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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3830-16T4

ZIAD and NADA HADAYA,

Plaintiffs-Appellants,

v.

PRINCETON PLANNING BOARD,

Defendant-Respondent.

Argued May 15, 2018 – Decided June 1, 2018

Before Judges Fasciale and Natali.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Docket No. L-
1549-16.

Eric S. Goldberg argued the cause for
appellants (Stark & Stark, attorneys; Eric S.
Goldberg, of counsel and on the brief; Brian
E. Kasper, on the brief).

Gerald J. Muller argued the cause for
respondent (Miller Porter & Muller, PC,
attorneys; Gerald J. Muller, of counsel and
on the brief).

PER CURIAM

Ziad and Nada Hadaya (collectively plaintiffs) appeal from
an April 18, 2017 order dismissing their complaint in lieu of

prerogative writs. Plaintiffs own a single-family residence (the property) located in Princeton's R-6 zoning district.

In December 2015, plaintiffs filed an application with the Princeton Planning Board (Board) seeking approval to subdivide the property into two lots. The application proposed two distinct lots, which would accommodate two single-family dwellings, and would be divided by a "zig-zag" or "zipper" lot line. Approximately a week later, the Princeton Township Council passed Ordinance 2015-39, which eliminated permissive zig-zag lot line subdivisions in the R-6 zoning district. As a result, any application proposing a zig-zag lot line would require variance relief.¹

In January 2016, the land use engineer and zoning officer sent a letter to plaintiffs regarding the proposed subdivision application. The experts stated that the zig-zag lot line was permissible, but they raised questions regarding the proposed lot line configuration, and recommended that plaintiffs consider reconfiguring the proposed subdivision.

In March 2016, plaintiffs presented the application to the Board. At the hearing, the Board expressed its concern regarding

¹ It is undisputed that Ordinance 2015-39 does not apply to plaintiffs' subdivision application due to the time of application rule.

the proposed subdivision configuration and requested that plaintiffs submit an alternative proposal. Plaintiffs submitted an alternative proposal prior to the hearing being resumed in April 2016. Plaintiffs presented testimony for both the zig-zag plan and the alternative plan. The Board voted to deny both proposals, and in July 2016, the Board adopted a resolution memorializing the denials.

The following month, plaintiffs filed a complaint in lieu of prerogative writs. The judge held oral argument, and entered the order on appeal.

Plaintiffs argue that the Board erred in denying their zig-zag subdivision proposal. Specifically, plaintiffs argue that the Board incorrectly applied Section 10B-182 of the Princeton Township Code to preclude the use of a zig-zag lot line. Plaintiffs also contend that the Board erred in finding that plaintiffs were required to meet the criteria of a flag lot.

When reviewing a trial court's decision regarding the validity of a local board's determination, "we are bound by the same standards as was the trial court." Fallone Props., LLC v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552, 562 (App. Div. 2004). Thus, we give deference to the actions and factual findings of a zoning board and may not disturb such findings unless they were arbitrary, capricious, or unreasonable. Id. at 560. In

other words, a board's actions must be based on substantial evidence. Cell S. of N.J., Inc. v. Zoning Bd. of Adjustment, 172 N.J. 75, 89 (2002). We will not substitute our judgment for that of the zoning board "even when [we are] doubtful about the wisdom of the action." Cellular Tel. Co. v. Zoning Bd. of Adjustment, 90 F. Supp. 2d 557, 563 (D.N.J. 2000).

"[W]e give deference to a municipality's informed interpretation of its ordinances, while nevertheless construing the ordinance de novo." DePetro v. Twp. of Wayne Planning Bd., 367 N.J. Super. 161, 174 (App. Div. 2004). Because a board's action is presumed to be valid, "the party attacking such action has the burden of proving otherwise." N.Y. SMSA LP v. Bd. of Adjustment, 324 N.J. Super. 149, 163 (App. Div. 1999).

Plaintiffs argue that the Board improperly relied in part upon Section 10B-182 to deny their application. Plaintiffs contend that the Board's decision violated Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216 (1994), because they could not determine prior to the hearing whether Section 10B-182 applied to their proposed subdivision. Section 10B-182 provides that "[i]nsofar as is practicable, side lot lines shall be at right angles or radial to street lines." Thus, Section 10B-182 requests that an applicant submit a proposed subdivision with side lot lines perpendicular to the street, whenever possible.

In its resolution, the Board explained that plaintiffs failed to meet the requirements of Section 10B-182. The Board found that plaintiffs purposefully failed to comply with the design standard in an attempt to avoid the application of the flag-lot ordinance standards. The resolution stated that "[e]ven if [Section 10B-182] cannot be applied directly as a bulk zoning standard, it should be applied to prevent a design that allows an applicant to circumvent the flag lot standards."

"The generalized design standards for subdivision ordinances prescribed by the [Municipal Land Use Law], e.g. N.J.S.A. 40:55D-38, necessarily invoke the planning board's expertise and familiarity with local conditions and implicate the exercise of discretion by planning boards." Pizzo, 137 N.J. at 233. The standards listed in N.J.S.A. 40:55D-38 are design features related to a lot or piece of property, and their impact to the surrounding neighborhood. Thus, the Pizzo Court found that a planning board has the discretion to impose design standards that relate to the public interest as long as the standards are "reasonably specific to provide guidance and to foster consistency and fairness in their application." Id. at 230.

The Board in its discretion denied plaintiffs' application partially for failing to comply with Section 10B-182, and its action was not arbitrary, capricious or unreasonable. Plaintiffs

chose to design the proposed subdivision in violation of Section 10B-182, and the Board had the authority to deny their application on that basis.

Plaintiffs also argue that the Board erred in treating the proposed subdivision as a flag lot because it did not meet the definition of a flag lot pursuant to the Princeton Township Code. Plaintiffs contend that the Board's denial on the basis that the application was a "non-conforming flag lot" is arbitrary because it contradicted the definition of a flag lot.

In its resolution, the Board reasoned that plaintiffs' proposed subdivision was a non-conforming flag lot because the lot contained all of the characteristics of a traditional flag lot. The Board found that

[t]he zipper lot configuration in fact has the essential features of a flag lot – a driveway for the rear lot along the side of the front lot and one house lot behind the other. Not treating the zipper lot as a flag lot allows a more favorable [floor area ratio] calculation with no pole area exclusion and no enhanced set backs area. The Board finds that it cannot support an ordinance construction that allows protective standards in the flag lot ordinance to be avoided by technical devices. This is reinforced where compliance can only be achieved by ignoring the clear design standards of [S]ection 10B-182. Accordingly the Board concludes that the convoluted zipper lot configuration should be viewed as a non-conforming flag lot rather than as a conforming two-lot subdivision.

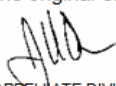
The judge found that the Board's action was reasonable citing that no other subdivision was approved with a similar zipper lot line and stating that deference should be given to the Board's interpretation of the definition.

Substantial evidence exists to support the Board's decision to treat plaintiffs' proposed subdivision as a non-conforming flag lot, such as Princeton Township's intention to prevent such a lot configuration by passing Ordinance 2015-39. Although it is undisputed that this ordinance does not apply to plaintiffs' proposed subdivision, its passing evinces the municipality's intent of disfavoring these types of subdivisions.

We conclude that plaintiffs' remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION