed, concluding that the barriers were not structures because they were not “‘built’ or ‘constructed’ as a dwelling or commercial establishment. The blocks were not joined to one another nor were they affixed to the property. Instead, they were merely placed on [Walker’s] property to avoid vehicular trespassing.” *Id.* at 301, 676 A.2d at 215. The court in *Walker* did not determine whether the barriers were permitted as a fence, only that they were not structures and, therefore, a building permit was not required. *Id.* at 301-02, 676 A.2d at 215.

Unlike *Walker*, Aungst admits that the issue here is not whether the flower box is a structure, but whether Aungst’s structure is exempt from the Ordinance’s regulation prohibiting accessory structures in the front yard. (*See* Ordinance, §16.2.2.2(1).) The ZHB examined the language of the Ordinance in making its determination. Therefore, *Walker* is distinguishable from this case.

Next, Aungst argues that the ZHB may not preclude the flower box in light of section 603.1 of the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, *as amended, added by* section 48 of the Act of December 21, 1988, P.L. 1329, 53 P.S. §10603.1, because the Ordinance has no restriction on flower box size or dimension. Section 603.1 of the MPC, 53 P.S. §10603.1, states:

In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

“The permissive widest use of the land is the rule and not the exception. . . .” *Fidler v. Zoning Board of Adjustment of Upper Macungie Township*, 408 Pa. 260, 265, 182 A.2d 692, 695 (1962). A municipality may not disregard the letter of the ordinance under the pretext of pursuing its spirit. *Bailey v. Zoning Board of Adjustment of the City of Philadelphia*, 569 Pa. 147, 163, 801 A.2d 492, 502 (2002).

However, words and phrases of local ordinances “shall be construed according to [the] rules of grammar and according to their common and approved usage.” *Patricca v. Zoning Board of Adjustment of the City of Pittsburgh*, 527 Pa. 267, 274, 590 A.2d 744, 747-48 (1991)(citation omitted). In interpreting an ordinance, the undefined terms must be given their plain, ordinary meaning, and the intended result must not be absurd or unreasonable. *Riskier v. Smith Township Zoning Hearing Board*, 886 A.2d 727, 731 (Pa. Cmwlth. 2005); *Mann v. Lower Makefield Township*, 634 A.2d 768, 772 (Pa. Cmwlth. 1993). Further, an ordinance must be construed to give effect to all of its provisions. *Mann*, 634 A.2d at 771-72. We must

afford great weight and deference to a ZHB's interpretation of its own ordinance. *Risker*, 886 A.2d at 731.

The ZHB found that Aungst's structure did not qualify as an exemption under section 16.2.2.3 of the Ordinance. Initially, the ZHB considered that the Ordinance has a height limitation for a fence in an R-district of 3 ½ feet and that the structure has a height between 4 ½ and 7 ½ feet, well above the limitation for a fence. Although the box itself is 2 ½ feet high, the attached 4 ½ to 5 ½ foot posts, supporting a wood-slat roof and lattice work, are connected to and are part of the structure and, therefore, must be considered as well.

The ZHB also considered that the structure was not similar in size or purpose to any of the exemptions in section 16.2.2.3. The exemptions are for “[l]amp posts, flagpoles, mailboxes, exterior lighting fixtures, flower boxes, lawn ornaments, signs for home occupations permitted in accordance with this ordinance, basketball hoops, and access structures to aid the handicapped.” (Ordinance, §16.2.2.3.)

When interpreting an ordinance, we must read all of the exemptions together so that the nature of the limited exemptions can be properly interpreted and the intent of the ordinance is clear. *H.E. Rohrer, Inc. v. Zoning Hearing Board of Jackson Township*, 808 A.2d 1014, 1016-17 (Pa. Cmwlth. 2002). The ZHB read the exemptions as a whole and determined that Aungst's structure did not fall within the listed exemptions. A “flower box” is defined in Webster's Third New International Dictionary 876 (1986), as “a usu[ally] elongated box containing soil and used for growing ornamental plants.” A “box” is defined as “something constructed of a flat

bottom and four up-right solid sides.” *Id.* at 263. Here, the flower box has a flat bottom and four solid sides. However, it also has attached posts with lattice supporting a wood-slat roof. The structure in this case is quite large and exceeds the common, ordinary definition of a flower box. In interpreting the Ordinance, it is absurd and unreasonable to conclude that this large structure is a common flower box.

In *Bailey*, our Supreme Court stated that “when the words in an ordinance are not explicit, the legislative body’s intent may be ascertained by considering, among other things, the ordinance’s goal, the consequences of a particular interpretation of the ordinance, and interpretations of the ordinance by an administrative agency.” 569 Pa. at 163, 801 A.2d at 502. The ZHB considered the intent of the Ordinance, which is to maintain a certain aesthetic look for front yards in R-districts. (*See* Ordinance, §16.2.2.2(1).) The ZHB properly concluded that Aungst’s structure is prohibited as an unattached accessory structure in an R-1 residential district under section 16.2.2.2(1) of the Ordinance and that the structure does not meet any of the exemptions to this restriction under section 16.2.2.3 of the Ordinance.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 16th day of April, 2014, we hereby affirm the September 11, 2013, order of the Court of Common Pleas of Lycoming County.

ROCHELLE S. FRIEDMAN, Senior Judge