SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

November 22, 2005

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RE: McGuiness v. Board of Adjustment of the Town of Henlopen Acres
C.A. No. 05A-02-003-ESB

Date Submitted: August 23, 2005

Dear Counsel:

This is my decision on the appeal by Stephen and Kathleen McGuiness (the "McGuinnesses") of the denial of their application for a building permit for a new home by the Board of Adjustment (the "Board") of the Town of Henlopen Acres (the "Town"). The Board's decision is affirmed for the reasons set forth herein.

STATEMENT OF FACTS

The McGuinesses submitted an application to the Town for a building permit for a new, two-story, 6,704 square-foot home. The zoning officer denied the application because the McGuinesses' home exceeded the zoning code's 6000 square-foot limitation. The McGuinesses appealed the zoning officer's decision to the Board, arguing that the zoning code was ambiguous and that the 6,000 square-foot limitation applied only to the "heated living space" of their home. The Board denied the McGuinesses' appeal, reasoning that the zoning code was not ambiguous and that the home exceeded the 6,000 square-foot limitation. The McGuinesses then filed an appeal with this Court.

The McGuinesses have raised three arguments in support of their appeal. One, the McGuinesses argue that the Board committed an error of law by enforcing an ambiguous ordinance. Two, the

McGuinesses argue that the Board's decision is not supported by substantial evidence in the record. Three, the McGuinesses argue that the Board committed an error of law by not providing a rationale for its conclusion prior to issuing its written decision.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the Superior Court on appeal from a decision of a Board of Adjustment is limited to whether the agency's decision is supported by substantial evidence and whether the agency made any errors of law.[1] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[2] The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[3] It merely determines if the evidence is legally adequate to support the agency's factual findings.[4] Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.[5]

DISCUSSION

Section 130-19.F. is the zoning code provision that is at issue in this case. It states, "The maximum square footage of a dwelling unit shall not exceed the [sic] 6,000 square feet." The McGuinesses argue that the words "dwelling unit" are ambiguous and that the 6,000 square-foot limitation applies only to the heated living space of their home. A statute is ambiguous if it is susceptible to having two or more possible meanings.[6] The McGuinesses have not identified the multiple meanings that "dwelling unit" may have. Indeed, that would be difficult to do given the facts of this case. The McGuinesses submitted

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[1] *Janaman v. New Castle Co. Bd. Of Adj.*, 364 A.2d 1241, 1242 (Del. Super. Ct. 1976); *aff'd* 379 A.2d 1118 (Del. 1977); *General Motors Corp. v. Freeman*, 164 A.2d 686 (Del. 1960).

[2] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986), *app. dism.*, 515 A.2d 397 (Del. 1986).

[3] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

[4] 29 *Del.C.* § 10142(d).

[5] *Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. Ct. 1958).

[6] *Newtowne Village Service Corp. v. Newtowne Road Development Company, Inc.*, 772 A.2d 172, 175 (Del.2001).

plans for a two-story, 6,704 square-foot home. Everything in the home is under one roof. The two-car garage is incorporated into the home. There can be no doubt that the McGuinesses have submitted plans for a "dwelling unit." They have not argued otherwise. There also can be no doubt that the McGuinesses' dwelling unit exceeds 6,000 square feet and, as such, is not in compliance with the zoning code. Where a statute is unambiguous and there is no reasonable doubt as to its meaning, the Court must give effect to its literal meaning.[7] I can find no ambiguity at all with § 130-19.F. The zoning officer and the Board reached the correct decision regarding the application of §130-19.F. to the McGuinessess' application for a building permit for a new home. The home is simply too large.

Even though I have concluded that § 130-19.F. is not ambiguous, I will address the McGuinesses' other arguments. The McGuinesses' argument that § 130-19.F. was intended to apply only to the heated living space of their home is based on § 130-24, which states:

> No structure shall exceed 30 feet in height as defined in § 130-4. No one-story or bi-level house shall be constructed in the Town of Henlopen Acres with less than 1,800 square feet of livable floor space exclusive of porches, garages, basements, breezeways or storage areas. No two-story or Cape Code house shall be constructed in the Town of Henlopen Acres with less than 2,400 square feet of livable floor space exclusive of porches, garages, basements, breezeways or storage areas.

This section sets forth the minimum square-foot requirements for one and two-story homes. The minimum is expressed in terms of "livable floor space." It was adopted before the Town adopted § 130-19.F. Obviously, if the Town had wanted to define the maximum square footage of a dwelling unit in terms of "livable floor space," it would have done so. The fact that the Town did not use this language obviously means that the Town did not want to express the maximum square footage of a dwelling unit in terms of "livable floor space."

The McGuinesses also argue that the interplay between § 130.19.E. and F. supports their argument that § 130.19.F. applies only to the heated living space of their home. In this regard, the McGuinesses argue that because in some instances the limit in § 130-19.E. may be lower than the limit in § 130-19.F., that the 6,000 square foot limit in § 130-19.F. must then only apply to the heated living space of a home. § 130-19.E. states, "The floor area section shall not exceed 30% and include all that which is under roof,

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[7] *Zimmerman v. State*, 628 A.2d 62, 68 (Del. 1993).

including garage and storage." This section allows the Town to make sure that homes are proportional to the lots. § 130-19.F. sets a 6,000 square foot limitation regardless of the size of the lot. The two sections, as they work together, serve the Town's goals of making sure that homes are proportional to the lots and no bigger than 6,000 square feet regardless of the size of the lot. There is nothing at all contradictory about this and it does not in any way support the McGuinesses' argument.

The McGuinesses also argue that the square footage of their garage should be excluded from the limit set forth in § 130.19.F. This argument fails because § 130.19.F., by its own language, does not exclude garages.

The McGuinesses' final argument is that the Board's decision is not supported by substantial evidence in the record and that the Board members did not state their reasons for their votes on the record. This case involves the simple application by a zoning officer of an unambiguous zoning provision to an application for a building permit for a new home. It is the kind of routine decision that zoning officers make every day. §130-19.F. limits the size of a dwelling unit to 6,000 square feet. The McGuinesses' plans for their new home exceed 6,000 square feet. There is no other necessary factual finding other than this one. The zoning officer correctly denied the McGuinesses' application for a new home because it did not comply with § 130-19.F. The Board correctly agreed with the zoning officer's decision. The Board's decision is supported by simple logic and the undisputed facts of this case.

CONCLUSION

The Board's decision is affirmed.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley