

# Property Owners Need to Seek Intervention in Zoning Battles

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Special to the Legal

Since the 1990s, the region has received an "extreme makeover" as planned communities, retail complexes and restaurants have taken root in previously underdeveloped areas of the region. Since the use and occupancy of buildings, structures and land in the region are strictly restricted and regulated by Pennsylvania's municipalities planning code and other applicable zoning regulations, variance relief is typically required in order for development to occur.

Neighborhood opposition can prolong the zoning approval process. Even if the zoning hearing board grants the variance, affected neighbors have the right to appeal the board's decision to the court of common pleas. In a recent decision, the Commonwealth Court in *Nahas v. Zoning Hearing Board of Schuylkill* issued a strict warning to remind developers not to sit back idly while the appeal is being fought at the trial court level.

## VARIANCE GRANTED

In *Nahas*, Anna and Robert Yeager filed an application for a zoning variance under the municipalities planning code with the zoning hearing board of Schuylkill County to operate a car restoration business out of their garage on property located in a residential zoning district. The zoning hearing board granted the variance after concluding that the property owners would suffer unnecessary hardship under the strict application of the ordinance due to the unique physical conditions particular to their property.

## TRIAL COURT REVERSES RULING

After the zoning hearing board's deci-



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sion was handed down, two of the Yeagers' neighbors, Joseph and Olga Nahas, decided to challenge the decision by filing an appeal with the Court of Common Pleas of Schuylkill County. Since the Nahases were only required under Pennsylvania law to sue the zoning hearing board and not the Yeagers, the Yeagers were not a party to the land use appeal. Even though the zoning variance was at stake, the Yeagers chose not to participate in the trial court proceedings.

The trial court eventually reversed the zoning hearing board's determination and held that there was no unnecessary hardship by the denial of the zoning variance. The Yeagers then filed an appeal of the trial court's ruling with the Pennsylvania Commonwealth Court.

The Nahases then filed a motion to quash the appeal, arguing that the Yeagers lacked standing to appeal the trial court's ruling because the Yeagers had failed to intervene in the trial court proceeding and thus were not a party to the land use appeal filed by the Nahases.

## RIGHT TO INTERVENE

A party generally intervenes in a case by petitioning the court for leave to intervene pursuant to the Pennsylvania Rules of Civil Procedure. The municipalities planning code, however, makes it relatively easy for a property owner to intervene in land use

appeals. Section 11004-A of the code provides that "[w]ithin 30 days ... following the filing of a land use appeal, if the appeal is from a board or agency of a municipality, the ... owner or tenant of the property directly involved in the action appealed from may intervene as of course."

By permitting intervention as of right in land use appeals, the municipalities planning code, in effect, creates a presumption

that the property owner or tenant meets the requirements to intervene which are set forth under the Pennsylvania Rules of Civil Procedure.

## LACK OF STANDING

The Commonwealth granted the Nahases' motion to quash the Yeagers' appeal, finding that the Yeagers lacked standing to appeal the

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## AREA MORTGAGE RATES

Lender	Fixed Rates		Adjustable Rates	Jumbo Rates*	Commercial
	30 yr.	15 yr.	1 yr.	30 yr. fixed	Yes/No**
Hamilton Nat'l Mtg. 800-220-7334	6.00/0	5.38/0	N/A	6.25/0	Yes
National Future Mtg. 800-291-7900	6.00/0	5.38/0	N/A	6.25/0	Yes
Home Finance of America 800-358-5626	6.00/0	5.38/0	3.13/0	6.25/0	No
American Residential 800-566-8470	6.00/0	5.50/0	N/A	6.25/0	No
Madison First Financial 800-516-4666	6.00/0	5.38/0	N/A	6.25/0	No
Savings Mortgage 800-559-0924	6.13/0	5.50/0	4.00/0	6.38/0	No
Lighthouse Mortgage 800-784-1331	6.25/0	5.63/0	N/A	6.25/0	No
American Family Mtg. 610-358-5324	5.50/3	4.75/3	3.00/3	5.75/3	No
AA E Mortgage 877-793-1400	6.00/0	5.38/0	N/A	6.25/0	No
United Bank of Philadelphia 215-751-9950	6.25/0	5.50/0	N/A	6.50/0	No
State Farm Bank 877-734-2265	6.38/0	5.75/0	4.13/0	6.50/0	No
Turnstone Mortgage 877-734-2265	6.13/0.25	5.50/0.25	3.25/0	6.38/0	No

\* A "Jumbo" or non-conforming mortgage is a loan amount in excess of \$333,700.

\*\* Indicates if a lender offers mortgage loans for commercial properties. Call to discuss rates and terms.

Rates compiled by the National Financial News Services, a mortgage information and financial clearing house in West Chester, Pa. Rates may be for new applicants only; information on terms and other available programs may be obtained by calling the lender directly. Consumers wishing additional rate information call (610) 344-9953. Rates valid May 21, 2004. For additional information on mortgages, go to: [www.PhillyMortgageRates.com](http://www.PhillyMortgageRates.com)

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trial court's decision because the Yeagers had failed to intervene in the trial court proceeding. The Commonwealth Court noted that a property owner whose property is directly involved in a zoning appeal is not granted automatic party status in an appeal from the decision of the zoning hearing board despite the fact that both may have participated as parties before the board. The Commonwealth Court caustically stressed that if the property owner wishes to appeal the trial court's ruling, the property owner must intervene as a party at the trial court level.

The Commonwealth Court found that the Yeagers' failure to intervene was fatal to their appeal of the trial court's adverse ruling. In *Nahas*, the court focused on the Yeagers' decision not to intervene under Section 11004-A. While a property owner or tenant has the right to intervene under Section 11004-A so long as notice of intervention is filed within 30 days of the land use appeal, the property owner or tenant is not prevented

from intervening in the appeal after the 30-day period expires.

Pennsylvania courts have consistently held that the property owner or tenant can intervene pursuant to the Pennsylvania Rules of Civil Procedure even if he misses the 30-day deadline.

If the property owner or tenant decides to intervene pursuant to the Pennsylvania Rules of Civil Procedure instead of under Section 11004-A, he must file a petition for leave to intervene with the trial court. The trial court then, upon the filing of the petition and after a hearing on the merits, has the discretion to either grant or deny the petition.

While the trial court has the discretion to deny a petition to intervene filed pursuant to the Pennsylvania Rules of Civil Procedure, such petitions are generally granted simply because an owner or tenant of property involved in zoning litigation obviously has the requisite interest and status to become an intervener. For example, in *Epting v. Marion Township Zoning Hearing Board*, appeal denied, the Commonwealth Court found that the trial court did not abuse its discretion by allowing intervention in a land use appeal

four months after the appeal was filed. In *Epting*, the Commonwealth Court concluded that the petition to intervene was filed two months before the scheduled hearing date and the delay did not prejudice the appeal.

Similarly, the Commonwealth Court in *Grove v. Zoning Hearing Board of Thornbury Township* found that the trial court did not abuse its discretion by allowing the property owner to intervene after the prescribed 30-day period had already elapsed. In *Grove*, the Commonwealth Court stated that the adjoining property owners, who appealed the zoning board's decision, were not prejudiced by the petition to intervene, which was filed more than 30 days after the appeal was filed but before the case was listed for argument.

Even though Pennsylvania courts readily allow the property owner or tenant to intervene in the land use appeal, he must actually intervene in the appeal under Section 11004-A or pursuant to the Pennsylvania Rules of Civil Procedure. For example, in *Brendel v. Zoning Enforcement Officer of Borough of Ridgway*, the Commonwealth Court reiterated that mere participation in a matter before the trial court does not

accord the participant party status and, thus, standing to appeal. In *Brendel*, the court found that the Borough of Ridgway lacked standing to appeal the decision of the trial court even though the Borough of Ridgway submitted briefs and presented testimony at trial. The court noted that the borough of Ridgway did not file notice of intervention or indicate to the trial court that Ridgway was attempting to intervene pursuant to the Pennsylvania Rules of Civil Procedure.

### LESSON LEARNED FROM NAHAS

Property owners should take solace from the Commonwealth Court's decision in *Nahas* because it merely reacquainted them with well-established precedent. As a result, they have no choice but to remain actively involved at the trial court level, even if they have received zoning approval from the zoning board. If they fail to do so and count their chickens before they hatch, they could find themselves being barred from appealing an unfavorable trial court ruling, a virtual death sentence for the development project. •