

COMMONWEALTH COURT OF PENNSYLVANIA

Harrisburg Gardens, Inc. v. Susquehanna Township Zoning Hearing Board

981 A.2d 405 (Pa. Commw. Ct. 2009) · No. No. 636 C.D. 2008 · Decided September 23, 2009

SUMMARY

The Commonwealth Court of Pennsylvania affirmed the denial of Harrisburg Gardens, Inc.'s land-use appeal concerning its nursery and garden center. The court held that the business's expanded operations, including increased stone sales, truck traffic, storage, noise, dust, and related activities, constituted a new and dissimilar use rather than a permissible natural expansion of a prior nonconforming use. The court also held that Harrisburg Gardens waived its challenges to the trial court's remand and the admission of additional testimony.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Commonwealth Court of Pennsylvania                                                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Senior Judge Kelley; President Judge Leadbetter; Judge Pellegrini                                                                                                                                                                                                                                           |
| JURISDICTION          | Pennsylvania                                                                                                                                                                                                                                                                                                |
| DECIDED               | September 23, 2009                                                                                                                                                                                                                                                                                          |
| DOCKET                | No. 636 C.D. 2008                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Harrisburg Gardens appealed the Dauphin County Court of Common Pleas' affirmance of a zoning hearing board decision that its current nursery and garden-center operation was not a valid continuation or natural expansion of a prior lawful nonconforming use.                                             |
| STANDARD OF REVIEW    | Where the trial court receives no additional evidence from a zoning hearing board's decision, the appellate court determines whether the board committed an abuse of discretion or an error of law. The appellate court may not disturb the Board's findings if they are supported by substantial evidence. |
| PRECEDENTIAL VALUE    | Published and precedential decision of the Commonwealth Court of Pennsylvania                                                                                                                                                                                                                               |
| PARTIES               | Harrisburg Gardens, Inc. v. Susquehanna Township Zoning Hearing Board                                                                                                                                                                                                                                       |

## TOPICS

zoning

municipal law

appellate procedure

standard of review

preservation of error

## PRACTICE AREAS

zoning

municipal law

land use

## QUESTIONS PRESENTED

1. Whether Harrisburg Gardens' expanded stone and landscaping-materials operation constituted a natural expansion or continuation of the predecessor's lawful nonconforming nursery use.
2. Whether the zoning hearing board's findings concerning the nature and sales composition of the predecessor and current businesses were supported by the record.
3. Whether the trial court erred by remanding Harrisburg Gardens' motion for additional evidence to the zoning hearing board.
4. Whether the trial court erred in refusing to strike testimony and exhibits received during the remand hearing.
5. Whether Harrisburg Gardens waived its challenges by failing to raise them in its Rule 1925(b) statement or before the zoning hearing board.

## HOLDINGS

1. A landowner may naturally expand a nonconforming business only when the proposed use is sufficiently similar to the existing use and the expansion is necessary to accommodate increased trade; mere similarity or increased volume alone is insufficient. The Board properly found that Harrisburg Gardens' substantially different and more intensive stone-oriented operation was a new and dissimilar use.
2. A property owner seeking to expand a nonconforming use bears the burden of proving the existence of a prior lawful nonconforming use and must provide an evidentiary record defining its present extent and historical background.
3. The Board's findings concerning the predecessor's traditional nursery operation, Harrisburg Gardens' stone-heavy sales, and the increased impacts of the current operation were supported by testimony and the record.
4. Harrisburg Gardens waived its challenge to the trial court's remand of the additional-evidence motion by failing to include that issue in its Rule 1925(b) statement, and waived its challenge to the additional testimony and exhibits by failing to object after its continuance was denied and counsel left the hearing.

## KEY QUOTATIONS

*“there is no authority for such mere similarity, on its own, as a sufficient basis for the application of the natural expansion doctrine.”* (981 A.2d at 411-412)

*“A party cannot gain advantage by making a hasty retreat from the hearing room.”* (981 A.2d at 415)

## FACTUAL BACKGROUND

Harrisburg Gardens operated a nursery and garden center on approximately seven acres in a residential neighborhood. Its predecessors primarily sold and grew plants, trees, and shrubs, with only a small amount of stone and mulch sales and a few storage bins. After Harrisburg Gardens purchased the property, the business shifted toward stone and landscaping materials, used more and larger trucks and storage bins, employed more workers, and generated substantially more noise, dust, dirt, vibration, and truck traffic; it also temporarily manufactured topsoil and crushed rock on the property. The zoning hearing board found that these changes constituted a new and dissimilar use rather than a natural expansion of the prior nonconforming nursery use.

## PROCEDURAL HISTORY

The Susquehanna Township Zoning Hearing Board sustained neighboring residents' appeal and concluded that Harrisburg Gardens' present operation was neither a valid nonconforming use nor a valid continuation of its predecessor's use. The Court of Common Pleas remanded for consideration of Harrisburg Gardens' motion to present additional evidence, denied a motion to strike the additional testimony and exhibits, and affirmed the Board. The Commonwealth Court affirmed, holding that several appellate arguments were waived and that the record supported the Board's determination that the current operation was a new and dissimilar use.

## DISPOSITION

affirmed

## CASES CITED

- Narberth JKST Tennis Club, Inc. v. Zoning Hearing Board of Borough of Narberth, 938 A.2d 1144 (Pa. Commw. Ct. 2007)
- Limley v. Zoning Hearing Board of Port Vue Borough, 533 Pa. 340, 625 A.2d 54 (1993)
- Lench v. Zoning Board of Adjustment of City of Pittsburgh, 852 A.2d 442 (Pa. Commw. Ct. 2004)
- B & B Shoe Products Co. v. Zoning Hearing Board of Manheim Borough, 368 A.2d 1332 (Pa. Commw. Ct. 1977)
- Silver v. Zoning Board of Adjustment, 435 Pa. 99, 255 A.2d 506 (1969)
- Pappas v. Zoning Board of Adjustment of City of Philadelphia, 527 Pa. 149, 589 A.2d 675 (1991)
- IMS America, Ltd. v. Zoning Hearing Board of Borough of Ambler, 503 A.2d 1061 (Pa. Commw. Ct. 1986)
- Collis v. Zoning Hearing Board of East Allen Township, 415 A.2d 102 (Pa. Commw. Ct. 1980)
- Solebury Township v. Solebury Township Zoning Hearing Board, 914 A.2d 972 (Pa. Commw. Ct. 2007)
- Seipstown Village, LLC v. Zoning Hearing Board of Weisenberg Township, 882 A.2d 32 (Pa. Commw. Ct. 2005)
- McGeehan v. Zoning Hearing Board of Springfield Township, 407 A.2d 56 (Pa. Commw. Ct. 1979)
- Upper Merion Township v. Urbano, 294 A.2d 403 (Pa. Commw. Ct. 1972)
- Baker

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