

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Hetley Associates,	:	
Appellant	:	
	:	
v.	:	
Lemoyne Borough Zoning	:	No. 1306 C.D. 2025
Hearing Board	:	Submitted: September 14, 2026

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNON

FILED: October 9, 2026

Hetley Associates (Applicant) appeals from the September 4, 2025 order of the Court of Common Pleas of Cumberland County (Common Pleas) affirming a decision of the Lemoyne Borough (Borough) Zoning Hearing Board (Board) that denied Applicant's request for a use variance. Upon review, we affirm Common Pleas' order.

I. Background

In its opinion filed pursuant to Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. 1925(a), Common Pleas cogently and concisely recited the facts of this case as follows:

[Applicant] owns three properties [(Residential Lots)] in the Urban Residential District [(URD)] defined in Chapter 550, Article III of the Lemoyne Borough Zoning Ordinance. One of the houses is rented, and there appears to be a market for single family homes in the . . . [URD].

In January 2025, [Applicant] requested a use variance to demolish the houses on the [R]esidential [L]ots and construct a parking lot in their place[s]. The alleged hardship that necessitates this action arises out of [Applicant's] other property, Hetley Plaza [(Plaza Lot)],^[1] which is a strip shopping center located around the corner. The Plaza [Lot] is primarily occupied by businesses that serve a minimal number of customers, but there is one vacant space formerly occupied by a failed restaurant.

[Applicant] claims that the Plaza [Lot] does not have enough parking to accommodate its customers. Indeed, the Plaza [Lot] is operating as a prior nonconforming use, with the number of parking spaces below the requirements of the Commercial General District (CGD) where it is zoned. [Applicant] argues conditions around the Plaza have changed over time, which has exacerbated its parking challenges. The . . . Board . . . disagreed, arguing among several reasons that [Applicant's] decision to rent to a restaurant business aggravated the parking problem. The Board denied the variance on March 27, 2025 following a hearing, and [Applicant] appealed. Following argument on August 11, 2025, we affirmed the Board.

Hetley Assocs. v. Lemoyne Borough Zoning Hearing Bd., C.P. No. 20205-04832 Civil Term (filed Dec. 11, 2025) (1925 Op.) at 2-3.

In affirming the Board, Common Pleas opined that reasonable minds may differ concerning the character of the neighborhood and concluded that the Board's finding that the requested variance would alter the character of the neighborhood was not "arbitrary, capricious or unreasonable." 1925 Op. at 4 (additional quotation marks omitted). Common Pleas also agreed with the Board that the current use of the Residential Lots for residential purposes was practical;

¹ We note that, although Applicant owns the Plaza Lot and all three Residential Lots, they currently remain separate properties despite their common ownership. The record does not suggest that any attempt has been made to reverse subdivide the lots so as to form one consolidated lot. Further, we express no opinion concerning the propriety of such a reverse subdivision, were one to be undertaken.

Common Pleas opined that “[a]s the Board pointed out, there is no reason why the [R]esidential [L]ots cannot continue to be used as rental properties, which are in demand in the area.” *Id.* at 6. Common Pleas additionally agreed with the Board’s determination that the requested variance was not the minimum needed, rejecting Applicant’s assertion that the minimum-variance requirement does not apply to use variances. *Id.* at 6-7.

Most significantly for purposes of our review, in rejecting Applicant’s assertion that use of the Residential Lots for a permitted purpose was not practical, Common Pleas observed:

To meet the burden for a variance, [Applicant] was required to show that because of the hardship to the property, strict adherence to the zoning ordinance is not practical. However, [Applicant] has not successfully shown hardship to the property. Put simply, “the property” subject to this analysis is not the [P]laza [Lot] with the parking issues, but the [R]esidential [L]ots that are the subject of the variance request.

Therefore, [Applicant] cannot claim that the [P]laza[Lots] parking hardship is applicable to the [R]esidential [Lots] in question. Additionally, any economic hardship [Applicant] is suffering because of the lack of parking is not applicable.

1925 Op. at 4-5 (footnotes omitted).

II. Issues

On appeal,² Applicant asserts four issues for review. Applicant contends that the Board made a legal error or abused its discretion by determining:

² This Court has explained our limited review of zoning decisions as follows:

(1) that the requested use variance would alter the essential character of the neighborhood; (2) that any hardship was self-created by Applicant; (3) that strict adherence to the Zoning Ordinance was practical; and (4) that the requested use variance was not the minimum variance needed to provide relief. Upon review, however, we conclude that Applicant's failure to demonstrate an unnecessary hardship concerning the Residential Lots is fatal to the variance application. Therefore, we dispose of the appeal on that basis.

III. Discussion

"A variance is an extraordinary exception and should be granted sparingly[.]" *Heisterkamp v. Zoning Hearing Bd. of Lancaster*, 383 A.2d 1311, 1314 (Pa. Cmwlth. 1978). Section 550-104(E)(4) of the Borough's zoning ordinance provides, in pertinent part, the following standards for obtaining a variance:

The . . . Board may grant a variance, provided that all of the following findings are made, where relevant in a given case:

(a) ***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***

When the trial court does not take additional evidence, our . . . review is limited to determining whether the zoning board committed an abuse of discretion or an error of law in denying the use variance. . . . The zoning board abuses its discretion when it makes material findings of fact not supported by substantial evidence. . . . Substantial evidence is such relevant evidence as a reasonable mind might find adequate to support a conclusion. . . .

Bawa Muhaiyaddeen Fellowship v. Phila. Zoning Bd. of Adjustment, 19 A.3d 36, 39 n.1 (Pa. Cmwlth. 2011) (first citing *Soc'y Created to Reduce Urb. Blight (SCRUB) v. Zoning Bd. of Adjustment*, 814 A.2d 847 (Pa. Cmwlth. 2003); and then citing *Teazers, Inc. v. Zoning Bd. of Adjustment*, 682 A.2d 856 (Pa. Cmwlth. 1996)).

particular property and the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of this chapter in the neighborhood or zoning district in which the property is located.

(b) ***That because of such physical circumstances or conditions, there is not a possibility that the property can be developed in strict conformity with the provisions of this chapter and that the authorization of a variance is therefore necessary to enable reasonable use of the property.***

(c) That such unnecessary hardship has not been created by the [applicant].

(d) That the variance, if authorized, will not alter the essential character of the zoning district or neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare.

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue.

CODE OF THE BOROUGH OF LEMOYNE, PA., § 550-104(E)(4) (2025) (emphasis added). The Borough's variance requirements are consistent with those in Section 910.2(a) of the Pennsylvania Municipalities Planning Code (MPC),³ which provides, in pertinent part, that:

[a zoning hearing] 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

³ Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §§ 10101-11202. Section 910.2(a), 53 P.S. § 10910.2(a), was added by the Act of December 21, 1988, P.L. 1329.

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) (emphasis added).

Prominent among the Board's arguments in support of its denial of a variance here is its assertion that Applicant has not met and cannot meet the hardship requirement for a variance because the asserted unnecessary hardship relates to the separate commercial Plaza Lot or to Applicant itself rather than to the three Residential Lots concerning which Applicant seeks variance relief.⁴ We agree, and

⁴ Applicant argues that the uses of adjacent properties, even in different zoning districts, are relevant in analyzing whether the requested variance will alter the essential character of the neighborhood. Applicant's Br. at 8 (citing *RDM Grp. v. Pittston Twp. Zoning Hearing Bd.*, 311 A.3d 1216, 1228-29 (Pa. Cmwlth. 2024)). However, such uses are not relevant to an applicant's satisfaction of the separate factor of unnecessary hardship related to the specific property for which variance relief is sought.

because this issue is dispositive, we affirm on this basis without reaching Applicant's other arguments.

This case is controlled by this Court's ruling in *Bawa Muhaiyaddeen Fellowship v. Philadelphia Zoning Board of Adjustment*, 19 A.3d 36 (Pa. Cmwlth. 2011). In *Bawa Muhaiyaddeen*, the variance applicant owned a lot in the R-2 residential zoning district in Philadelphia on which it operated a mosque as a legal nonconforming use. *Id.* at 38. Subsequently, the applicant purchased an adjacent lot on which there was a single-family residence. *Id.* To accommodate the growing needs of its congregation, the applicant sought a variance to change the use of the second lot from a single-family residence to "a mechanical room in the basement; an office with a conference room on the first floor; additional offices on the second floor; and a caretaker's apartment on the third floor." *Id.* The local zoning board of adjustment denied the variance, finding, *inter alia*, that the applicant "did not satisfy its burden to demonstrate undue hardship" *Id.* at 38-39. A common pleas court denied the applicant's appeal and affirmed the decision of the zoning board of adjustment. *Id.* at 39. On appeal, this Court also affirmed. The Court observed that "to establish unnecessary hardship, a party must demonstrate that the property cannot be used for a permitted purpose, that the cost of conforming the property for a permitted purpose is prohibitive, or that the property has no value for a permitted purpose." *Id.* at 40 (citing *Allegheny W. Civic Council, Inc. v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 689 A.2d 225 (Pa. 1997)). Although the applicant argued that several nearby properties were being used for religious purposes, this Court found that the uses of those other properties did not establish that the lot in question was not fit for residential use. *Id.* at 41.

Most significant here, this Court observed in *Bawa Muhaiyaddeen* that the applicant was not really asserting a hardship regarding the lot for which it was seeking the variance, but rather, a hardship to itself or to its original lot arising from its desire to expand. This Court rejected the applicant's hardship argument, explaining:

To the extent [the applicant] argues that the unique nature of the *adjacent* property results in unnecessary hardship, we note that the relevant inquiry is whether the hardship created by the application of the zoning provisions is unique to the *subject* property as distinguished from the hardship arising from the impact of the zoning regulations on the entire district, or the impact of the zoning regulations on the owner of the property.

Bawa Muhaiyaddeen, 19 A.3d at 41 (emphasis in original) (citing *Zappala Grp., Inc. v. Zoning Hearing Bd. of Town of McCandless*, 810 A.2d 708, 711 (Pa. Cmwlth. 2002) (concluding that a use variance “is appropriate only where the *property*, not the person, is subject to hardship”) (emphasis in original) (internal citation omitted)) (additional citations omitted).

The same reasoning applies here. Applicant is asserting a hardship based on its inability to enhance its use of its separate, commercially zoned Plaza Lot by expanding the parking for that lot onto the adjacent but separate Residential Lots. The use variance sought is for the Residential Lots, not the Plaza Lot. However, the Residential Lots are usable and valuable for their permitted residential purposes. *See* 1925 Op. at 2 & 6. Applicant has not cited any pertinent authority to support variance relief to one property based on hardship to a separate property. Applicant, therefore, failed to sustain its burden of demonstrating an unnecessary hardship regarding the Residential Lots. *See Bawa Muhaiyaddeen*, 19 A.3d at 41. Accordingly, it is not eligible for the requested variance relief.

This absence of a hardship regarding the Residential Lots is conclusive concerning Applicant's inability to obtain the requested variance; therefore, we need not address the other variance factors under the MPC and the Zoning Ordinance.⁵ *See In re Chestnut Hill Cmty. Ass'n*, 155 A.3d 658, 668 (Pa. Cmwlth. 2017) (reversing a zoning board decision granting a variance where the applicant failed to establish unnecessary hardship); *see also Singer v. Phila. Zoning Bd. of Adjustment*, 29 A.3d 144, 151 n.5 (Pa. Cmwlth. 2011) (reversing the grant of a variance where the applicant failed to establish unnecessary hardship, and declining to address the other elements for variance relief). The Board properly denied the requested variance.

⁵ We note, however, that to the extent Applicant is also arguing that analysis of a use variance request does not require the applicant to demonstrate that the request represents the minimum variance required in order to afford relief, that argument is without merit. In *In re: Appeal of Ridge Park Civic Association*, 240 A.3d 1029 (Pa. Cmwlth. 2020), this Court explained:

Objector first challenges the trial court's alternative holding that the minimum variance criterion is inapplicable to use variances.[] We agree that this determination is erroneous. . . . [T]his Court recently clarified that the minimum variance criterion applied to use variances. *Paganico v. Zoning Hearing Bd. of the Municipality of Penn Hills*, 227 A.3d 949, 954 (Pa. Cmwlth. 2020); *see also Zelienople Borough v. Zelienople Borough Zoning Hearing Bd.* (Pa. Cmwlth., No. 671 C.D. 2019, filed June 23, 2020), slip op. at 11[] (analyz[ing] whether applicant's testimony was sufficient to support conclusion that use variance satisfied minimum variance criterion). . . .

As a practical matter, the minimum variance criterion applies to use variances despite the fact that, generally, "a use variance marks a qualitative rather than a quantitative departure from an existing ordinance" and "a minimum variance is [more] difficult to assess in use variance cases [than in] dimensional variance cases[.]" *Paganico*, 227 A.3d at 954-55.

Id. at 1033 (footnote omitted).

IV. Conclusion

Based on the foregoing discussion, the Board's denial of variance relief is affirmed.

CHRISTINE FIZZANO CANNON, Judge

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ORDER

AND NOW, this 9th day of October, 2026, the September 4, 2025 order of the Court of Common Pleas of Cumberland County is AFFIRMED.

CHRISTINE FIZZANO CANNON, Judge