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Who is an "Aggrieved Party" Entitled to Appeal a Zoning Decision?

FACTS:

In 1957, a subdivision containing 17 lots was platted in Chikaming Township near Lake Michigan. Lot 6 of the subdivision has a total area of 9,676 square feet. The township enacted its first zoning ordinances in 1964. Lot 6 was rendered nonconforming under its 1981 zoning ordinance, which required a minimum area of 20,000 square for buildability. Wanting to build a residential cottage on Lot 6, the owner (a purchaser at tax sale) filed an application with the township for a variance of its square footage and rear setback requirements. The township sent notice to property owners within a 300-foot radius of Lot 6 of the hearing to be held before the township's Zoning Board of Appeals (ZBA). Following the hearing, the ZBA approved the variance request.

Various property owners appealed the decision to the circuit court. The ZBA argued that the property owners lacked standing to challenge its decision since they were not "aggrieved parties" within the meaning of the Michigan Zoning Enabling Act (MZEA). In 2006, the state Legislature consolidated three previous zoning enabling acts for local units of government into the MZEA. The MZEA provides for judicial review of a local unit of government's zoning decision. In particular, section 605 of the MZEA provides that a party "aggrieved" by the ZBA decision may appeal to the circuit court. The circuit court is authorized to review a ZBA's decision to determine if the decision was based on the Michigan constitution and laws, was based on proper procedure, and was supported by evidence.

QUESTION:

The circuit court held that those property owners within 300 feet of Lot 6 had standing to qualify as an aggrieved party for purposes of an appeal to the circuit court. The circuit court also found that the ZBA did not have the authority to grant the variance since the specific conditions of the section authorizing the township to grant a variance were not satisfied.

ANSWER:

On appeal, the Court of Appeals held that, under MCL 125.3605, an aggrieved party must allege and prove that he or she has suffered special damages not common to other property owners similarly situated. Incidental inconveniences and mere ownership of adjoining parcels are insufficient. Furthermore, the court of appeals held that the township notice requirement to property owners within a 300-foot radius does not confer "aggrieved party" status. "Aesthetic, ecological, and practical harms are insufficient to show 'special damages not common to other property owners similarly situated.'" The court noted that since the MZEA (adopted in 2006) incorporated the "aggrieved person" threshold, its decision interpreting the language in the MZEA aligns with the body of case law interpreting the "aggrieved person" threshold.

The Court of Appeals did not address other issues raised by the appellants since they were not properly able to invoke the jurisdiction of the court.

Olsen v Chikaming Township, Nos. 337724 and 337726 (July 3, 2018)

Note: Application for leave to appeal to the Michigan Supreme Court has been filed.