

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

AUUE, INC.,

No. SA 19-000748

Appellant,

v.

BOROUGH OF JEFFERSON HILLS ZONING
HEARING BOARD,

Appellee,

and

OPINION AND ORDER OF COURT

BOROUGH OF JEFFERSON HILLS and 68
RESIDENTS OF JEFFERSON HILLS,

Intervenors.

Honorable Joseph M. James

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OPINION

James, J.

August 7, 2020

This appeal arises from the decision of the Borough of Jefferson Hills Zoning Hearing Board (“Board”) which denied Appellant AUUE, Inc.’s application for a zoning permit to build UPMC South on Route 51 in the Borough of Jefferson Hills. The Property consists of five parcels located at the corner of Route 51 and Elliot Road. One lot is

partially located in the Office Park (“O-P”) District and the Commercial 1 (“C-1”) District. Another lot sits entirely within the O-P District. One lot is partially located in the O-P District and partially in the Residential 1 (“R-1”) District. Two lots are located entirely in the R-1 District.

In August of 2018 AUUE filed an Application for a zoning permit to build UPMC South, a medical center consisting of a hospital, a medical clinic and medical office buildings. Jefferson Hills Zoning Ordinance Section 701.1.a. lists the following principal uses by right in the O-P District: (a) assisted living facility; (b) financial institutions; (c) business or professional offices; (d) conference or training center; (e) hospital; (f) independent living facility; (g) medical center; (h) medical clinics; (i) medical research facilities; (j) nursing home and/or professional care home; (k) timber removal; (l) funeral home. In October of 2018, the zoning officer issued a zoning permit to AUUE but indicated it would need to secure various additional approvals and permits. Intervenor, a group of Jefferson Hills residents, appealed the granting of the zoning permit. Much of what appeared in the record showed that neighbors are opposed to a major development in the area. The Borough, an Intervenor by right, joined the position of the Jefferson Hills Residents. After eleven hearings and testimony of dozens of witnesses, the Board issued a decision rejecting AUUE’s permit application finding that the Ordinance seeks to encourage uses ancillary to Jefferson Hospital and does not allow for the development of another medical center. It is from that decision that AUUE appeals.

When the trial court takes no additional evidence, the scope of its review is limited to determining whether the Board committed an error of law, abused its discretion or made

findings not supported by substantial evidence. Mars Area Residents v. Zoning Hearing Board, 529 A.2d 1198, 1199 (Pa. Cmwlth. 1987). 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, 501 Pa. 550, 462 A.2d 637, 640 (1983).

The Board determined that the Ordinance precludes the development of UPMC South on the Property. AUUE contends that because the language of the Ordinance in Section 701 is clear and unambiguous in allowing a hospital and medical center as principal uses by right, that there was no need for the Board to look further to ascertain legislative intent. However, the Board concluded that Pennsylvania law requires it to read the statutory language in context with the legislative intent. Appeal of Neshaminy Auto Villa, Ltd., 358 A.2d 433, 435 (Pa. Cmwlth. 1976). Therefore, the Board considered the entire Ordinance starting at Section 701 as well as the Statement of Intent under Article 700. The Statement of Intent of Article 700 lists three intentions for the O-P District. It states:

In addition to the general goals listed in the preamble, the districts established in these regulations are intended to achieve the following:

To encourage development of medical offices, medical clinics and diagnostic centers ancillary to the Jefferson Hospital;

To encourage other business and professional offices and supporting services in a campus style setting with protections for adjoining residentially zoned properties; and

To provide a compatible zoning classification to serve as a transition between residential properties and commercial properties in locations accessible to the regional highway network.

The Board explained that the first statement of intent states that one purpose of the O-P District is to provide ancillary uses to Jefferson Hospital. It noted that when the O-P District was created, Jefferson Hospital already existed. The second statement of intent encourages other businesses and professional offices and supporting services. Both the second and the third statements of intent reference protecting the residentially zoned properties and the district being a transition between residential and commercial properties. The Board concluded that when read in its entirety, neither a hospital nor a medical center would be considered “other businesses and professional offices”. The Board found that if another hospital or medical center had been contemplated by the Borough it would have been included in the Statement of Intent.

It is a well-settled principle that a zoning hearing board’s interpretation of its own zoning ordinance is entitled to great weight and deference. See Hope v. Sadsbury Township Zoning Hearing Board, 890 A.2d 1137 (Pa. Cmwlth. 2006). This principle is also codified in Section 1921(c)(8) of the Statutory Construction Act of 1972. The basis for the judicial deference is the knowledge and expertise that a zoning board possesses to interpret the ordinance that it is charged with administering. In Re. Thompson, 896 A.2d 659, 669 (Pa. Cmwlth. 2006). Here, the Board, after holding multiple hearings, considering testimony from hundreds of witnesses and examining thousands of pages of

exhibits, concluded that when read together, the Ordinance and the Statement of Intent do not contemplate another hospital or medical center containing a hospital in the O-P Districts. The Board also noted that Section 701 refers to both “medical center” and “hospital” in the singular. Based on the interpretation of the Ordinance and the legislative goals, it determined that Borough Council intended to promote the expansion and development of Jefferson Hospital and its ancillary uses, not the development of an additional hospital. The intent of the Code was not to have two competing hospitals in the O-P District. The Board also noted that testimony from former Borough officials provided some insight into the creation of the O-P Districts. The former officials indicated that the districts were created to promote lower-density uses that were compatible with the semi-rural residential character of the neighborhood. They explained that “hospital” was included in the permitted uses of Section 701 to account for the then existing hospital and not to develop more hospitals.

The Court notes that AUUE raised other issues including exclusionary and spot zoning. However, because the use is precluded by the interpretation of the Ordinance and the legislative goals, the Court will not reach those issues.

Based upon the foregoing Opinion, the Board’s decision is affirmed and AUUE’s appeal is dismissed.

Joseph M. James

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ORDER OF COURT

AND NOW, this 7th day of August 2020, based upon the foregoing Opinion, the Board's decision is affirmed and the Appellant's appeal is dismissed.

By the Court:

Joseph M. James