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**IN THE COURT OF COMMON PLEAS
OF CHESTER COUNTY, PENNSYLVANIA**

BOARD OF SUPERVISORS OF EAST FALLOWFIELD TOWNSHIP Appellant,	:	NO. 2009-14024-LU
	:	LAND USE APPEAL
	:	
v.	:	
ZONING HEARING BOARD OF EAST FALLOWFIELD TOWNSHIP Appellee,	:	
	:	
and	:	
BAWA MUHAIYADEEN FELLOWSHIP Intervenor/Appellee.	:	

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OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA.

PRAECIPE FOR DETERMINATION

TO THE PROTHONOTARY:

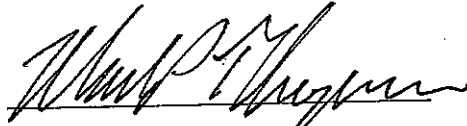
Kindly submit the following matter assigned to Judge Ronald C. Nagle for determination:

1. Brief of Appellant, East Fallowfield Township Board of Supervisors, in Support of Appeal of the Decision and Order of It's Township Zoning Hearing Board.
2. Date of Filing: May 9, 2011
3. Oral argument is requested.

LAMB MCERLANE PC

Date: May 9, 2011

BY:



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 OF CHESTER COUNTY, PENNSYLVANIA

BOARD OF SUPERVISORS OF EAST FALLOWFIELD TOWNSHIP Appellant,	:	NO. 2009-14024-LU (consolidated with No. 2010-02504-LU)
	:	
	:	LAND USE APPEAL
v.	:	
ZONING HEARING BOARD OF EAST FALLOWFIELD TOWNSHIP Appellee,	:	
	:	
and	:	
BAWA MUHAIYADEEN FELLOWSHIP Intervenor/Appellee.	:	

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BRIEF OF APPELLANT, EAST FALLOWFIELD TOWNSHIP BOARD OF SUPERVISORS, IN SUPPORT OF ITS APPEAL OF THE DECISION AND ORDER OF THE EAST FALLOWFIELD TOWNSHIP ZONING HEARING BOARD

Appellant, Board of Supervisors of East Fallowfield Township (“Township” or “Appellant”) respectfully submits its Brief in support of its appeal of the February 4, 2010 Decision and Order of the Zoning Hearing Board of East Fallowfield Township (the “Decision and Order”) granting the Application of the Bawa Hahaiyaddeen Fellowship Farm Community for: i) a variance from Section 1704.12.H(4) of the East Fallowfield Township Zoning Ordinance, and ii) finding that the 30,000 square foot minimum Lot Area requirement in Section

1704.12.H(1) was not applicable to the single family dwellings proposed as part of the Community, and in support of its appeal avers as follows:

I. HISTORY OF THE CASE

A. Procedural Background

The Bawa Hahaiyaddeen Fellowship Farm Community (the "Fellowship" or "Appellee") is the owner of a property consisting of approximately 108 acres located in East Fallowfield Township at the intersection of Mount Carmel Road and Fellowship Drive (the "Property"). The Property is located in the RA Residential District and is currently improved with a mausoleum, a maintenance building and several out-buildings. The Fellowship proposes to develop the Property under the provisions of Section 1704.12¹ of the Zoning Ordinance as a Planned Institutional Community consisting of forty-three (43) single-family dwellings², an institutional campus and cemetery, and agricultural areas all of which are depicted on the Plan identified at the hearing as Exhibit B-1. The Community is proposed to be development under the Uniform Condominium Act, 68 Pa.C.S. §§3101-3414, and is proposed to be served by a community sewage treatment system and water supply, as required by Section 1704.12.A(2).

Although the Township repealed Section 1704.12 of the Zoning Ordinance, which permitted a Planned Institutional Community by a conditional use in the RA District, the

¹ Section 1704.12 of the Zoning Ordinance permits the development of a Planned Institutional Community, which may consist of: i) Institutional Uses, such as a place of worship, a school, a rectory and a cemetery (See Sections 1704.12.G(2) and (3)); ii) Residential Uses including Single Family detached dwellings, Two Family and Multiple Family dwellings; and iii) Agricultural Uses and Accessory Buildings. (See Sections 1704.12.B(1) – (8).

² Pursuant to Section 1704.12.G(1) of the Zoning Ordinance, the gross density for residential use shall not exceed one dwelling unit per two-and-one-half (2.5) acres. The Fellowship's proposed forty-three (43) units is the maximum density that could be permitted on the Property pursuant to Section 1704.12.G(1).

Fellowship filed its original application before Section 1704.12 was repealed. The parties agree that the provisions of this Section govern the Fellowship's Application dated June 24, 2009, for a variance and/or reinstatement of a variance³ from the minimum front yard requirement of Section 1704.12.H(4) of the Zoning Ordinance. The Fellowship also requested an interpretation and/or variance from Section 1704.12.H.(1) of the Zoning Ordinance, which requires a minimum "lot area" of 30,000 square feet for single family residential dwellings.

The Zoning Hearing Board convened hearings on the application on July 22, 2009, and held subsequent hearings on August 19, 2009, and September 23, 2009. The Zoning Hearing Board voted at its meeting on October 28, 2009 to grant the reinstatement of the previously granted variance 1704.12.H(4) which was confirmed in writing by letter dated October, 30, 2009.

On November 25, 2009, the Township filed an appeal from Zoning Hearing Board's October 30, 2009 letter Decision at Chester County Court of Common Pleas Docket No. 09-14024. On February 4, 2010, the Zoning Hearing Board issued a Decision and Order with specific findings of fact and conclusions of law granting the Application for a variance and/or reinstatement of variance from Section 1704.12H(4) of the Zoning Ordinance and further finding the minimum lot area provisions of Section 1704.12.H(1) not applicable to the dwellings proposed as part of the development. On March 4, 2010, the Township filed an appeal from the February 4, 2010 Decision and Order of the Zoning Hearing Board.

³ By Decision and Order dated June 11, 2002, the Zoning Hearing Board of East Fallowfield Township granted variance relief from the minimum setback requirement of Section 1704.12.H(4) of the Zoning Ordinance to permit proposed dwellings to be located less than fifty-feet from the right of way of the proposed road serving the development. Pursuant to the Decision and Order and Section 2008 of the Zoning Ordinance, the grant of variance expired six months after the June 11, 2002 Decision and Order was issued. Pursuant to *In Re Appeal of Newtown Racquetball Asssociates*, 464 A.2d 576 (Pa. Cmwlth. 1983), the initial impropriety of the grant of a variance cannot serve to validate its repetition, therefore a renewed variance may be denied if the grant of the first variance was improper or illegal. *Newtown Racquetball Asssociates*, 464 A.2d at 580.

On March 15, 2010, the Township filed an Motion to Consolidate the appeals, which was granted by Order of the Court dated April 8, 2010.

B. The Zoning Hearing Board Hearing

In support of its application, the Fellowship presented the testimony of Emanuel Levin, president of the Bawa Mahaiyaddeen Fellowship and Bryan D. Kulakowsky, P.E. a registered professional engineer. In support of the Plan, Mr. Levin testified that the Fellowship was simply trying to fit the maximum number of units permitted under Section 1704.12.G(1) of the Zoning Ordinance and that the only reason Two Family and Multiple Family type dwellings (with smaller associated lot sizes) were not considered was that such dwellings “wouldn’t meet the needs of the people” (N.T. 8/19/09, p. 43). The Fellowship’s engineer, Mr. Kulakowsky, testified that the number of proposed units allowed the Fellowship to keep the cost of the site improvements at a certain “basis per unit” and that if they reduced the number of units, costs would be driven up making the project less affordable (N.T. 8/19/09, p. 56). He offered no specific testimony on the economic feasibility of the project as it related to the number of units permitted.

Thomas Comitta, an expert Land Planner, testified on behalf of the Township and presented an exhibit entitled “Alternate Site Plan”, identified at the hearing as Exhibit T-3, a copy of which is attached hereto, The Alternate Site Plan depicts the Fellowship’s proposed Planned Institutional Community Plan, however instead of the proposed maximum possible number of forty-three (43) single family dwellings, Exhibit T-3 shows twenty-two (22) individual “lots” in the same area, which in Comitta’s opinion comply with the area and bulk regulations of Section 1704.12.H for Single Family Dwellings.

Comitta testified that the maximum density of units permitted on the Property pursuant to Section 1704.12.G(1), based on its size, was forty-three (43), as proposed by the Fellowship, but that in addition to that calculation, there are additional area and bulk requirements that must be met under Section 1704.12.H depending on the proposed housing type (N.T. 9/23/09, p. 74). Based on the minimum dimensions required for a Single Family Dwelling in Section 1704.12.H, Mr. Comitta testified that principally the 30,000 square foot minimum lot size in Section 1704.12.H(1) and minimum 125 foot minimum lot width at building setback indicated that each Single Family Dwelling was to have a minimum lot area surrounding it (N.T. 9/23/09, p. 75). Mr. Comitta testified that he utilized the area and bulk regulations of Section 1704.12.H to achieve twenty-two (22) compliant lots within the area where the Fellowship proposed its forty-three (43) Single Family Dwellings (N.T. 9/23/09, p. 77).

Mr. Comitta also testified that, in addition to the minimum front yard setback and minimum lot size requirements, the Fellowship's proposed configuration of dwelling units did not comply with the other requirements in Section 1704.12.H, including the 125 foot minimum lot width at building setback, 50 foot minimum lot width at street line, 20 foot minimum side yard setback, and 50 foot rear yard setback for some proposed units; therefore, variance relief would be necessary from these requirements as well (N.T. 9/23/09, p. 82-83). Based on all of the area and bulk requirements for a Planned Institutional Community, Comitta opined that the required minimum lot area is intended to surround each individual dwelling unit regardless of the form of ownership of the proposed dwelling units. (N.T. 9/23/09, p. 84)

C. The Decision and Order

In its Decision and Order, the Zoning Hearing Board found that, because the words “(per family)”⁴ appeared below “Minimum lot area” in Section 1704.12.H(1), rather than “per structure”, the drafter of the Ordinance anticipated a cluster development and did not require one home per every three quarter of an acre. The Zoning Hearing Board further found that the Fellowship’s proposed condominium form of ownership resulted in each family having 30,000 square feet allotted to them (Decision and Order, F.F. 21). In addition the Zoning Hearing Board granted the Fellowship’s requested variance relief from the front yard setback requirement of Section 1704.12.H(4), without any discussion or citation to the standards set forth for the grant of a variance under the MPC or Zoning Ordinance.

II. QUESTIONS PRESENTED FOR REVIEW

1. Whether the Zoning Hearing Board erred as a matter of law by finding that the provisions of Section 1704.12.H of the Zoning Ordinance did not apply to the Fellowship’s Plan?

Suggested Answer: Yes.

2. Whether the Zoning Hearing Board Erred by granting a variance from Section 1704.12H(4) of the Zoning Ordinance where the record contains no evidence demonstrating compliance with the standards for grant of a variance in Section 910.2(a) of the Municipalities Planning Code, 53 P.S. 10910.2(a), and Section 2007.2 of the Township Zoning Ordinance?

Suggested Answer: Yes.

⁴ The Zoning Ordinance does not define the terms “per family”, but does define the term “Family” in part as “One (1) or more persons occupying the same dwelling unit and living and cooking as a single housekeeping unit, said unit consisting only of individuals who are related by blood, marriage, or otherwise by law, except that such unit may also consist of foster children, domestics, and one other individual not related by blood to others in the housekeeping unit...”

III. LEGAL ARGUMENT

Section 1001-A of the MPC governing Land Use Appeals provides: "The procedures set forth in this article shall constitute the exclusive mode for securing review of any decision rendered pursuant to Article IX or deemed to have been made under this act." 53 P.S. § 11001-

A. Section 1005-A of the MPC further provides:

If the record below includes findings of fact made by the governing body, board or agency whose decision or action is brought up for review and the court does not take additional evidence or appoint a referee to take additional evidence, the findings of the governing body, board or agency shall not be disturbed by the court if supported by substantial evidence.

53 P.S. § 11005-A. Therefore, where the Court has not held a hearing or taken additional evidence, the scope of review in a land use appeal is limited to a determination of whether the Board has committed an error of law or a manifest abuse of discretion. *Allegheny West Civic Council, Inc. v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 689 A.2d 225, 227 (Pa. 1997). A governing body abuses its discretion when its findings of fact are not supported by substantial evidence. *Valley View Civic Assoc. v. Zoning Hearing Bd. of Adjustment*, 462 A.2d 637, 640 (Pa. 1983); *Herr v. Lancaster County Planning Comm'n*, 625 A.2d 164, 167 (Pa. Cmwlth. 1993). "Substantial evidence is defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Valley View Civic Assoc. v. Zoning Hearing Bd. of Adjustment*, 462 A.2d 637, 640 (Pa. 1983)". *In Re Thompson*, 896 A.2d 659, 667 (Pa. Cmwlth. 2006).

In this case, the Fellowship's Plan simply fails to comply with the area and bulk requirements of Sections 1704.12.H of the Zoning Ordinance and no explanation was offered by the Appellee or moreover, by the Zoning Hearing Board as to why any of the area and bulk

regulations do not apply to the development other than that the spirit of the Ordinance encouraged "clustering" of the Appellee's proposed dwelling units.

A. THE AREA AND BULK REGULATIONS IN SECTION 1704.12.H OF THE ZONING ORDINANCE APPLY TO THE FELLOWSHIP'S PLAN

Section 104.12.H of the Zoning Ordinance provides as follows:

H. Area and bulk regulations:

	Single Family	Two Family	Multi Family
Minimum lot area (per family)	30,000 sq. ft.	12,500 sq. ft.	7,500 sq. feet (min. lot are per unit)
Min. lot width (at setback line)	125 ft	125 ft (aggregate)	N/A
Min. lot width (at street line)	50 ft.	50 ft. (aggregate)	N/A
Min. front yard	50 ft.	50 ft.	N/A
Side yards	20 ft.	20 ft.	N.A
Rear yard	50 ft.	50 ft.	N.A
Lot coverage	20%	25% max.	25% max.
Min. structure separation (Multi-Family)	N/A	40 ft. *	40 ft. *
Building Height	35 ft. max.	35 ft. max.	35 ft. max.

While it is true that zoning ordinances are to be liberally construed to allow the broadest possible use of land, it is also true that zoning ordinances are to be construed in accordance with the plain and ordinary meaning of their words and should be construed in a sensible manner. *Zappala Group, Inc. v. Zoning Hearing Bd.*, 810 A.2d 708 (Pa. Cmwlth.

2002), petition for allowance of appeal denied, 5 828 A.2d 351 (Pa. 2003); *Phillips v. Zoning Hearing Board of Montour Township*, 776 A.2d 341 (Pa. Cmwlth. 2001). Zoning ordinance provisions must be read as a whole and effect must be given to all provisions. *Appeal of Neshaminy Auto Villa Ltd.*, 358 A.2d 422 (Pa. Cmwlth. 1976). Further, in interpreting a zoning ordinance, the letter of the ordinance is not to be disregarded in the pretext of pursuing its spirit. *Tobin v. Radnor Twp. Bd. of Commissioners*, 597 A.2d 1258 (Pa. Cmwlth. 1991).

Upon review of the provisions of Section 1704.12.H of Zoning Ordinance, there is no language stating the regulations apply only in certain circumstances or moreover may be abrogated in order to permit the "clustering" of units or otherwise. The Zoning Hearing Board held that: "One house on a ¾ acre lot is not clustering." (p. 6, Decision and Order) Despite this apparent finding of fact, there is no evidence in the record, substantial or otherwise, that would support such a finding. Rather, the Township's planning expert, Mr. Comitta testified that 30,000 square foot (¾ acre) lots could be considered "clustered" (N.T. 9/23/09, p. 94).

When read as a whole, it can only be concluded that the "Minimum Lot Area (per family)" applies to each type of dwelling (*Single Family*, *Two Family* and *Multiple Family*) and that the "Lot Area" is intended to be located surrounding each type of dwelling, not in some amorphous location attenuated from the dwelling unit. This conclusion is supported by the provisions in Section 1704.12.H(2) through (8), which set forth minimum lot widths, minimum front yards, minimum side yards, minimum rear yards, and minimum lot coverages on conjunction with the minimum lot areas. When read together with the lot area requirements, the provisions of Section 1704.12.H clearly contemplate that lot areas are to

be surrounding each proposed dwelling structure. This is shown on Exhibit T-3, and moreover, corroborated by the un-contradicted testimony of the Township's planning expert during the hearing (N.T. 9/23/09, p. 75).

The Zoning Hearing Board's interpretation that the words "(per family)" in describing minimum lot area do not require each dwelling to be constructed within an individual lot area *where a condominium form of ownership is proposed* is contrary to the plain meaning of Section 1704.12.H. Moreover, the Commonwealth Court has clearly held that, whether the Fellowship's community is proposed under the Uniform Condominium Act, 68 Pa.C.S. §§3101-3414, Uniform Planned Community Act, 68 Pa.C.S. §§5101-5414, or by traditional subdivision of the tract under the MPC, the creation of condominiums may not afford the owner favored status with respect to compliance with a Township's subdivision ordinance. *Frank N. Schaeffer Family, LP v. Zoning Hearing Bd. of Chanceford*, 964 A.2d 23 (Pa. Cmwlth. 2008), affirmed by 989 A.2d 5 (Pa. 2010). According to the Zoning Hearing Board's interpretation, a proposed condominium form of ownership would require 30,000 square feet of "lot area" within the development, but not necessarily a "lot area" surrounding each dwelling unit (which would be required if the property was subdivided into lots). It is not reasonable to interpret Section 1704.12.H in a manner where the number of permitted dwellings could nearly double from potentially 22 units to 43 units based solely on the proposed form of ownership. The language of Section 1704.12.H does not say that nor would it be reasonable to adopt this interpretation espoused by the Zoning Hearing Board. As a result, the Zoning Hearing Board erred in reaching the conclusion that the terms "(per family)" anticipated a cluster development with *no minimum lot areas* surrounding the proposed dwelling units.

B. THE ZONING HEARING BOARD ERRED BY GRANTING A VARIANCE FROM THE PROVISIONS OF SECTION 1704.12.H OF THE ZONING ORDINANCE WHERE THE RECORD CONTAINS NO EVIDENCE DEMONSTRATING COMPLIANCE WITH THE STANDARDS FOR GRANT OF A VARIANCE.

The Applicant failed to meet the requirements for the grant of a variance set forth in Section 910.2(a) of the Municipalities Planning Code, 53 P.S. 10910.2(a), and Section 2007.2 of the Township Zoning Ordinance, and the Zoning Hearing Board erred as a matter of law and abused its discretion by failing to apply the standards for the grant of a variance. In this case, there is no evidence whatsoever in the record that would support the grant of a variance from the minimum front yard setback, minimum lot size or any other area and bulk requirement set forth in Section 1704.12.H. The Zoning Hearing Board erred by granting a variance without evidence to rely on that would support such findings. Not only did the Township demonstrate that the Fellowship could develop its proposed community in compliance with the area and bulk requirements of Section 1704.12.H, albeit with less units than the maximum possible, but the Zoning Hearing Board failed to make a single finding of fact or conclusion of law concerning the Fellowship's compliance with the requirements for the grant of a variance.

Pennsylvania law is clear that an applicant seeking variance relief has the burden to establish all five requirements under Section 910.2(a) of the MPC. *East Caln v. Zoning Hearing Bd. of East Caln Twp.*, 915 A.2d 1249, 1252 (Pa. Cmwlth. 2006); *Valley View Civic Assoc. v. Zoning Bd. of Adjustment*, 462 A.2d 637, 640 (Pa. 1983); *Larsen v. Zoning Hearing Bd. of Adjustment of the City of Pittsburgh*, 672 A.2d 286, 289 (Pa. 1996); and *Gateside-Queensgate Co. v. Delaware Petroleum Co.*, 580 A.2d 443, 447 (Pa. Cmwlth. 1990). The reasons for granting a variance must be substantial, serious and compelling. *Valley View Civic Assoc.* 462

A.2d 637, 640 (Pa. 1983). An applicant's burden is a heavy one, and a variance should be granted sparingly and only under exceptional circumstances. *Issacs v. Wilkes-Barre City Zoning Hearing Board*, 612 A.2d 559 (Pa.Cmwlth. 1992).

The MPC sets forth five separate standards for a variance, all of which must be met as prerequisites to the grant of variance relief. Section 910.2 of the MPC provides:

(a) The board shall hear requests for variances where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The board may by rule prescribe the form of application and may require preliminary application to the zoning officer. The board may grant a variance, provided that all of the following findings are made where relevant in a given case:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the applicant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

53 P.S. § 10910.2(a); *see also* Zoning Ordinance §2207.2.

The applicant seeking a variance must satisfy all the criteria set forth in Section 910.2 of the MPC. *Gateside-Queensgate Co. v. Delaware Petroleum Co.*, 134 Pa. Cmwlth. 603, 610-11,

580 A.2d 443, 447 (1990). The failure of an applicant to prove even one of these criteria requires the denial of the variance. *Id.*

“Even under the more relaxed *Hertzberg*⁵ standards, which allow courts to consider multiple factors in determining if a dimensional variance is justified, the zoning board nonetheless must find some unnecessary hardship arising from the unique physical circumstances or conditions of the lot before the zoning board may grant a variance.” *Society Created to Reduce Urban Blight v. Zoning Bd. of Adjustment of the City of Philadelphia (Appeal of Conrail)*, 772 A.2d 1040, 1045 (Pa. Cmwlth.), *alloc. denied*, 833 A.2d 146 (Pa. 2001) (footnote supplied). “[W]hile *Hertzberg* eased the requirements for granting a variance for dimensional requirements, it did not make dimensional requirements . . . ‘free-fire zones’ for which variances could be granted when the party seeking the variance merely articulated a reason that it would be financially ‘hurt’ if it could not do what it wanted to do with the property” *Society Created to Reduce Urban Blight v. Zoning Bd. of Adjustment of the City of Philadelphia (Appeal of Keystone)*, 771 A.2d 874, 877 (Pa. Cmwlth.), *alloc. denied*, 567 Pa. 730, 786 A.2d 991 (2001). In this matter, Appellants failed to present evidence that would meet their burden under MPC §§ 910.2(a)(1) through 910.2(a)(5) with respect to the area and bulk requirements in Section 1704.12.H. In this case, the Fellowship’s primary witness, Mr. Levin testified that they could have complied with the minimum lot size or could have used Two-Family or Multiple-Family units, but that it would not “meet the needs of the people” (N.T. 8/19/09, p. 43). Furthermore, even if the Zoning Hearing Board were to accept the

⁵ Under the Pennsylvania Supreme Court’s decision in *Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 554 Pa. 249, 721 A.2d 43 (1998), “the courts may consider multiple factors in determining whether the applicant established unnecessary hardship for a dimensional variance, including the cost of the strict compliance with the zoning ordinance, the economic hardship that will result from the denial of a variance, and the characteristics and conditions of the surrounding neighborhood.” *Mitchell v. Zoning Hearing Bd. of the Borough of Mount Penn*, 838 A.2d 819, 828 (Pa. Cmwlth. 2003).

uncorroborated testimony concerning an increased “per unit basis” if the number of units were limited, such a factor may not be considered in an analysis of whether the standards for grant of a variance have been met. It is clear that economic maximization is not a proper basis for variance relief. *See Mucy v. Fallowfield Twp. Zoning Hearing Bd.*, 609 A.2d 591, 594 (Pa. Cmwlth. 1992) (“it is not sufficient to show mere economic hardship or that the property could be utilized more profitably if a variance were granted.”); *see also Jasy Corp. v. Board of Adjustment*, 198 A.2d 854, 855 (Pa. 1964) (“The only hardship which [the applicant] would suffer from the refusal of the requested variance is financial. Such hardship is insufficient to warrant the grant of a variance.”) (citing *Pincus v. Power*, 376 Pa. 175, 101 A.2d 914 (1954)).

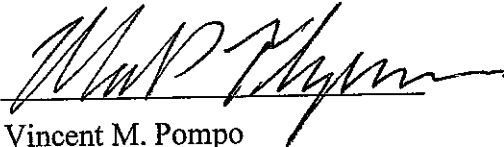
It is clear that the grant of a variance must be based on substantial evidence establishing all five requirements under Section 910.2(a) of the MPC have been met and that an applicant seeking a variance must satisfy all the criteria set forth in Section 910.2 of the MPC. *Gateside-Queensgate Co. v. Delaware Petroleum Co.*, 134 Pa. Cmwlth. 603, 610-11, 580 A.2d 443, 447 (1990). By ignoring the standards for the grant of a variance, the Zoning Hearing Board improperly wrote-out the area and bulk requirements for a Planned Institutional Community under Section 1704.B of the Zoning Ordinance and permitted the maximum number of units to be constructed without compliance with any of the area and bulk requirements in Section 1704.23.H. The Zoning Hearing Board essentially ignored Section 1704.H in pursuing the spirit of what it felt a Planned Institutional Community should be.

WHEREFORE, the Board of Supervisors of East Fallowfield Township requests that this Court reverse the Decision and Order of the Zoning Hearing Board of East Fallowfield Township granting a variance from Section 1704.12(H)(4) of the Zoning Ordinance and the determination

that the minimum lot area requirement of Section 1704.12H(1) is not applicable to the Fellowship's proposed Plan.

Respectfully Submitted,

Date: 5/9/11

BY: 

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 Supervisors of East Fallowfield Township*

**IN THE COURT OF COMMON PLEAS
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 Intervenor/Appellee. :

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 OFFICE OF THE
 PROthonotary
 CHESTER CO., PA.

CERTIFICATE OF SERVICE

This is to certify that in this case, assigned to Judge Ronald C. Nagle, complete copies Brief of Appellant, East Fallowfield Township Board of Supervisors, in Support of Appeal of the Decision and Order of It's Township Zoning Hearing Board have been served upon the following persons, by the means and on the date stated:

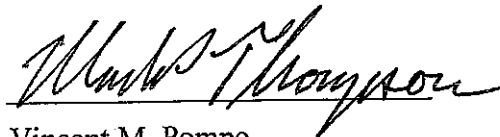
<u>Name:</u>	<u>Means of Service:</u>	<u>Date of Service:</u>
John E. Good, Esquire 331 W. Miner Street West Chester, PA 19382 <i>Attorney for Bawa Hahaiyadden Fellowship</i>	First Class – Postage Prepaid	May 9, 2011

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EXHIBIT A

Alternate Site Plan, Prepared by Thomas Comitta Associates, September 23, 2009

