

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Clear Channel Outdoor, Inc.	:	
and Stemy Associates, G.P.,	:	
Appellants	:	
	:	
v.	:	No. 789 C.D. 2006
	:	
Zoning Board of Adjustment and	:	Argued: November 16, 2006
City of Philadelphia and Society	:	
Created to Reduce Urban Blight	:	
("SCRUB") and Mary Cawley Tracy	:	

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: December 29, 2006

Clear Channel Outdoor, Inc. (Applicant) and Stemy Associates, G.P. (Landowner), appeal an order of the Court of Common Pleas of Philadelphia County (trial court) that affirmed a decision of the Zoning Board of Adjustment of the City of Philadelphia (ZBA) denying Applicant's request for a use variance to maintain five outdoor, rooftop billboard signs. Applicant contends it is entitled to maintain its signs as valid non-conforming uses or as uses tolerated under the doctrines of vested rights, variance by estoppel or laches. Alternatively, it argues it is entitled to a variance to maintain the signs. Discerning no merit in these assertions, we affirm.

Landowner owns the property located at 7033-49 Frankford Avenue in the City of Philadelphia (Subject Property), which is zoned C-2 Commercial.

The Subject Property is improved with a building that houses a public storage facility, an income tax office and a luncheonette. Although other commercial uses exist along Frankford Avenue, a residential neighborhood abuts the rear of the Subject Property, and there is a residential area across the street from the Subject Property. Of further note, there are at least three other properties within 600 feet of the Subject Property that contain non-accessory rooftop signs.

In September 2002, Applicant applied to the City's Department of Licenses and Inspections (L&I) for a use permit to "[l]egalize five single-face, rooftop, illuminated, non-accessory signs" on the Subject Property. Reproduced Record (R.R.) at 31a. Each sign is approximately 12-feet by 24-feet.

Shortly thereafter, L&I issued Applicant a Notice of Refusal of Permit, rejecting Applicant's request on the grounds: non-accessory signs are not permitted in the C-2 zoning district; the signs are within 300-feet of residentially zoned properties; the signs are within 500 feet of other non-accessory signs; the bottoms of the signs are located above the 25-foot maximum height from Frankford Avenue's road surface; no more than two signs are permitted on a lot; and, for each sign erected, a sign of equal or greater size must be removed and Applicant does not propose to remove any signs. R.R. at 33a. The Notice of Refusal also indicated that in December 1949 the ZBA granted a one-year permit for the erection of five poster panels on the Subject Property. Id.

Applicant appealed L&I's Notice of Refusal to the ZBA, asserting:

Literal enforcement of the [City of Philadelphia Zoning Code (Zoning Code)] would impose an unnecessary hardship [on] the [Subject] [P]roperty and ... legalization of the existing signs will not adversely affect the public health, safety, welfare or traffic in the area. Therefore, variance relief is requested. Applicant also requests any other variances, use certificates or special use permits that are necessary.

R.R. at 35a. A hearing before the ZBA ensued.

In support of its requests for relief, Applicant presented the testimony of Albert Tantala, P.E., a civil engineer, as follows. Of the five sign faces erected on the Subject Property, there are two sign faces intended for traffic traveling north on Frankford Avenue and three faces intended for traffic traveling south. Tantala performed a site inspection on the Subject Property and determined the signs were not visible from nearby residentially zoned properties. He opined the structures on the Subject Property that contain the signs are the original structures that date back to approximately 1949. He also opined the signs do not obscure any views of the City or any historic properties and they are consistent with the character of the community.

Applicant also presented the testimony of Maureen Henwood, its real estate representative, who testified Applicant purchased the signs in July 2001. She found a series of leases for the signs beginning in 1954 when she reviewed Applicant's internal file for the Subject Property. Henwood also found three previously issued permits: a zoning permit dated December 13, 1949, approving rooftop signs, with no expiration date; a use permit designated as a temporary one-year permit; and, a permit from the Department of Public Safety, dated December

29, 1949, for a rooftop sign. She did not find any violation notices from L&I other than a recent violation notice that gave rise to Applicant's variance request.

Several witnesses testified in opposition to Applicant's request (collectively, Objectors), including Mary Cawley Tracy, Executive Director of the Society Created to Reduce Urban Blight (SCRUB). SCRUB conducted a survey of billboards in Philadelphia in 2001 and determined 58% of the billboards in the Tacony section of the City existed without licenses or permits, including the five signs on the Subject Property. Tracy took photographs of the surrounding area and determined the signs were visible from a nearby residential neighborhood.

Several other Objectors testified that Applicant's signs detract from the aesthetics of the area and are illegal. In addition, a representative from City Councilwoman Joan Krajewski's office read a letter from the Councilwoman expressing opposition to Applicant's variance request. Further, after the hearing, the ZBA received correspondence from several Objectors disputing Applicant's representations that the 1949 permits for the signs were anything other than temporary.

Ultimately, the ZBA issued a decision denying Applicant's variance request. The ZBA determined Applicant did not meet its burden of proving unnecessary hardship or that its signs do not have an adverse impact on the community. Applicant appealed to the trial court.

Thereafter, the trial court remanded the matter for several limited purposes, including obtaining the vote of a quorum of the ZBA. Of particular relevance here, the trial court directed that, if necessary, the ZBA was to issue supplemental findings and conclusions addressing whether the 1949 permits were properly issued, whether continued non-accessory outdoor advertising is valid pursuant to those permits, and whether continued outdoor advertising is protected as a vested right or as a nonconforming use.

On remand, the ZBA determined only the vote of a quorum of the ZBA members was necessary and no further hearing was required. The ZBA further determined the 1949 permits were no longer viable, and Applicant did not establish a right to use its signs as non-conforming uses or under the doctrine of vested rights. Again, Applicant appealed to the trial court.

Without taking additional evidence, the trial court affirmed. The trial court determined the ZBA's decision denying Applicant's variance request was supported by substantial evidence and in accord with applicable law. As to the effect of the 1949 permits, the trial court stated:

In addition to the testimony heard and considered by the ZBA, the use permit from 1949 speaks for itself. The ZBA had issued a *temporary* non-conforming use permit for the [Subject Property] so that five poster panels could be erected. This 1949 use permit has not been renewed since that time. The signs are blatantly illegal and are atrocious adjuncts to urban blight. They contribute greatly to the decline in aesthetic standards in this [C]ity and should be removed immediately. Thus, it is this court's conclusion that the [ZBA's] decision was

supported by substantial evidence, and it did not commit an error of law, nor did it commit an abuse of discretion.

Tr. Ct., Slip Op. at 6 (citation omitted) (emphasis in original). Applicant now appeals to this Court.

On appeal,¹ Applicant argues: it is entitled to maintain its existing signs as valid, pre-existing non-conforming uses, the City should be estopped from requiring removal of the signs, and it is entitled to a variance to maintain the signs.

I.

Applicant first argues the ZBA and the trial court ignored well-settled law regarding the constitutional protections afforded non-conforming uses. Applicant's argument proceeds as follows. It presented irrefutable evidence that its predecessors-in-interest obtained valid zoning and building permits for the signs in 1949. Pursuant to Section 14-104(2) of the Zoning Code (governing non-conforming uses), for a use to be considered non-conforming and deserving of protection, a landowner need only prove the use was in existence when a prohibiting ordinance provision was enacted. Here, it proved its signs were in use in 1981 and 1991, when the Zoning Code was amended to prohibit such signs, because it presented an uninterrupted lease history that shows continued use of the signs from 1954 to present. This lease history, coupled with the 1949 permits it

¹ Because the parties presented no additional evidence after the ZBA's decision, our review is limited to determining whether the ZBA committed an abuse of discretion or an error of law. Allegheny W. Civic Council, Inc. v. Zoning Bd. of Adjustment of City of Pittsburgh, 547 Pa. 163, 689 A.2d 225 (1997).

obtained from the City, is sufficient to show its signs are valid, non-conforming uses.

A pre-existing nonconforming use arises when a lawful existing use is subsequently barred by a change in the zoning ordinance. Hager v. W. Rockhill Twp. Zoning Hearing Bd., 795 A.2d 1104 (Pa. Cmwlth. 2002). The right to maintain a pre-existing nonconformity is available only for uses that were lawful when they came into existence and which existed when the ordinance took effect. Id. Indeed, in Camaron Apartments, Inc. v. Zoning Board of Adjustment of City of Philadelphia, 324 A.2d 805, 807 (Pa. Cmwlth. 1974) (en banc), this Court stated, “a nonconforming use is one which does not comply with present zoning provisions but which existed lawfully and was created in good faith prior to the enactment of the zoning provision.” (emphasis added).

Pre-existing illegal uses cannot become nonconforming uses with a protected right to exist upon enactment of a new ordinance prohibiting them. Hager. It is the burden of the party proposing the existence of such nonconforming use to establish both its existence and legality before the enactment of the ordinance at issue. Id.; 8131 Roosevelt Corp. v. Zoning Bd. of Adjustment of City of Phila., 794 A.2d 963 (Pa. Cmwlth. 2002); Lantos v. Zoning Hearing Bd. of Haverford Twp., 621 A.2d 1208 (Pa. Cmwlth. 1993).

Here, Applicant asserts a party claiming the existence of a non-conforming use need only prove such use was in operation at the time of an ordinance enactment that rendered it illegal. Applicant suggests it is unnecessary

to show the use existed lawfully at the time of the prohibiting enactment in order to obtain non-conforming use status. Based on the foregoing authority, we reject these assertions.

In its initial decision, the ZBA did not make any specific findings as to whether Applicant's signs constituted valid non-conforming uses. However, the ZBA did find "[L&I's] Notice of Refusal of Permit noted that the [ZBA] had previously granted a one year permit for the erection of five (5) poster panels on December 12, 1949" ZBA Op., 02/19/04, Finding of Fact (F.F.) No. 3 (emphasis added). Following Applicant's appeal, the trial court remanded, stating:

If, after a full review of the record and if the [ZBA] deems necessary, its shall prepare supplemental Findings of Fact and Conclusions of Law addressing [(1) whether the various 1949 permits presented to the [ZBA] authorizing outdoor advertising at [the Subject Property] were properly issued; (2) whether continued non-accessory outdoor advertising at the [Subject] Property remains valid pursuant to the various permits issued in 1949 authorizing this use and (3) whether continued non-accessory outdoor advertising on the [Subject] Property is protected as a ... nonconforming use

Tr. Ct. Remand Order of 05/07/04 at 1-2. On remand, the ZBA did not conduct further hearings, but made one additional determination. It stated, "NO CONTINUING VALIDITY TO VARIOUS PERMITS ISSUED IN 1949 PURSUANT TO APPLICATION 22200B FOR A TEMPORARY NON CONFORMING USE NOR TO USE BY VESTED RIGHT OR AS A NON-CONFORMING USE." ZBA Op., 08/30/05 at 1.

Based on our review of the record, no error is apparent in the ZBA's remand determination. More specifically, in order to prove its signs existed lawfully prior to the 1981 and 1991 prohibiting Zoning Code amendments, Applicant presented several filings from 1949. The first document is a "Temporary Non-Conforming Use Permit" issued by the ZBA. R.R. at 49a. It states, pursuant to Application No. 22200-B, the ZBA authorized construction of five poster panels as a "temporary non-conforming use ... to extend for a period of not more than one year from Dec. 12, 1949." *Id.* (emphasis added). A second document, a "Use Registration Permit" from the City Department of Public Works, also indicates permission to erect the five poster panels on the Subject Property was granted for not more than one year based on Application No. 22200-B. R.R. at 50a.

A third document, a permit from the Department of Public Safety, authorized Applicant's predecessor to construct a "roof sign" on the Subject Property. R.R. at 51a, 57a. In addition, a fourth document, a "Zoning Permit" from the Department of Public Works, also authorized construction of a roof sign "in accordance with Application No. 22200-B under the regulations of the [Zoning Code]." R.R. at 51a, 55a.

The record also contains a copy of Application No. 22200B itself, in which applicant's predecessor applied for permission to erect five poster panels; it indicates it was received by the ZBA as well as other City departments and contains a stamp that states "TEMPORARY NONCONFORMING." R.R. at 52a-53a (emphasis added).

Viewed as a whole, the evidence presented by Applicant indicates Applicant's predecessor obtained permission to erect the signs on a temporary, one-year basis; therefore, permission to use the signs expired in 1950. As a result, Applicant's use of the signs became unlawful after 1950. Because the signs did not exist lawfully prior to the enactment of the prohibiting Zoning Code amendments, they are not entitled to nonconforming use status. Hager; Lantos; Camaron Apartments. As such, we discern no error in the ZBA's determination.

II.

Applicant next asserts the ZBA and the trial court overlooked well-settled case law on the related concepts of vested rights and variance by estoppel, which provides that where a permit holder relies on a permit's validity and expends substantial sums in reliance on it, it is entitled to maintain its use. Applicant contends here its costs in purchasing the signs and its predecessors' costs of erecting and maintaining the signs constitutes such reliance.

Applicant further argues it is entitled to maintain the signs as a result of over 50 years of neglect by the City in failing to take any enforcement action against the use of the signs. It asserts the City is guilty of laches for allowing the signs to remain for over 52 years in violation of the Zoning Code.

In In re Kreider, 808 A.2d 340 (Pa. Cmwlth. 2002), this Court discussed the closely related equitable doctrines of vested rights, variance by estoppel and equitable estoppel, which operate to bar a municipality from enforcing its land use regulations. We explained:

Our courts have generally labeled the theory under which a municipality is estopped: ... a “vested right” where the municipality has taken some affirmative action such as the issuance of a permit, Chateau Woods, Inc. v. Lower Paxton Township, 772 A.2d 122 (Pa. Cmwlth. 2001); a “variance by estoppel” where there has been municipal inaction amounting to active acquiescence in an illegal use, Skarvelis v. Zoning Hearing Bd., 679 A.2d 278 (Pa. Cmwlth. 1996); or, “equitable estoppel” where the municipality intentionally or negligently misrepresented its position with reason to know that the landowner would rely upon the misrepresentation, Cicchiello v. Bloomsburg Zoning Hearing Board, 617 A.2d 835 (Pa. Cmwlth. 1992). Estoppel under these theories is an unusual remedy granted only in extraordinary circumstances and the landowner bears the burden of proving his entitlement to relief. Skarvelis, 679 A.2d at 281. Except for the characterization of the municipal act that induces reliance, [these] theories share common elements of good faith action on the part of the landowner: 1) that he relies to his detriment, such as making substantial expenditures, 2) based upon an innocent belief that the use is permitted, and 3) that enforcement of the ordinance would result in hardship, ordinarily that the value of the expenditures would be lost. Chateau Woods, 772 A.2d at 126; Skarvelis, 679 A.2d at 281; Cicchiello, 617 A.2d at 837.

Id. at 343 (footnote omitted).

As to Applicant’s vested rights argument, the doctrine of vested rights was fashioned to accomplish fairness when a landowner relies on a zoning permit issued by a municipality, where the permit is subsequently determined to be invalid. Rudolph v. Zoning Hearing Bd. of Cambria Twp., 839 A.2d 475 (Pa. Cmwlth. 2003). Five factors must be weighed in determining whether an applicant acquired a vested right as the result of a permit issued by the government:

(1) his due diligence in attempting to comply with the law; (2) his good faith throughout the proceedings; (3) the expenditure of substantial unrecoverable funds; (4) the expiration without appeal of the period during which an appeal could have been taken from the issuance of the permit; and (5) the insufficiency of the evidence to prove that individual property rights or the public health, safety or welfare would be adversely affected by the use of the permit.

Petrosky v. Zoning Hearing Bd. of Twp. of U. Chichester, 485 Pa. 501, 507, 402 A.2d 1385, 1388 (1979). Although a landowner is not required to prove all five factors, Mirkovic v. Zoning Hearing Bd. of Smithfield Twp., 613 A.2d 662 (Pa. Cmwlth. 1992), the doctrine “applies only to cases where the applicant, in good faith reliance upon a permit issued in error, incurs significant non-recoverable costs.” Hitz v. Zoning Hearing Bd. of S. Annville Twp., 734 A.2d 60, 66 (Pa. Cmwlth. 1999) (emphasis added).

Here, Applicant’s vested rights argument fails as Applicant did not prove it relied in good faith on a permit issued in error. As explained above, Applicant only presented evidence that the ZBA issued its predecessor a 1949 use permit that authorized construction of five poster panels on the Subject Property as a temporary non-conforming use, for a period of one year. There is no indication this temporary nonconforming use permit was issued in error or that the permit was later determined to be invalid. Rather, the permit simply expired after its one-year duration.

In addition, because the permit expired in 1950, over 50 years ago, Applicant cannot now claim good faith reliance on it. To the contrary, upon the

expiration of the permit the signs ceased to operate legally. Thus, Applicant and its predecessors operated the signs without proper approval over a lengthy period; such unauthorized use is not indicative of good faith. Cf. 8131 Roosevelt Corp. (owner continued to operate the adult cabaret on the property after the expiration of the two-year temporary permit even though it was fully aware that a new permit was required to operate the club legally. Such conduct necessarily precludes a determination of good faith by owner.)

Further, the ZBA credited Objectors' testimony that the signs adversely affect the community. As such, Applicant did not produce sufficient evidence its use would not adversely affect the community. Finally, despite its present contentions, Applicant made no attempt to quantify the supposed "expenditure of substantial unrecoverable funds" before the ZBA. Thus, Applicant's vested rights argument fails.

As to applicant's variance by estoppel and laches arguments, Applicant did not raise these arguments before the ZBA. As such, these issues are waived. See Soc'y Created to Reduce Urban Blight (SCRUB) v. Zoning Bd. of Adjustment (Callowhill Ctr. Assocs.), 804 A.2d 116 (Pa. Cmwlth. 2002).²

² In addition, these arguments fail on their merits. As to Applicant's variance by estoppel argument, we note, although the City did not require removal of the signs over a significant period, Applicant did not present any evidence to prove active acquiescence by the City so as to satisfy the primary criterion for a variance by estoppel. See Skarvelis v. Zoning Hearing Bd., 679 A.2d 278 (Pa. Cmwlth. 1996). Indeed, other than the temporary, one-year non-conforming use permit issued by the ZBA in 1949, Applicant points to no affirmative act by the City that would reasonably lead Applicant to conclude its signs were permissible. In addition, as explained above, the signs at issue here remained on the Subject Property for over 50 years after the temporary permit issued by the ZBA expired in 1950. This precludes a determination of **(Footnote continued on next page...)**

III.

As a final issue, Applicant maintains the ZBA erred in denying its variance request. It argues the Subject Property's physical characteristics, i.e., its location within 500 feet of existing outdoor advertising signs, coupled with the fact that Section 14-1604 of the Zoning Code prohibits such advertising within 500 feet of an existing sign, is sufficient to satisfy the unnecessary hardship criterion. Applicant argues, because strict enforcement of Section 14-1604 requires removal of its signs despite the fact the signs existed on the Subject Property for over 50 years, application of the Zoning Code imposes a hardship on its use.

Applicant also argues a variance is justified here because continued outdoor advertising is consistent with the Subject Property's historical use and with the surrounding retail and commercial uses. As to the alleged adverse community impact, Applicant maintains that the testimony before the ZBA establishes that continued outdoor advertising on the Subject Property would not substantially harm neighboring properties. In support, it cites its engineer's testimony that the signs are not visible to nearby residential properties. Again, we disagree.

(continued...)

good faith, another necessary requirement for a variance by estoppel. Cf. 8131 Roosevelt Corp. v. Zoning Bd. of Adjustment of City of Phila., 794 A.2d 963 (Pa. Cmwlth. 2002). For these reasons, Applicant could not prevail on a variance by estoppel theory.

As to Applicant's laches argument, not only did Applicant fail to raise this claim before the ZBA, Applicant also failed to raise this claim before the trial court. In addition, Applicant did not present any proof of prejudice to the ZHB. Moreover, as noted, Applicant initiated this action by seeking a variance. Under these circumstances, the equitable doctrine of laches cannot be invoked in an action at law. See Camaron Apartments, Inc. v. Zoning Bd. of Adjustment of City of Phila., 324 A.2d 805 (Pa. Cmwlth. 1974) (en banc).

Pursuant to Section 14-1802 of the Zoning Code, in determining whether to grant a variance the ZBA must consider whether, among other things:

(a) because of the particular physical surrounding, shape, or topographical conditions of the specific structure or land involved, a literal enforcement of the provisions of [the Zoning Code] would result in unnecessary hardship;

(b) the conditions which the appeal for a variance is based are unique to the property for which the variance is sought;

* * * *

(j) the grant of the variance will not adversely affect the public health, safety or general welfare;

(k) the grant of the variance will be in harmony with the spirit and purpose of [the Zoning Code]

Id. A party seeking a variance bears the burden of proving unnecessary hardship will result if the variance is denied, and the proposed use will not be contrary to the public interest. Soc’y Created to Reduce Urban Blight (SCRUB) v. Zoning Bd. of Adjustment (Arsenal Bus. Ctr.), 858 A.2d 679 (Pa. Cmwlth. 2004), appeal dismissed as improvidently granted, 587 Pa. 303, 899 A.2d 352 (2006).

Further, the asserted hardship must be unique or peculiar to the property as distinguished from a hardship arising from the impact of zoning regulations on an entire district. Id.; Soc’y Created to Reduce Urban Blight (SCRUB) v. Zoning Bd. of Adjustment (Preston Ship & Rail, Inc.), 908 A.2d 967 (Pa. Cmwlth. 2006). In addition, mere evidence that a zoned use is less financially rewarding than the proposed use is insufficient to justify a variance. Id. Thus,

absent a finding that a property will be rendered valueless, financial hardship alone is not a sufficient basis for granting a variance. Outdoor Works. Typically, the loss of rental income from disallowed outdoor advertising signs is not an unnecessary hardship. Id.

Here, in denying Applicant's variance request, the ZBA expressly determined Applicant did not prove it would suffer any unnecessary hardship if the ZBA denied the variance. This is not surprising in light of the fact that the Subject Property is improved with a building that houses several other businesses. Thus, denial of the variance would not render the Subject Property valueless.

Additionally, contrary to Applicant's assertions, the unnecessary hardship must be shown to be unique to the property as distinguished from a hardship arising from the impact of zoning regulations on the entire district. Preston Ship & Rail, Inc. Here, Applicant did not prove any alleged hardship was unique to the Subject Property as opposed to a hardship resulting from the impact of the Zoning Code regulations to the entire C-2 zoning district. Indeed, its argument on unnecessary hardship makes no sense. As such, Applicant did not demonstrate the requisite unnecessary hardship.

Moreover, the ZBA determined grant of the variance would be contrary to the public interest. This conclusion is supported by the determination that Applicant's signs violate nearly every provision of Section 14-1604 of the Zoning Code. See Arsenal Bus. Ctr. (multiple, substantial violations of Section 14-1604 that result from the applicant's proposed signs demonstrate the proposal is

contrary to the public interest); Soc’y Created to Reduce Urban Blight v. Zoning Bd. of Adjustment (Revere Nat’l Corp.), 713 A.2d 135 (Pa. Cmwlth. 1998) (“the [ZBA] committed an error of law when it determined that granting the variance would not be contrary to the public interest. The policy of the City, as specifically expressed in its [Z]oning [Code], indicates that it has a strong interest in keeping its streets free from urban blight.”) (Emphasis added). In sum, because the ZBA’s determinations are supported by substantial evidence, we cannot disturb them. Taliaferro v. Darby Twp. Zoning Hearing Bd., 873 A.2d 807 (Pa. Cmwlth.), pet. for allowance of appeal denied, 585 Pa. 692, 887 A.2d 1243 (2005).³

Based on the foregoing, we affirm.

ROBERT SIMPSON, Judge

³ Applicant also argues the ZBA erred in failing to fully address its non-conforming use and vested rights claims. In addition, it contends the trial court erred in failing to address its vested rights, variance by estoppel and laches claims as well as its nonconforming use argument. It contends, at a minimum, we should remand and direct the trial court and the ZBA to address all of its issues.

Here, although the ZBA’s findings could have contained more detail, they are not so inadequate as to preclude appellate review. In its initial opinion, the ZBA made numerous findings that addressed Applicant’s variance request, which was the only ground for relief stated in Applicant’s appeal of L&I’s Notice of Refusal of Permit. See R.R. at 31a. In addition, in its brief remand decision, the ZBA expressly rejected Applicant’s non-conforming use and vested rights arguments, despite the fact the vested rights argument was not asserted before the ZBA. In so doing, the ZBA expressly addressed the effect of the 1949 permits on Applicant’s requests to continue its use of the signs. Similarly, the trial court also addressed the effect of the 1949 permits on Applicant’s requests for relief. Furthermore, Applicant did not raise its vested rights, variance by estoppel or laches arguments at any time before the ZBA; thus, the trial court was not required to address these arguments. For these reasons, no remand is necessary.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Clear Channel Outdoor, Inc. :
and Stemy Associates, G.P., :
Appellants :
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v. : No. 789 C.D. 2006
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Zoning Board of Adjustment and :
City of Philadelphia and Society :
Created to Reduce Urban Blight :
("SCRUB") and Mary Cawley Tracy :

ORDER

AND NOW, this 29th day of December, 2006, the order of the Court of Common Pleas of Philadelphia County is **AFFIRMED**.

ROBERT SIMPSON, Judge