

Bond Case Briefs

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ZONING - PENNSYLVANIA

Bernotas v. Zoning Hearing Bd. of City of Bethlehem

Commonwealth Court of Pennsylvania, June 7, 2013 - A.3d - 2013 WL 2450160

Adjacent landowners sought review of decision of zoning hearing board granting variances to applicant to expand grocery store, a nonconforming use of property.

The Commonwealth Court upheld the granting of the variances, finding that:

- Dimensional variance standard, rather than nonconforming use standard, applied to application for variances;
- Substantial evidence supported finding that hardship resulted from unique physical conditions of property;
- Substantial evidence supported finding that requested expansion was necessary for reasonable use of the property;
- Substantial evidence supported finding that proposed expansion would not adversely impact neighborhood; and
- Applicant was required to obtain a variance, not special exception.

In general, an applicant can establish unnecessary hardship required for a variance by demonstrating either that physical characteristics of the property are such that the property cannot be used for the permitted purpose or can only be conformed to such purpose at a prohibitive expense, or that the property has either no value or only a distress value for any permitted purpose.

In considering a dimensional variance request, multiple factors may be considered, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.

Dimensional variance standard, rather than nonconforming use standard, applied to application for variances to add loading dock, ramp, and warehouse for grocery store, a nonconforming use of the property; additions would increase nonconforming use without creating a new use on the lot, and proposed new structures were incidental and secondary to principle nonconforming use of the property and would improve and modernize existing structures devoted to nonconforming use.