

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John Petrizzo

v.

The Zoning Hearing Board of
Middle Smithfield Township, Monroe
County, Pennsylvania

Adams Outdoor Advertising, Inc.

v.

Zoning Hearing Board of the
Township of Middle Smithfield

Adams Outdoor Advertising, LTD.,
a limited partnership, organized
under the laws of the State of
Minnesota, by its managing general
partner, Adams Outdoor Advertising,
Inc., and Edward T. Regina

v.

Board of Supervisors of the
Township of Middle Smithfield

Appeal of: Adams Outdoor
Advertising, LTD., a limited
partnership, organized under the laws
of the State of Minnesota, by its
managing general partner, Adams
Outdoor Advertising, Inc., and
Edward T. Regina

No. 28 C.D. 2014

Argued: September 11, 2014

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: October 3, 2014

Adams Outdoor Advertising, LTD (Adams) appeals from a single Order issued by the Court of Common Pleas of Monroe County (trial court) after consolidating three land use appeals relating to Adams' request to replace a pre-existing non-conforming billboard¹ (Existing Billboard) with a larger, double-sided, digital billboard (Proposed Billboard). The trial court reversed the determination of the Zoning Hearing Board of the Township of Middle Smithfield (ZHB), which had granted Adams' request in part, and affirmed the decision of the Board of Supervisors of the Township of Middle Smithfield (Supervisors), which had denied Adams a conditional use permit for its Proposed Billboard.

On appeal, Adams argues that: (1) the ZHB exceeded its jurisdiction by ruling on the merits of Adams' conditional use application; (2) the ZHB erred in denying zoning relief for the Proposed Billboard because the Middle Smithfield Township Zoning Ordinance (Zoning Ordinance) specifically permits such signs, thereby making it no more non-conforming than the Existing Billboard; and (3) the ZHB properly granted a *de minimis* variance and the trial court erred in reversing that decision. Adams also argues that the Supervisors erred in denying a conditional use permit for the Proposed Billboard because the Zoning Ordinance specifically permits such signs, thereby making it no more non-

¹ The Middle Smithfield Township Zoning Ordinance (Zoning Ordinance) refers to billboards as "off-premises signs." (Zoning Ordinance § 090-090, R.R. at 613a.)

conforming than the Existing Billboard, and the ZHB granted some relief from the violated provisions of the Zoning Ordinance.

I. Factual Background

Adams entered into an agreement with Edward T. Regina to lease property along Route 209 (Property), on which the Existing Billboard is located, with the intent to replace the Existing Billboard with the Proposed Billboard. The Property is zoned Commercial-1 (C-1), and billboards are permitted as conditional uses in the C-1 district. (ZHB Decision, Findings of Fact (ZHB FOF) ¶ 4.) The Existing Billboard was constructed in the 1970s, is single-faced, made of wood, sits approximately 15 $\frac{3}{4}$ feet above grade, and is 30 feet long by 8 feet high for a total of 240 square feet. (ZHB FOF ¶¶ 3, 5.) The Existing Billboard is located within 359 feet of the closest billboard on the same side of Route 209, and within 22.13 feet of the closest billboard on the opposite side of Route 209. (ZHB FOF ¶ 11.) The Existing Billboard is within 263.5 feet of the nearest residence and 153 feet of the boundary line of a residential district. (ZHB FOF ¶¶ 12-13.) The Existing Billboard constitutes a pre-existing non-conforming use since it was constructed before the passage of the Zoning Ordinance, which, in relevant part, requires a 2,000-foot minimum distance between billboards and a 1,000-foot setback from existing residential dwellings or residential zoning districts (isolation requirements). (ZHB FOF ¶ 16; Zoning Ordinance § 090-090.C, R.R. at 614a.)

Adams desires to remove the Existing Billboard and replace it with the Proposed Billboard, which would be “a steel uni-pole double-sided billboard that is 12 feet [by] 24 feet for a total sign area for each of the two billboards of 288 square feet, or a total signage square footage of 576 square feet” and would be 35 feet

above grade. (ZHB FOF ¶¶ 7-8.) The Proposed Billboard would be located within approximately 1-3 feet of the location of the Existing Billboard. (ZHB FOF ¶ 9.) The Proposed Billboard would have digital displays. (ZHB FOF ¶ 2.) The Proposed Billboard would meet all of the requirements for a conditional use permit except the isolation requirements of Section 090-090.C.

a. Proceedings Before the ZHB

Adams and Regina filed an application with the ZHB seeking relief from the isolation requirements of Section 090-090.C, either through the grant of a variance or a determination that the Proposed Billboard was permitted as of right because it was replacing the pre-existing, non-conforming use. The ZHB held a hearing at which Adams and John Petrizzo, a neighboring landowner who was granted party status, presented evidence. Adams presented three reasons for granting the relief: (1) the Proposed Billboard was permitted “as of right” pursuant to Section 090-140.B of the Zoning Ordinance because it was replacing an existing lawful, non-conforming use and was not any more non-conforming than the Existing Billboard; (2) Adams was entitled to a variance from the isolation requirements of Section 090-090.C; and (3) if relief was not granted, the Property would be effectively confiscated and a validity variance pursuant to Section 083-060.C was proper. (ZHB Decision at 2.)

The ZHB first addressed Adams’ argument that the Proposed Billboard was permitted “as of right.” Section 090-140.B of the Zoning Ordinance governs “Non[-]conforming signs” and states, in pertinent part, that upon grant of a permit a pre-existing, non-conforming sign may be replaced with a new non-conforming sign as long as “the new sign is not any more non[-]conforming than the previous sign. For example, an existing non[-]conforming sign may be allowed to be

replaced in the same location by a new sign with the same or less sign area or height.” (Zoning Ordinance § 090-140.B, R.R. at 616a.) The ZHB rejected Adams’ argument that the Proposed Billboard was not any more non-conforming than the previous sign because it could be permitted, as proposed, as a conditional use in the C-1 district. The ZHB stated that, regardless of whether it was a new sign or reconfigured sign, the Proposed Billboard had to comply with the isolation requirements of Section 090-090.C and a variance was needed because “the proposed distances are radically short of” those criteria. (ZHB Decision at 4.) The ZHB held that, even though it would be in the same location, the increase in the non-conformity was not *de minimis* because the increase in advertising space from 240 square feet to 576 square feet, 288 square feet per side, resulted in 336 additional square feet of advertising space that “would be offending the isolation distance.” (ZHB Decision at 5.) The ZHB reasoned that the increase in advertising space and corresponding increase in the offense to the isolation requirements of Section 090-090.C made the Proposed Billboard more non-conforming than the Existing Billboard and, therefore, not permitted as a replacement sign under Section 090-140.B. (ZHB Decision at 5-6; ZHB FOF ¶ 20.)

The ZHB next held that Adams failed to meet any of the requirements for a dimensional variance under Section 083-060.C(1) and did not present any evidence of economic detriment to either Adams or Regina by the denial of the variance. (ZHB Decision at 7-8; ZHB FOF ¶¶ 21-26.) However, the ZHB found that the changes Adams proposed qualified for a *de minimis* variance:

18. The 60 square feet increase from 240 square feet to 300 square feet (300 square feet being the maximum square footage of a one-

sided sign under the recently updated . . . Zoning Ordinance) is the maximum increase that could be characterized as de[]minimis in the degree of non-conformity.

19. The method of display of the sign, fixed or digital, does not create a greater degree of offense to the isolation distance and, as noted previously, the slight shifting of the sign a few feet is a de[]minimis relocation which does not offend the isolation distances to a greater extent.

. . . .

31. The applicant did not provide persuasive proof of satisfaction of the standards necessary to be met in order to secure a variance from an increase in the degree of non-conformity *beyond a de[]minimis increase to 300 square feet for a one-sided sign.*

(ZHB FOF ¶¶ 18-19, 31 (emphasis added).) Accordingly, the ZHB denied “[t]he application for a two-sided billboard in the requested dimension,” but granted the application “with condition, insofar as relocation and height. The applicant can relocate the sign the minimal three feet requested and have a maximum height of 35 feet provided the billboard is one-sided and is limited to 300 square feet of sign area.” (ZHB Order.) The ZHB further approved the use of either a digital or fixed display, so long as the digital display’s method and manner would be as Adams’ described.² (ZHB Order.)

b. Proceedings Before the Supervisors

After the ZHB issued its Order, a hearing on Adams’ conditional use permit for the Proposed Billboard was held by the Supervisors. The application sought permission for a double-sided billboard. (Supervisors Decision, Findings of Fact

² Additionally, the ZHB concluded that, because the Existing Billboard could be “maintained and financial gain realized . . . [the] denial of zoning relief will not result in the confiscation of the [P]roperty,” and a validity variance was not implicated. (ZHB Op. at 8-9; ZHB FOF ¶ 27.)

(Supervisors FOF) ¶¶ 1-2.) Adams and Petrizzo, who was granted party status, (Supervisors FOF ¶ 18), presented evidence on the application. The Supervisors noted that Adams bore the burden of proving its entitlement to a conditional use permit and held that Adams had met all of the requirements for a conditional use permit except the isolation requirements set forth in Section 090-090.C. (Supervisors Decision at 5-6.) The Supervisors concluded that, although Adams had obtained a variance from the ZHB, the variance was for a one-sided billboard with a limited sign area of 300 square feet and Adams was seeking a conditional use permit for a *double-sided* billboard with a total of 576 square feet of sign area. (Supervisors Decision at 6.) The Supervisors further concluded that the Proposed Billboard was more non-conforming than the Existing Billboard under Section 090-140.B, noting the considerable increase in the sign square footage; thus, relief under that section was unavailable. (Supervisors Decision at 6; Supervisors Conclusions of Law (Supervisors COL) ¶ 5.) Therefore, the Supervisors held that Adams’ plans for the Proposed Billboard did “not comply with the . . . Zoning Ordinance either expressly or by approved variance.” (Supervisors Decision at 6.) Accordingly, the Supervisors found that Adams did not meet its burden of proof and denied Adams’ application. (Supervisors COL ¶¶ 6-7; Supervisors Order.)

c. Proceedings Before the Trial Court

Adams separately appealed from the ZHB’s Order imposing the one-sided and square footage limitations, and the Supervisors’ Order denying its conditional use application. Petrizzo appealed the ZHB’s Order to the extent that it allowed Adams to replace the Existing Billboard with a one-sided, 35 foot tall, 300 square foot digital sign. The trial court consolidated the three appeals, heard argument, but did not accept any additional evidence. The trial court rejected Adams’

argument that the Proposed Billboard is no more non-conforming than the Existing Billboard and was permitted by Section 090-140.B, noting that the Proposed Billboard “would be more non[-]conforming because of a digital sign face, greater sign area and greater height than the current sign.” (Trial Ct. Op. at 6.) The trial court noted that, although the ZHB considered the height of the Proposed Billboard inconsequential to its offensiveness of the isolation requirements, the taller sign would have greater visibility to surrounding property owners. (Trial Ct. Op. at 6 n.1 (citing ZHB Op. at 5 n.2 (stating “it seems to be inconsequential as to whether the object which offends the isolation distances is located 23[] to 34 feet in the air or 7.74 to 15 ¾ feet in the air.”)).) The trial court further agreed with the ZHB that Adams did not meet any of the requirements of a traditional variance. (Trial Ct. Op. at 8.)

However, the trial court disagreed with the ZHB’s conclusion that a *de minimis* variance was warranted under the facts here. (Trial Ct. Op. at 8.) The trial court concluded that the change in sign size, from 240 square feet to 300 square feet, represented a 25% increase and that the change in height, from 15 feet to 35 feet, was a 133% increase. (Trial Ct. Op. at 9.) The trial court further explained that the change from a fixed sign to a digital sign was the type of alteration to a non-conforming sign that required compliance with zoning regulations, citing Lamar Advantage GP Co. v. Zoning Hearing Board of Adjustment of Pittsburgh, 997 A.2d 423 (Pa. Cmwlth. 2010) (replacing smaller fixed sign with a ticker sign fifteen times larger was not a permissible replacement of a non-conforming sign); Lamar Advertising Co. v. Zoning Hearing Board of Municipality of Monroeville, 939 A.2d 994, 1004 (Pa. Cmwlth. 2007) (stating that the change from a

conventional sign to a digital sign is an alteration which requires compliance with the applicable requirements of the zoning ordinance). (Trial Ct. Op. at 10.) The trial court held that the large increases in size and change from fixed to digital media were not *de minimis*, and reversed the ZHB's Order to that extent. (Trial Ct. Op. at 9, 11; Trial Ct. Order.) Finally, the trial court concluded that the Supervisors did not err in denying the conditional use permit because, although the ZHB granted a *de minimis* variance allowing Adams to construct a one-sided sign, the trial court had reversed that determination. (Trial Ct. Op. at 12.) Thus, the trial court affirmed the Supervisors' Order denying the conditional use permit. (Trial Ct. Order.) Adams now appeals to this Court.³

II. Adams' Appeal to this Court

a. Adams' Challenges to the ZHB's Decision.

i. Whether the ZHB exceeded its jurisdiction.

On appeal, Adams first argues that the ZHB exceeded its jurisdiction by "granting definitive zoning relief." (Adams' Br. at 19.) It appears that Adams considers the ZHB's determination denying zoning relief for a double-sided billboard to be the equivalent of denying the conditional use permit, which Adams properly notes falls within the jurisdiction of the Supervisors. However, the

³ When the trial court takes no additional evidence, an appellate court's scope of review is limited to determining whether the zoning board committed an error of law or an abuse of discretion in rendering its decision. Lamar Advertising of Penn, LLC v. Zoning Hearing Board of Deer Lake, 915 A.2d 705, 709 n.9 (Pa. Cmwlth. 2007). The same standard applies for reviewing a board of supervisors' decision regarding a conditional use permit. Levin v. Board of Supervisors of Benner Township, 669 A.2d 1063, 1068 (Pa. Cmwlth. 1995). "An abuse of discretion will only be found where the zoning board's findings are not supported by substantial evidence." Larsen v. Zoning Board of Adjustment of the City of Pittsburgh, 672 A.2d 286, 289 (Pa. 1996). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Valley View Civic Association v. Zoning Board of Adjustment, 462 A.2d 637, 640 (Pa. 1983).

ZHB's decision did not rule on whether the Proposed Billboard was permitted as a conditional use; rather, it focused on Adams' request for either a variance from the isolation requirements found in Section 090-090.C or a determination allowing the Proposed Billboard as a replacement of the pre-existing, non-conforming Existing Billboard. Although the ZHB determined that the Proposed Billboard was more non-conforming than the Existing Billboard, the ZHB granted a *de minimis* dimensional variance so long as the Proposed Billboard was single-sided, did not exceed 35 feet in height or 300 square feet in sign area. The ZHB imposed the condition based upon its conclusion that the addition of a second side, which increases the signage square footage from 240 square feet to 576 square feet, "is a significantly greater level and degree of offense to the isolation [requirements] than a single-sided sign with 240 square feet or, for that matter, one with 300 square feet." (ZHB FOF ¶ 17.) A zoning hearing board may impose reasonable conditions on the grant of a variance. Section 910.2(b) of the Municipalities Planning Code⁴ (MPC), 53 P.S. § 10910.2(b); Somers v. Stroud Township Zoning Hearing Board, 913 A.2d 306, 313 (Pa. Cmwlth. 2006). Thus, we conclude that the ZHB ruled only on Adams' request for zoning relief and did not, as Adams asserts, address the merits of the conditional use permit.

ii. Whether the ZHB erred in rejecting the Proposed Billboard as designed.

Adams next argues that the Proposed Billboard is not more non-conforming than the Existing Billboard and, therefore, should be permitted, *exactly as*

⁴ Act of July 31, 1968, P.L. 805, as amended, added by Section 89 of the Act of December 21, 1988, P.L. 1329. Section 910.2(b) of the MPC states that, "[i]n granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the zoning ordinance." 53 P.S. § 10910.2(b).

proposed, as a replacement of the pre-existing, non-conforming use under Section 090-140.B of the Zoning Ordinance. Adams asserts that a sensible reading of Section 090-140.B authorizes the requested relief because the only non-conforming condition of the Proposed Billboard, the violation of the isolation requirements, was part of the Existing Billboard's non-conformity.⁵ According to Adams, since this violation does not change with the construction of the Proposed Billboard, that sign is not more non-conforming than the Existing Billboard. In addition, Adams relying on the Zoning Ordinance's definition of "[n]on[-]conformance," now also maintains that whether the Proposed Billboard is any more non-conforming than the Existing Billboard must be determined by comparing it to the current standards of the Zoning Ordinance and not to the Existing Billboard itself. Adams appears to argue that, when applying the definition of "[n]on[-]conformance" to this matter, the Zoning Ordinance's provisions become ambiguous and, as such, must be construed in Adams' favor and against any implied extension of a restriction. Phillips v. Zoning Hearing Board of Montour Township, 776 A.2d 341, 344 (Pa. Cmwlth. 2001). Adams concludes, therefore, that the Proposed Billboard is not more non-conforming and is permitted, as proposed, under Section 090-140.B.

Section 090-140.B provides, in relevant part:

[i]f a permit is issued by the Township, then an existing, lawful nonconforming sign may be replaced with a new nonconforming sign,

⁵ In particular, Adams asserts that: digital technology is permitted by Section 090-090.J; a maximum height of 35 feet above grade is authorized by Section 090-090.F; double-sided billboards are permitted by Section 090-040.A(4); the square footage of billboards with an interior angle of less than 45 degrees is calculated based on only one side of the billboard, Section 090-040.A(4); and the maximum size of a billboard is 300 square feet per side pursuant to Section 090-090.E. (Zoning Ordinance §§ 090-040.A, 090-090, R.R. at 610a-11a, 614a.)

provided the new sign is not any more nonconforming than the previous sign. For example, an existing nonconforming sign may be allowed to be replaced in the same location by a new sign with the same or less sign area and height.

(Zoning Ordinance § 090-140.B, R.R. at 616a.) Where an administrative board reasonably interprets the ordinance it is charged with administering, that interpretation is entitled to deference unless clearly erroneous or inconsistent with the ordinance. Turchi v. Philadelphia Board of License and Inspection Review, 20 A.3d 586, 591-92 (Pa. Cmwlth. 2011). “Such deference is appropriate because a zoning hearing board . . . possesses knowledge and expertise in interpreting that ordinance.” Lench v. Zoning Board of Adjustment of the City of Pittsburgh, 13 A.3d 576, 579 (Pa. Cmwlth. 2011).

The ZHB determined that whether the Proposed Billboard was more non-conforming than the Existing Billboard was based upon a comparison of all the characteristics of the existing, non-conforming sign, not simply the non-conforming isolation requirements of that sign. It applied the specific example given in Section 090-140.B and concluded that the Proposed Billboard was more non-conforming than the Existing Billboard. The ZHB particularly addressed Adams’ argument that there was only a *de minimis* change in the non-conformity, noting that the level of offense to the isolation requirements was greatly increased by Adams changing the advertising square footage from the existing 240 square feet to the proposed 576 square feet. (ZHB Decision at 5.) The ZHB acknowledged that the Proposed Billboard could be located on the Property *if* it complied with the isolation requirements, but “the fact remain[ed] that but for a status as a non-conforming structure, no advertising structure whatsoever would be allowed in this location unless a variance w[as] granted.” (ZHB Decision at 5.)

Adams appears to want to apply only those requirements of the Zoning Ordinance that are most beneficial to its plans. Adams wants to apply the provisions of Section 090-090 that allow it to construct the Proposed Billboard as planned, but not apply that section's isolation requirements. Similarly, Adams wants to take advantage of the existing non-conforming isolation requirements of the Existing Billboard pursuant to Section 090-140.B, but not that section's restriction that the replacement sign not be any more non-conforming, i.e., the same size and height, as the Existing Billboard. These provisions are not ambiguous, and the ZHB's interpretation of Section 090-140.B as not authorizing the type of relief Adams desires is not clearly erroneous or inconsistent with the Zoning Ordinance and, therefore, is entitled to deference. Turchi, 20 A.3d at 591-92. Denying the expansion of a billboard that nearly doubles the square footage of advertising space that is already encroaching on the isolation requirements between that billboard, other billboards, residences and residential districts is not inconsistent with the Zoning Ordinance's apparent intent to limit the expansion of pre-existing, non-conforming billboards. Accordingly, we reject Adams' contention that the ZHB erred in its interpretation of Section 090-140.B.

iii. Whether the ZHB properly granted Adams a de minimis variance.

Adams also argues that the ZHB correctly determined that its request for zoning relief for the Proposed Billboard was *de minimis* because the location varied only one to three feet from the location of the Existing Billboard and the trial court erred in reversing that determination. Petrizzo asserts that the ZHB erred in granting the variance because the proposed increases were not *de minimis*.

“A *de minimis* variance may be granted, even where the strict requirements for a variance have not been met, where the variation requested is minor and rigid compliance is not necessary to protect the public policy concerns of the ordinance.” Lench, 13 A.3d at 581. “The *de minimis* zoning doctrine authorizes a variance in the absence of a showing of the unnecessary hardship traditionally required.” Nettleton v. Zoning Board of Adjustment of the City of Pittsburgh, 828 A.2d 1033, 1038 (Pa. 2003). “[T]he burden on an applicant is at its lightest where the request involves a *de minimis* variance with respect to a dimensional requirement.”⁶ Lench, 13 A.3d at 582. In determining whether a proposed deviation is *de minimis* there are no set criteria, and “*de minimis* variances are granted according to the particular circumstances of each case.” Bailey v. Zoning Board of Adjustment of the City of Philadelphia, 801 A.2d 492, 504 n.21 (Pa. 2002). The grant of *de minimis* relief is within the zoning hearing board’s discretion; however, we have held that a variation of 34% was not *de minimis* as a matter of law. Swemley v. Zoning Hearing Board of Windsor Township, 698 A.2d 160, 162-63 (Pa. Cmwlth. 1997). Conversely, this Court has held that a dimensional change of less than 10 percent will be treated as *de minimis*. For example, in Township of Middletown v. Zoning Hearing Board of Middletown Township, 682 A.2d 900, 901-02 (Pa. Cmwlth. 1996), we held that adding 167 square feet to a building, or 6.76%, beyond the dimensional maximum was *de minimis*.

⁶ Generally, dimensional variances require a lesser burden of proof than use variances. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43, 47-48 (Pa. 1998).

Here, as pointed out by the trial court, the proposed change in square footage of the single-sided billboard approved by the ZHB, from 240 square feet to a maximum of 300 square feet, represents a 25% increase. (Trial Ct. Op. at 9.) Even the change between the original square footage of 240 square feet and the actual proposed size, 288 square feet, is a 20% increase of advertising space. The ZHB's Order allowed Adams' Proposed Billboard to be a maximum of 35 feet above grade, an increase of 133% from the Existing Billboard's height of 15 feet above grade. Moreover, the change from a fixed sign to a digital sign, which the ZHB granted here as a *de minimis* change, is one that requires compliance with the applicable zoning regulations. Lamar Advertising Company, 939 A.2d at 1003. This change requires the use of new materials, and altered the brightness of the sign, and the sign's message would automatically change every eight seconds. (Trial Ct. Op. at 11.) The legal maxim "[d]e minimis non curat lex" means that "the law does not care for small or trifling matters." Bailey, 801 A.2d at 504 n.20. The deviations approved by the ZHB in this matter are not small or trifling and, therefore, we conclude that the ZHB abused its discretion in granting Adams a *de minimis* variance for a single-sided, 35 foot high, digital, 300 square foot sign.

b. Adams' Challenges to the Supervisors' Decision.

In support of its challenge to the Supervisors' denial of a conditional use, Adams, essentially, reiterates its arguments pertaining to why the ZHB erred in interpreting Section 090-140.B as prohibiting the Proposed Billboard. It also argues that the Supervisors erred in not granting it a conditional use permit based upon the relief that was granted by the ZHB because Adams satisfied its burden of proving its entitlement to a conditional use permit and no evidence was presented

to demonstrate that the Proposed Billboard would be detrimental to the community's health, safety and welfare.

Section 913.2(a) of the MPC⁷ provides that, “[w]here the governing body, in the zoning ordinances, has stated conditional uses to be granted or denied by the governing body pursuant to express standards and criteria, the governing body shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria.” 53 P.S. § 10913.2. That a use is permitted as a conditional use reflects “a legislative determination that such use would not have an adverse impact on the public interests in normal circumstances.” K. Hovnanian Pennsylvania Acquisitions, LLC v. Newtown Township Board of Supervisors, 954 A.2d 718, 724-25 (Pa. Cmwlth. 2008). The “applicant for conditional use approval has the burden of establishing compliance with the specific, objective criteria of the zoning ordinance.” Joseph v. North Whitehall Township Board of Supervisors, 16 A.3d 1209, 1215 (Pa. Cmwlth. 2011). “Once that burden is satisfied, the applicant has made out a prima facie case and must be granted a conditional use, unless the objectors present sufficient evidence that the proposed use will have a detrimental effect on the public health, safety and welfare.” Id.

The Supervisors applied the same reasoning under Section 090-140.B as the ZHB to conclude that the Proposed Billboard was more non-conforming and, therefore, did not qualify as a replacement based on that section. For the reasons set forth in our prior discussion, we conclude that the Supervisors also did not err in its interpretation of Section 090-140.B. Moreover, the fact that the ZHB abused

⁷ Added by Section 93 of the Act of December 21, 1988, P.L. 1329, as amended, 53 P.S. § 10913.2.

its discretion in granting a variance based upon its conclusion that the changes were *de minimis*, likewise, supports affirming the Supervisors' Order because Adams did not establish that it met all of the requirements for a conditional use permit, either expressly or as modified by a variance. Even if we had affirmed the ZHB's grant of a *de minimis* variance approving a single-sided, 35 foot tall, 300 square foot billboard, Adams' conditional use permit requested permission to install the *double-sided* Proposed Billboard and, therefore, did not comport with the zoning relief granted by the ZHB. Accordingly, Adams did not meet its burden of proof, and the Supervisors did not err in denying a conditional use permit to Adams.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John Petrizzo	:	
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v.	:	No. 28 C.D. 2014
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The Zoning Hearing Board of	:	
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Adams Outdoor Advertising, LTD.,	:	
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under the laws of the State of	:	
Minnesota, by its managing general	:	
partner, Adams Outdoor Advertising,	:	
Inc., and Edward T. Regina	:	
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Outdoor Advertising, Inc., and	:	
Edward T. Regina	:	

ORDER

NOW, October 3, 2014, the Order of the Court of Common Pleas of Monroe County, entered in the above-captioned matters, is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge