IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Councilmember Jeffery Young, Jr. on behalf of and as representative of Council of the City of Philadelphia and Strawberry Mansion Community Concern	:	
v.	:	No. 688 C.D. 2026
	:	Argued: October 13, 2026
City of Philadelphia, City of Philadelphia Zoning Board of Adjustment, Pennrose, LLC, Strawberry Mansion Housing LLC, and Philadelphia Housing Authority	:	
Appeal of: Jeffery Young, Jr.	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge (P.)
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER FILED: November 17, 2026

Jeffery Young, Jr. (Councilmember Young), a member of the Council of the City of Philadelphia (Council), appeals, on behalf and as a representative of Council, from the Order of the Court of Common Pleas of Philadelphia County (common pleas) that upheld the Decision of the City of Philadelphia Zoning Board of Adjustment (Board), which approved use and dimensional variances for an affordable housing development project located at 2500 N. 31st Street (N. 31st Street Property) being developed by the Philadelphia Housing Authority (Authority), Pennrose LLC, and Strawberry Mansion Housing, LLC (together, Pennrose)

(collectively, Applicants). After accepting Councilmember Young's untimely appeal nunc pro tunc, common pleas concluded that Councilmember Young had waived two of the three issues he asserted and that the Board did not err or abuse its discretion in granting the requested variances.

On appeal, Councilmember Young argues common pleas erred in finding that he waived all but one issue and that the Board erred in granting the variances because Applicants did not meet their burden of proof for obtaining variances under the Philadelphia Zoning Code (Code),[1] Title 14 of THE PHILADELPHIA CODE (2012). The Authority and Pennrose reply that the Board's Decision should be affirmed, either because Councilmember Young's issues have been waived or on the merits of the Board's Decision. The Authority, joined by Pennrose, also argues that common pleas abused its discretion in granting Councilmember Young nunc pro tunc relief thereby allowing him to file his appeal to common pleas after 30 days of the Board's Decision. Pennrose separately asserts that Councilmember Young lacked standing to appeal the Board's Decision.[2]

I. BACKGROUND

A. Proceedings Before the Board

This appeal concerns the development of the N. 31st Street Property as part of a scattered-site affordable housing development project that utilizes multiple parcels located throughout the Strawberry Mansion neighborhood (the Project), which would have between 55 and 57 units overall. (Board Decision, Findings of

[1] The Code is available at https://codelibrary.amlegal.com/codes/philadelphia/latest/phildadelphia_pa/0-0-286773 (last visited November 16, 2026).

[2] This matter was argued together with *Councilmember Jeffery Young, Jr. on behalf of and as representative of Council of the City of Philadelphia v. City of Philadelphia* (Pa. Cmwlth., No. 360 C.D. 2026), as they involve overlapping legal issues, particularly as to Councilmember Young's standing.

Fact (FOF) ¶¶ 8, 16; Conclusion of Law (COL) ¶ 13.) The Philadelphia Land Bank conveyed these parcels, which are vacant lots and described as distressed, blighted, or subject to "short-term dumping," to the Authority for its use and approved Applicants' efforts to obtain building permits for the Project. (FOF ¶¶ 9, 13, 27; COL ¶ 12.) Thus, the Authority owns the Project, which is being developed by Pennrose. (FOF ¶ 9; COL ¶ 13.) One goal of the Project was to ensure affordable quality units in the area. (FOF ¶¶ 13, 16, 29; COL ¶¶ 13, 17.) The N. 31st Street Property is located within the RSA-5 (Residential Single-Family Attached-5) zoning district. (FOF ¶ 1.)

The N. 31st Street Property consists of a 6,325 square-foot vacant lot located at the northwest corner of North 31st and West Cumberland Streets. (FOF ¶ 19; COL ¶ 12.) This parcel appears to have been used as a "pocket park, although no evidence was submitted by any party that the site was formally established for this use." (FOF ¶¶ 22, 23, 25, 27; COL ¶ 12.) As proposed, this part of the Project consists of

> 11 dwelling units consisting of one-, two-, and three-bedroom units, each with its own entrance from the sidewalk. Ten of the entrances would be on the Cumberland Street side of the property and the remaining one would be on 31st Street. Six of the units (all [5] of the [1]-bedroom flats as well as the [3]-bedroom flat) would be [Americans with Disabilities Act of 1990[3]] accessible to meet the [10] percent accessibility requirement for the entire project. The electrical meters for all of the units appeared to be clustered on 31st Street side of the property past the entrance to the 11th unit. *See* [(R.R. at 82a, 85a, 94a-95a, 168a-69a, 211a, 379a-83a, 407a-08a.)]

(COL ¶ 13.)

[3] 42 U.S.C. §§ 12101-12213.

The Philadelphia Department of Licenses and Inspections (L&I) denied a permit for the N. 31st Street Property because Applicants needed a use variance due to the RSA-5 designation and the multi-family use proposed and a dimensional variance due to the proposed placement of the utility meters not meeting the screening requirements. (FOF ¶ 1.) Applicants appealed L&I's denial of the permit to the Board, asserting that the dimensional variance needed is de minimis and that granting the use variance would not increase congestion, impair light and air, burden public utilities, or harm neighboring properties. (*Id.* ¶ 2.) The Board held hearings on April 22 and June 4, 2025.

The parties presented statements to the Board, and the Board received letters of support for the Project from State Senators Sharif Street and Vincent Hughes, State Representative Keith Harris, and Ryan Boyer of the Philadelphia Building and Construction Trades Council. (*Id.* ¶ 10.) Representative Harris also testified about his support, explaining that the affordable rentals created by the Project would be occupied by members of this community who want to stay in the area, but who may not be able to purchase homes at this time. (*Id.* ¶ 28.)

Representatives from the Authority, Strawberry Mansion Community Development Corporation (Strawberry Mansion CDC), and members of the community testified in support of the Project, including about the N. 31st Street development, and about the pocket park not being maintained, having broken benches, and being used to dump trash, and that the development would reduce the presence of blight in the community and increase needed affordable housing opportunities. (*Id.* ¶¶ 13, 15-16, 25, 27, 45, 46.) An Authority witness testified that new green spaces, including a new full park, were being added nearby. (*Id.* ¶¶ 24-25.) Representatives from Applicants and the Philadelphia City Planning

Commission (Commission) testified about the development plans for the whole Project, the specific development plans for the N. 31st Street Property, the large size of that property, the characteristics of the surrounding neighborhood, the requested variances, how screening could be incorporated for the utility meters, and the funding of the Project, particularly its eligibility for a federal Low Income Housing Tax Credit. (*Id.* ¶¶ 8, 19-21, 29-30.)

Pennrose's representatives adopted counsel's statements regarding the details of the N. 31st Street Property part of the Project, and testified about why the design had no steps, the changes made to the design to meet the neighborhood's characteristics, and how many of the units were being designed to be accessible to those with disabilities. (*Id.* ¶¶ 21, 30-33.) Photographs of the N. 31st Street Property and its immediate surrounds were introduced. (COL ¶ 12; R.R. at 977a-85a.) The Commission representative indicated that the N. 31st Street Property development and the Project was consistent with the Comprehensive Plan recommendation to promote affordable housing, that the screening for the utility meters was not absolutely necessary, and that the Commission recommended granting the variances. (*Id.* ¶ 29.)

Bonita Cummings, a Strawberry Mansion resident and representative of the coordinating Registered Community Organization (RCO) Strawberry Mansion Community Concern (SMCC), testified in opposition to the Project as a whole and to the development of the N. 31st Street Property in particular. (FOF ¶¶ 3, 11, 23.) Cummings objected to the Project primarily because it was creating rental units, not units available for home ownership opportunities, and to the N. 31st Street Property development because it was removing the pocket park, which some members of the community used as green space. (*Id.* ¶¶ 11, 23.) Another resident, Gwendolyn

Fields, testified about her use of the pocket park, which had recently been "cleaned up," and that as an elderly person with disabilities, she would not walk multiple blocks to the new greenspaces. (*Id.* ¶ 26.)

Conlan Crosley of Councilmember Young's office, which represents this area on Council, testified at both hearings, and explained at the June 4, 2025 hearing that the objection to the N. 31st Street Property development was because of the loss of the pocket park. (R.R. at 361a-62a.) Councilmember Young testified at the April 22, 2025 hearing, at which evidence regarding the entire Project was given, but his testimony did not relate to the N. 31st Street Property. Councilmember Young did not testify or otherwise appear at the June 4, 2025 hearing, but he sent a letter to the Board regarding the N. 31st Street Property development. (Decision at 28 n.13.) In that letter, Councilmember Young stated

> My office and I would like to express a position of Opposition for 2500 N[.] 31st Street (MI2025 001305) zoning application. It does not match the character of the neighborhood and places a hardship on the community. Thank you for the opportunity to comment on the above referenced project. If you have any other questions, please do not hesitate to reach out to Conlan Crosley on our staff.

(*Id.*)

At the end of the June 4, 2025 hearing, the Board voted to approve the variances. (FOF ¶ 34; R.R. at 409a-10a.) On June 16, 2025, the Board sent an email giving notice of its written Decision. (R.R. at 12a.) Nothing in the email recipient list reflects that Councilmember Young was sent this notice. (*Id.*)

In its written decision, the Board made the following relevant findings and conclusions.

> [] In this matter, the Board found that [] Applicant[s] met the criteria under the [] Code for an unnecessary hardship not created by [] Applicant[s] that justified the requested use variances.

[] The subject property is a 6,325 square foot vacant lot at the corner of North 31st and West Cumberland Streets in the Strawberry Mansion neighborhood of Philadelphia. Aside from a small vacant lot adjacent to North Napa Street, the subject property nearly spans the width of Cumberland Street between 31st and Napa Streets . . . . Based on the photos and testimony presented at the hearing, the property is blighted with overgrowth, trash, and broken park furniture. The Board also observed that the park was surrounded by a brick wall topped by a chain-link fence. There are two gated access points, one on Cumberland Street and one on 31st Street. It was not clear to the Board from the evidence and testimony provided who is permitted to access this parcel and who established and maintains its "park-like" conditions. The adjacent properties appear to be mainly residential in nature, improved with attached structures, and located in the RSA-5 zoning district like the subject property. *See* [(R.R. at 379a-80a, 383a-86a, 392a-95a, 406a-09a.)]

. . . .

[] On the issue of hardship, the Board found that the development of a single-family home on the subject property would be out of character with the neighborhood given the nearly exclusive presence of attached rowhouses in the area. Not only would one single-family home be out of context on this substantial lot, but it would be unlikely to be economically viable given the substantially smaller size of the existing residential structures and lots in this area. Indeed, the immediately adjacent vacant parcel at Cumberland and Napa Streets appears to more closely comport with the average lot size for this neighborhood. To address the hardship presented by this unique, oversized lot,[] [] Applicant[s] proposed 11 dwelling units with separate entrances that resemble the attached rowhomes located throughout the neighborhood and are therefore consistent with the spirit of the RSA-5 zoning district. Moreover, there was no testimony or evidence presented that a dimensional variance (or variances) could address the hardship at this site. In fact, no dimensional variances were requested for this project. *See* [(R.R. at 379a-83a, 407a-08a.)]

[] By providing a separate entrance for each unit, [] Applicant[s] effectively limited the . . . units that could be constructed at the subject property. The Applicant[s] also limited the number of dwellings by proposing a combination of one-, two-, and three-bedroom units. If [] Applicant[s] had sought to construct only one-bedroom dwellings, the number of requested units could have been notably higher . . . .

Therefore, the Board found that [] Applicant[s] demonstrated that the proposed 11 units represented the minimum relief necessary to overcome the established hardship. *See* [(R.R. at 379a-83a, 407a-08a.)]

[] Furthermore, the Board concluded that [] Applicant[s] satisfied the remaining criteria under Section 14-303(8)(.1)(.c)-(.h) [of the Code], thereby demonstrating that the proposal at the subject property would not have a negative effect on the public safety, health, and general welfare of the surrounding community. The primary opposition to the development at this property (and the project as a whole) was the coordinating RCO . . . . It appeared to the Board that SMCC's main concern about the overall development was the lack of homeownership opportunities. While the Board certainly understands SMCC's desire to build equity for families in its community, it is the role of the [Board] to determine whether the variance criteria have been satisfied by [] Applicant[s] in the proposal before the Board. Whether dwelling units will ultimately be leased or owned is not distinguished in the use definitions under the Household Living subcategory in the [] Code.[] *See* [(R.R. at 98a-105a, 197a.)]

[] SMCC's primary objection to the proposal at the subject property was the removal of the existing pocket park. However, as mentioned previously, the establishment, maintenance, and permitted access to this property as a park was unclear. While the Board does not dispute the importance of green space in a neighborhood, [] Applicant[s were] not seeking relief from any landscaping or tree removal provisions in the [] Code. Furthermore, [] Applicant[s] . . . both spoke to past and future efforts to provide green space in projects . . . where it could be accommodated. As noted by the [] Commission, the proposal at the subject property aligns with the recommendation in the Comprehensive Plan to promote affordable housing. In addition, the proposal at this property allows [] Applicant[s] to create accessible units to address community needs as well as to satisfy overall project requirements. *See* [(R.R. at 383a-95a, 400a.)]

[] Lastly, regarding the placement of the utility meters, the Board did not observe any interior basement location on the plans where the meters could be situated. Thus, by necessity, they would need to be placed on the exterior of the building. The plans submitted by [] Applicant[s] show that all of the meters are situated in one location on the 31st Street side of the building. [] Applicant[s] did state at the hearing that they would do their best to comply with the screening requirements in the aforementioned overlay, subject to any restrictions

> instituted by the electric company. If [] Applicant[s are] not able to completely screen the meters as required by the [] Code, the Board considered the variance sought in this case to be de minimis.

(COL ¶¶ 11-12, 14-18 (footnotes omitted).) Accordingly, the Board concluded that Applicants had met their burdens of "production and persuasion through credible testimony and evidence, which warranted the requested minimum relief for the proven hardship at the subject property." (*Id.* ¶ 19.)

B. Appeal to Common Pleas

On June 12, 2025, Council adopted Resolution 250621 (Resolution), which "[a]uthoriz[ed] Councilmember Young's appeal, on behalf of and as representative of [] Council of the decision of the [] Board . . . with respect to [the] N. 31st Street [Property]." (R.R. at 947a-48a.) The Resolution further authorized the designated councilmember to obtain counsel to appeal a Board decision and to litigate the appeal on Council's behalf and as Council's representative. (*Id.*) The Resolution additionally authorized Councilmember Young "to file the appeal on behalf of and as representative of [] Council." (*Id.*) Councilmember Young was provided with the "full authority" to "prosecute and defend, on behalf of and as representative of [] Council" any appeal of the Board's Decision on the N. 31st Street Property. (*Id.*) Through the Resolution, Council ratified the steps Councilmember Young had taken on its behalf and as its representative in preparing for this appeal and "authorize[d] [him] to take all further steps on behalf of and as representative of [] Council with respect to [this] appeal" that he concludes are appropriate for successfully prosecuting and defending this appeal, including filing further appeals if necessary. (*Id.*)

Councilmember Young filed an appeal with common pleas on July 17, 2025, which was rejected as untimely. Councilmember Young then filed a verified

Petition for Allowance to file an Appeal Nunc Pro Tunc (nunc pro tunc petition). Therein, Councilmember Young verified that he and Crosley appeared and participated at the Board's hearing, the Board served written notice of its Decision by an email to "interested parties" on June 16, 2025, neither Councilmember Young nor Crosley were served with that notice when they should have been under the Board's Rules and Regulations, Councilmember Young first learned of the Board's Decision on July 17, 2025, he filed an appeal the same day, the appeal was rejected as untimely, and Councilmember Young sought nunc pro tunc relief because he would have timely filed an appeal had he been timely served the Board's Decision. (*See* Young's Reply Brief (Br.) Ex. B; Authority's Br. Ex. 1.) Common pleas granted nunc pro tunc relief on or about August 21, 2025, and Councilmember Young filed his appeal on or about August 25, 2025.

Pennrose, asserting it had not been served with Councilmember Young's nunc pro tunc petition, sought to vacate the August 21, 2025 order, which common pleas granted. Pennrose filed an answer to Councilmember Young's nunc pro tunc petition, and common pleas subsequently granted Councilmember Young nunc pro tunc relief again on or about November 4, 2025. The Authority sought reconsideration, which common pleas denied on December 8, 2025.

In his appeal to common pleas, Councilmember Young argued that Applicants did not present substantial evidence of unnecessary hardship, failed to show that the requested relief was the minimum required, or that the proposal would not adversely affect the public interest. The Authority and Pennrose argued that the issues Councilmember Young raised in his appeal had not been preserved before the Board and, in any event, the Board's Decision was supported by substantial evidence and

contained no errors of law or abuses of discretion. Pennrose also challenged Councilmember Young's standing to appeal the Board's Decision.[4]

Following briefing and oral argument, common pleas denied the appeal and affirmed the Board's Decision via a footnoted Order dated April 24, 2026. Therein, common pleas concluded that the Board's "[c]onclusions of [l]aw cited substantial evidence to support the variances," and that Councilmember had preserved the last issue, whether there would be an adverse effect on the public interest. (Common pleas' April 24, 2026 Order at 2.) Common pleas held, on this preserved issue, that the Board's finding that there would be no such adverse effect was supported by substantial evidence, particularly where the focus was on the loss of the pocket park and the Board had specifically addressed the pocket park in its Decision.

Councilmember Young appealed to this Court and filed a Concise Statement of Errors Complained of on Appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), Pa.R.A.P. 1925(b), to which common pleas filed a responsive opinion (1925(a) Opinion). In the 1925(a) Opinion, common pleas explained that Councilmember Young had waived two of his three arguments because he "did not appear or testify about his opposition to the [N. 31st Street Property] at the [Board] hearings," and his submitted letter "complain[ed] in one sentence that the proposal 'does not match the character of the neighborhood and places a hardship on the community.'" (1925(a) Opinion (Op.) at 9 (quoting Decision at 26 n.13).) "His one-sentence complaint did not object" based on the issues he raised before common pleas, but "only that a variance would impose a 'hardship on the community.'" (*Id.*

[4] The City of Philadelphia contends that Pennrose's challenge to Councilmember Young's standing before common pleas differs from what it asserts now. (The City's Br. at 4 n.2 (citing R.R. at 668a-70a).) A review of the record before common pleas reflects that Pennrose argued lack of standing based on the Resolution not being a valid means of authorizing Councilmember Young's appeal.

at 10.) Accordingly, this letter "preserve[d] a challenge to" a determination that the variance would have "no adverse effect on public health, safety, or general welfare," as it "put the Board on notice that he objected to any [such] finding." (*Id.*)

Common pleas also held that the Board's findings on the public interest of the Project and the development of the N. 31st Street Property was supported by substantial evidence, pointing to credited evidence supporting the Board's findings in that regard, and that the Board had addressed SMCC's concerns regarding the pocket park "at length." (*Id.* at 10.) It concluded that "[t]he Board, as factfinder, was entitled to credit the testimony of [Strawberry Mansion CDC's and the Authority's witnesses] over the contrary testimony of [] Cummings and [] Fields," and common pleas "was not authorized by law to reweigh that evidence or substitute its judgment for the Board's." (*Id.* at 11 (citing *Marshall v. City of Philadelphia*, 97 A.3d 323, 329 (Pa. 2014)).)

Following briefing and oral argument, this matter is now ready for disposition.

II. DISCUSSION

A. Whether common pleas abused its discretion in granting Councilmember Young nunc pro tunc relief.

1. Parties' Arguments

The Authority initially argues that Councilmember Young's appeal from the Board was filed 31 days after the Board's Decision, making the appeal untimely, and common pleas abused its discretion in granting him nunc pro tunc relief.[5] According to the Authority, Councilmember Young did not establish the extraordinary circumstances necessary to obtain nunc pro tunc relief. The Authority asserts that Councilmember Young's reason for requesting relief was that he did not receive

[5] Pennrose initially filed an appeal of common pleas' grant of nunc pro tunc with this Court at docket number 1602 C.D. 2025, but this Court quashed that appeal without prejudice on April 8, 2026, because common pleas' order was not a final one.

written notice of the Board's Decision and this reason is insufficient because Councilmember Young was not entitled to written notice of the Decision where he did not register or appear at the Board's hearing or enter an appearance, which is what is required by the Board's Rules and Regulations. Not being entitled to written notice, the lack of such notice did not establish the extraordinary circumstances warranting the acceptance of Councilmember Young's late appeal. It further observes that nunc pro tunc relief was initially granted because common pleas believed the requested relief was unopposed, (R.R. at 11a), but the lack of opposition was due to Councilmember Young's failure to properly serve the request on the Authority and Pennrose. When it was served with notice, both the Authority and Pennrose challenged the grant of that relief. The Authority asserts there is nothing unique or unusual about Councilmember Young's failure to follow the Board's Rules to be a registered individual so as to be entitled to written notice of the Decision and, therefore, there are no extraordinary circumstances here.[6] *Triple Crown Corp., Inc. v. Lower Allen Township*, 327 A.3d 748, 757 (Pa. Cmwlth. 2024).

Councilmember Young responds that the Authority's arguments are misplaced because he did appear and testify at the Board's April 22, 2025 hearing, at which the Board received evidence applicable to the Project as a whole, and sent the letter opposing the development of the N. 31st Street Property for the June 4, 2025 hearing. He also points out that Crosley, a member of his staff, also appeared and testified at the April 22, 2025, and June 4, 2025 hearing. As such, they should have received notice of the Board's Decision but did not, and Councilmember Young was unaware of the Decision until the 31st day after the service of the Decision. Councilmember Young asserts he immediately filed an appeal on behalf

[6] Pennrose incorporates the Authority's arguments on this issue. (Pennrose's Br. at 29.)

of Council, which was rejected as being untimely, at which point he filed the verified Petition for Allowance to file an Appeal Nunc Pro Tunc.

Common pleas granted him that relief on August 22, 2025, and Councilmember Young filed his appeal the same day. According to Councilmember Young, common pleas, acting within its discretionary powers, reviewed this issue multiple times, and, ultimately, regranted this nunc pro tunc relief on November 4, 2025. There is no basis, Councilmember Young argues, upon which to determine that common pleas abused that discretion in granting him nunc pro tunc relief in these circumstances.

2. Analysis

There is no dispute that an appeal to common pleas from the Board's Decision had to be filed within 30 days of that decision. Section 914.1(b) of the Pennsylvania Municipalities Planning Code (MPC) provides that "[a]ll appeals from determinations . . . shall be filed . . . within 30 days after notice of the determination is issued." 53 P.S. § 10914.1(b).[7] "The failure to timely appeal an administrative agency's action is a jurisdictional defect," and "[t]he time for taking an appeal cannot be extended as a matter of grace or mere indulgence." *Martin v. Zoning Hearing Bd. of W. Vincent Twp.*, 230 A.3d 540, 546 (Pa. Cmwlth. 2020) (internal citation and quotation omitted). To obtain appellate review, the appellant must justify the delay in filing the appeal by seeking nunc pro tunc relief. *Id.*

"Nunc pro tunc relief may be granted . . . in circumstances in which a party failed to make a timely filing as a result of a fraud or a breakdown in the court's operations . . . ." *Triple Crown Corp., Inc.*, 327 A.3d at 754 (citing, e.g., *Criss*

[7] Act of July 31, 1968, P.L. 805, *as amended*, added by Section 95 of the Act of December 21, 1988, P.L. 1329.

v. Wise, 781 A.2d 1156, 1159 (Pa. 2001)). It is also available where there is a breakdown in the administrative process. *Smith v. Pa. Bd. of Prob. & Parole*, 81 A.3d 1091, 1093 (Pa. Cmwlth. 2013). "Generally, *nunc pro tunc* relief may be afforded only where 'extraordinary' circumstances exist to warrant it, and the burden of establishing the existence of such circumstances is on the party seeking nunc pro tunc relief." *Triple Crown Corp., Inc.*, 327 A.2d at 754 (citing, e.g., *Harris v. Unemployment Comp. Bd. of Rev.*, 247 A.3d 1223, 1229 (Pa. Cmwlth. 2021)).[8]

The Authority relies on Section 7.1 of the Board's Rules and Regulations to argue that Councilmember Young was not entitled to written notice of the Board's Decision. Section 7.1 provides that: "[t]he [] Board shall give prompt written notice of its decision to the [a]ppellant and to all Interested Persons." Board Rules and Regulations § 7.1.[9] "The date on which a decision of the [] Board is emailed to the [a]ppellant and all Interested Persons shall be conclusively presumed to be the date of adjudication, and the time for appeal shall run from that date." *Id.* The Board defines an "Interested Person" as the "[a]ppellant and **any person or entity who registered before the** [] **Board** in the manner specified by the [] Board." *Id.* § 2.3 (emphasis added). **However**, Section 14-303(14)(*l*) of the Code addressing public hearings before the Board **expressly** requires that

> **[a]ll decisions of the** [] **Board** . . . **shall be mailed to** the applicant, the applicant's attorney of record, such other persons or attorneys who have properly entered an appearance in the case, and **any** [RCO] or **member**

[8] "The appellant must also establish that (1) the appeal was filed within a short time after learning of and having an opportunity to address the untimeliness; (2) the elapsed time period is of very short duration; and (3) the appellee is not prejudiced by the delay." *Martin*, 230 A.3d at 546 (internal citation and quotation marks omitted). No one argues that these were not met, focusing instead on the alleged lack of extraordinary circumstances.

[9] The Board's Rules and Regulations are attached to the Authority's Brief as Exhibit 6 and are also attached to Councilmember Young's Reply Brief.

> **of [] Council (or their representative) who has submitted a letter concerning the matter**.

Code § 14-303(14)(*l*) (emphasis added).

The Authority does not argue that Councilmember Young was provided written notice, and he failed to timely appeal; it argues Councilmember Young's claim of extraordinary circumstances is unsupported because he was not entitled to written notice. Although the Authority may be correct that Councilmember Young did not appear at the June 4, 2025 hearing and did not otherwise register with the Board as to the N. 31st Street Property, he did "submit[] a letter concerning the matter." *Id.* As such, he was entitled to written notice of the Board's Decision pursuant to Section 14-303(14)(*l*) of the Code, *id.*, he did not receive it, and he did not become aware of the Board's Decision until after the time for appealing had passed. It was this lack of notice that resulted in Councilmember Young's appeal being untimely filed, and, when he learned of the Board's Decision, he acted promptly by filing his nunc pro tunc petition on the same day. Accordingly, we are not persuaded that common pleas abused its discretion in granting nunc pro tunc relief under these circumstances.

B. Whether Councilmember Young has standing to appeal the Board's Decision.

1. Parties' Arguments

Pennrose challenges Councilmember Young's standing to appeal the Board's Decision. It argues that it is undisputed that a councilmember does not have individual standing based on their position alone. Pennrose asserts the Resolution upon which Councilmember Young relies for standing is either procedurally ineffective or unconstitutional. Pennrose contends that, pursuant to Section 17.1 of

the Home Rule Charter Act[10] (Home Rule Act), only "aggrieved persons" and Council, the legislative body, have standing to appeal from a Board decision. 53 P.S. § 13131.1. It argues that Council does not have the authority to delegate its appeal authority to a particular councilmember because the General Assembly granted the authority to appeal to the legislative **body** in the Home Rule Act, and that this issue was left open for future consideration in this Court's recent decision in *Appeal of Clarke*, 316 A.3d 1095, 1103 n.8 (Pa. Cmwlth. 2024). According to Pennrose, permitting Council to delegate its standing to Councilmember Young to appeal the Board's Decision, with no guardrails to limit his discretion, would codify councilmanic prerogative in contravention of the General Assembly's determination that only Council, the body, has standing. Doing so, Pennrose argues, violates article IX, section 2 of the Pennsylvania Constitution, PA. CONST. art. IX, § 2 (granting municipalities the right to adopt home rule), because authorizing Councilmember Young to appeal individually conflicts with the General Assembly's limitation of standing to Council itself in Section 17.1 of the Home Rule Act. (Pennrose's Br. at 7 (citing *Spahn v. Zoning Bd. of Adjustment*, 977 A.2d 1132, 1143-44 (Pa. 2009)).) Procedurally, Pennrose argues that there is no evidence that the Resolution was ever presented to the mayor for approval, which Section 6 of the First Class City Government Law (First Class City Law), 53 P.S. § 12526,[11] requires in order for a resolution to become effective. Without the mayor's approval of the Resolution, it never became effective and the general principle that an individual councilmember does not have standing to appeal a Board decision based on their position is implicated.

[10] Act of April 21, 1949, P.L. 665, *as amended*, added by Section 2 of the Act of November 30, 2004, P.L. 1523, 53 P.S. § 13131.1.

[11] Act of June 25, 1919, P.L. 581.

Councilmember Young responds that he is not seeking to appeal in his individual capacity and asserts he is appealing on behalf of Council, which has expressly authorized him to act on its behalf via the Resolution. Councilmember Young asserts that Council could authorize a councilmember to prosecute a zoning appeal on its behalf, which Council has validly done here. According to Councilmember Young, Council collectively made the decision to appeal and authorized Councilmember Young to perform the administrative and ministerial acts required to carry out that decision. Council did not delegate any of its legislative power, it only authorized Councilmember Young to act on Council's decision to appeal the Board's approval of the variances for the N. 31st Street Property. This non-legislative action, Councilmember Young asserts, is not inconsistent with the Home Rule Act or the Pennsylvania Constitution, and, therefore, is permissible. Finally, Councilmember Young asserts Section 6 of the First Class City Law does not apply here because the Philadelphia Home Rule Charter (Home Rule Charter)[12] superseded the First Class City Law's governance structure, including the need to present resolutions to the mayor for approval or veto, and now only ordinances must be presented to the mayor.

The City of Philadelphia[13] (City) asserts that Pennrose's argument based on the First Class City Law is misplaced because that law was superseded by the City's Home Rule Charter in 1951 and is inconsistent with Sections 2-200 and 202 of the Home Rule Charter. Section 2-200 of the Home Rule Charter abolished the legislative resolutions, of which Section 6 speaks, and requires legislative acts only

[12] The Home Rule Charter is available at https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-262986 (last visited November 16, 2026).

[13] The City, which is an appellee, sought permission to file its brief out-of-time, which this Court granted. The City supports affirmance and writes only on this standing issue and takes no position on Pennrose's other standing argument.

by ordinances, which do require mayoral approval per Section 2-202 of the Home Rule Charter. Philadelphia Home Rule Charter (CHARTER) §§ 2-200, 2-202. Even if Section 6 was not superseded, the City maintains, Section 6 would not apply to **this** Resolution because it was not a legislative resolution, but an expression of Council's will to authorize Councilmember Young to proceed with litigating this appeal. A non-legislative resolution is an "informal enactment of a temporary nature, providing for the disposition of a particular piece of administrative business of a municipal corporation," *Blackwell v. City of Philadelphia*, 684 A.2d 1068, 1072 (Pa. 1996), and the Resolution here, the City asserts, "simply express[ed] the will of the legislative body on a particular motion or matter." (City's Br. at 9.) According to the City, this Resolution is akin to the thousands of other non-legislative actions taken by Council over the past 75 years, none of which were presented to the mayor for approval. For these reasons, the City argues the Court must reject Pennrose's argument based on the First Class City Law.

2. Analysis

The parties here make the same arguments regarding Councilmember Young's standing in this matter as they do in *Young v. City of Philadelphia*, __ A.3d __, __ (Pa. Cmwlth., No. 360 C.D. 2026, filed November 17, 2026), slip op. at 10-13 (*Young I*), which was argued together with this matter. In *Young I*, we set forth the legal principles that guide our determination as to a party's standing and, applying those principles to the Council resolution at issue, concluded that Councilmember Young's appealing the Board's decision on behalf of and as the representative of Council, as authorized by Council, did not violate Section 17.1 of the Home Rule Act. *Id.* at 13-19. Those same standing principles apply here, and, upon examination of the Resolution, we reach the same conclusion.

Similar to the Council resolution in *Young I*, the Resolution here, which was adopted prior to the filing of the appeal, states that it

> [a]uthoriz[es] Councilmember Young's appeal, **on behalf of and as representative of [] Council of the decision of the [] Board . . . with respect to [the] N. 31st Street [Property]**.
>
> WHEREAS, Pursuant to Resolution No. 240585, the Council President, or a Councilmember designated by [] Council President, shall have full authority to seek and retain legal counsel to file an appeal of the decision of the [Board] and to engage in any related litigation as may be necessary **on behalf of and in the name of [] Council**; and
>
> WHEREAS, [] Council intends by this Resolution to **authorize Councilmember Young to be a party to such an appeal on its behalf and to ratify Councilmember Young's authority to file the appeal on behalf of and as representative of [] Council**; now, therefore, be it
>
> RESOLVED, BY [] COUNCIL . . ., That Councilmember Jeffery Young, Jr. has **full authority to intervene in and thereafter as a party therein to prosecute and defend, on behalf of and as representative of this Council**, **the appeal of the decision of the [] Board** . . . with respect to [the] **N. 31st Street [Property]**.
>
> FURTHER RESOLVED, That this Council **ratifies all steps taken to date by Councilmember Young on behalf of and as representative of Council in preparation for said appeal**.
>
> FURTHER RESOLVED, That this Council **authorizes Councilmember Young to take all further steps on behalf of and as representative of Council** with respect to such appeal as Councilmember Young determines is appropriate for the successful prosecution and defense of such appeal, including, if necessary, any further appeals.

(R.R. at 947a-48a (emphasis added).)

The only difference between the two resolutions is the property listed as being the subject of the appeal. *Cf. Young I*, __ A.3d at __, slip op. at 16-17. Thus, for the

reasons set forth in *Young I*, there is no violation of or conflict with the General Assembly's enactment in Section 17.1 that would require a finding that Councilmember Young, acting on behalf of and as a representative of Council, lacked the requisite standing to file and prosecute this appeal.

As for Pennrose's reliance on Section 6 of the First Class City Law to challenge the procedural validity of the Resolution, a position also taken in *Young I*, that reliance is misplaced for the reasons set forth in *Young I*, __ A.3d at __, slip op. at 19-23.

Concluding there is no standing issue with the appeal from the Board's Decision, we turn to the merits of Councilmember Young's appeal of the Board's Decision.[14]

C. Whether the Board erred in granting the use variance for the N. 31st Street Property?

1. Did Councilmember Young preserve all of his issues before the Board?

a. Parties' Arguments

Councilmember Young argues common pleas erred in concluding that he had waived two of his three issues, the unnecessary hardship and minimum variance necessary challenges, due to not challenging those issues before the Board. According to Councilmember Young, he did not waive any arguments challenging the Board's finding that Applicants met their burden of proof. He argues the waiver rule is to ensure the factfinder has a full opportunity to create a record on all issues

[14] "Where the trial court does not take additional evidence, we are limited to determining whether the [Board] committed an error of law or manifestly abused its discretion." *Coal Gas Recovery, L.P. v. Franklin Twp. Zoning Hearing Bd.*, 944 A.2d 832, 837-38 (Pa. Cmwlth. 2008) (citation omitted). "An abuse of discretion occurs when the findings are not supported by substantial evidence in the record." *Id*. at 838 n.9 (citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id*. (citation omitted).

and, because it was Applicants who bore the burden on presenting evidence to support their claimed relief and the record created before the Board and common pleas on the requested relief is fully reviewable, which occurred here. (Councilmember Young's Br. at 19 (citing *In re Chacon* (Pa. Cmwlth., No. 1184 C.D. 2023, filed Sept. 19, 2025) (*Chacon II*)).) He notes that *Chacon II* involved a single objector, and that where there are multiple objectors at a Board hearing, any issue raised by any objector can be raised in an appeal from a Board decision, even if the appellant was not the one to raise it before the Board, particularly where objectors were told at the hearing not to be duplicative. (*Id.*) Thus, Councilmember Young asserts, he can challenge whether Applicants met their burden, even if he did not challenge the sufficiency of the evidence or state "the magic words" before the Board. (*Id.*)

Pennrose responds that the issues Councilmember Young raises were not preserved before the Board, as common pleas properly held. Before the Board, Councilmember Young submitted a letter in which he challenged the grant of any variance, not because of a lack of unique physical features or non-self-created unnecessary hardship or that the variances exceeded what was necessary. (Pennrose's Br. at 12-14 (citing *In re Chacon* (Pa. Cmwlth., No. 1184 C.D. 2023, filed Jan. 29, 2025) (*Chacon I*); Section 753(a) of the Local Agency Law, 2 Pa.C.S. § 753(a)).) The only issue found preserved by common pleas is that the granting of the variance will adversely impact the public interest, and Pennrose argues there is substantial evidence to support the Board's contrary conclusion that the Project at the N. 31st Street Property would promote the public interest. In particular, Pennrose argues, the Board accepted the testimony that the pocket park was not in a condition to be beneficial to the public and that other green spaces would be provided nearby.

Additionally, there was evidence, credited by the Board, that the Project as a whole, and at this particular location, was in the public interest because it meets the needs of providing affordable rentals and removing blight in the community. For these reasons, Pennrose asserts, the Board's findings and conclusions on this point were supported by substantial evidence. The remainder of the Board's findings of unnecessary hardship and least modification were also supported by substantial evidence and met the legal requirements for that relief under *Marshall*, 97 A.3d at 329; therefore, Pennrose argues the Decision to grant the variances should be affirmed.

The Authority likewise argues Councilmember Young waived the issues he raises on appeal because he did not raise them before the Board, although common pleas showed "leniency" in finding that Councilmember Young had preserved a challenge to the Board's finding that granting the variances would have "no adverse effect on public health, safety, or general welfare." (1925(a) Op. at 10.) The Authority maintains that Councilmember Young's issue raised before the Board, a single sentence in his letter, did not put anyone on notice of the arguments he raised before common pleas or here. The Authority argues that this matter "is indistinguishable from . . . *Chacon* [*I*]," and, consistent with that decision, common pleas appropriately considered whether Councilmember Young had "'properly preserved each of his arguments'" and correctly concluded that he had not, resulting in their waiver. (Authority's Br. at 15 (quoting *Chacon I*, slip op. at 6-7).) The Authority argues that, ultimately, "Councilmember Young conflates waiver and burden of proof," and *Chacon I* holds "that an objector must preserve his argument that an applicant failed to carry its burden" before the zoning hearing board and, if preserved, then the appellate court will determine if the applicant carried its burden.

(*Id.* at 17.) To the extent that Councilmember Young argues he can assert any issue raised by any objector at the Board's hearing, the Authority maintains that no one at the hearing raised the issues found waived by common pleas and, therefore, this argument does not require reversal.

b. Analysis

Section 753(a) of the Local Agency Law provides that "if a full and complete record of the proceedings before the [relevant local] agency was made[, an appellant] may not raise . . . any other question [on appeal to a court of common pleas that was] not raised before the agency . . . unless allowed by the court upon due cause shown." 2 Pa.C.S. § 753(a). Accordingly, under this provision, "an appellant waives any issue they did not present before the local agency, unless they seek and obtain special dispensation from the court of common pleas to raise an otherwise waived argument at the appellate stage." *Chacon I*, slip op. at 6 (citing 2 Pa.C.S. § 753(a)).

Both parties cite the *Chacon* decisions, with Pennrose and the Authority citing *Chacon I* and Councilmember Young citing *Chacon II*. In *Chacon I*, this Court concluded that common pleas erred in reversing a Board decision on issues, including that the applicant had not established that any undue hardship was not self-inflicted and that the requested variances did not provide the minimum deviation from the Code necessary to provide adequate relief, that the appellant had **not raised before the Board in the first instance**. We stated:

> [c]ommon [p]leas [] reversed the Board's decision in full, without giving the slightest consideration to whether [the appellant] had properly preserved each of his arguments. *See* Common Pleas Op., 9/18/23, at 10-22. Simply put, [c]ommon [p]leas should have ruled that [the appellant] had waived his arguments regarding undue hardship and minimum necessary relief[] by failing to raise them when he appeared before the Board, and erred by doing otherwise.[]

Id., slip op. at 6-7 (footnotes omitted). Thus, we remanded for common pleas to address the one issue that the appellant had raised before the Board, which common pleas had left unaddressed in its opinion. *Id.*, slip op. at 8-9.

Chacon II was this Court's subsequent review of common pleas' decision on the one issue **that had been preserved before the Board**. Common pleas determined that the Board erred in concluding that the grant of variances would not negatively impact adjacent property's supply of air and light. We affirmed, concluding that the applicant bore the burden of proving an entitlement to the requested variances, and, in this instance, the applicant's evidence had not addressed this requirement. *Chacon II*, slip op. at 5-7. Having not presented evidence on this requirement, the objector was not required to present anything in opposition thereto. *Id.*, slip op. at 8.

Here, the record before the Board reflects that Councilmember Young's objection raised in his letter[15] was that the proposed development of the N. 31st Street Property did "not match the character of the neighborhood and places a hardship on the community." (R.R. at 55a; Decision at 27.) Crosley reiterated this statement from the letter at the June 4, 2025 hearing and indicated that developing the N. 31st Street Property would result in "the community [] los[ing] a valuable pocket park." (R.R. at 361a-62a.) At no point in the proceedings before the Board did Councilmember Young assert that Applicants did not present sufficient evidence to meet their burden of proof on the variance requests. It was only before common pleas that he raised these issues. This matter is nearly on all fours with *Chacon I*, except common pleas here did what the common pleas court in *Chacon I* did not; it

[15] While Councilmember Young testified at the April 22, 2025 hearing, that testimony related to a different property in the Project. Thus, his letter reflected his objection to the N. 31st Street Property development.

considered whether Councilmember Young "had properly preserved each of his arguments," *id.*, slip op. at 7, and concluded that other than a challenge to the finding of no adverse impact on the public health, safety, and general welfare, he had not.

Although *Chacon I* is not reported, we find it highly persuasive because it involves nearly identical facts and legal issues as those here. *See* Pennsylvania Rule of Appellate Procedure 126(b), Pa.R.A.P. 126(b); Section 414(a) of the Court's Internal Operating Procedures, 210 Pa. Code § 69.414(a) ("Parties may [] cite an unreported panel decision of this Court issued after January 15, 2008, for its persuasive value, but not as binding precedent."). While Councilmember Young cites *Chacon II* to argue he did not have any obligation to raise these issues before the Board, *Chacon II* was the remand decision that addressed the issue that **had been preserved before the Board**.

As to Councilmember Young's observation that the *Chacon* cases involved a single objector and that he should be able to raise any issue in his appeal to common pleas that was raised by other objectors before the Board, the Court agrees that an appealing objector may cite other challenges raised and preserved before the zoning hearing board in their appeal as a basis for reversal. However, a review of **this record** reveals that neither Cummings, Crosley, nor Fields, the only others challenging the development of the N. 31st Street Property, asserted the issues common pleas found waived here. Thus, we agree with common pleas that the only issue preserved for appellate review is whether the Board erred in granting the variances because there would be no adverse effects on the public health, safety, and general welfare.

2. Did the Board err or abuse its discretion in concluding that granting the variances would not adversely affect on the public health, safety, and general welfare?

a. Parties' Arguments

Relevant to the preserved issue, Councilmember Young argues Applicants did not present evidence that the variances, which would result in the removal of the pocket park, would not adversely affect the public health, safety, and general welfare, (COL ¶¶ 17-18), citing the testimony of Cummings and Fields opposing the grant of the variances. The Authority argues there is ample record evidence that supports the Board's challenged findings, and the testimony of Cummings and Fields was rejected in favor of other evidence by the Board in its role as factfinder. That credibility determination, the Authority asserts, was for the Board, not this Court. (Authority's Br. at 21-22 (citing *Nettleton v. Zoning Bd. of Adjustment of City of Pittsburgh*, 828 A.2d 1033, 1041 n.10 (Pa. 2003)).) Pennrose likewise argues there is substantial evidence supporting the Board's finding in this regard, pointing to the photographs of the alleged pocket park and testimony regarding the bad and blighted condition of the alleged pocket park, and the evidence that the Authority was creating new parks nearby and that it was in the public's interest to grant the variances to allow the development of affordable housing at the N. 31st Street Property.[16]

b. Analysis

The Supreme Court has explained that the Code's requirements for obtaining a variance could be "boiled down . . . into three key requirements: (1) unique hardship to the property; (2) no adverse effect on the public health, safety or general

[16] The Authority and Pennrose also argue that, even if Councilmember Young had preserved his other challenges, the Board's findings as to unnecessary hardship and minimum variance necessary are supported by substantial evidence and not legally erroneous. (Authority's Br. at 18-20; Pennrose's Br. at 20-29.)

welfare; and (3) . . . the minimum variance that will afford relief at the least modification possible." *Marshall v. City of Philadelphia*, 97 A.3d 323, 329 (Pa. 2014) (citation and internal quotation marks omitted). "It is the function of the zoning board to determine whether the evidence satisfies the criteria for granting a variance." *Id.* at 331. "The [] Board as factfinder is the sole judge of credibility and conflict in the testimony and has the power to reject even uncontradicted testimony that the Board finds to be lacking in credibility." *Nettleton*, 828 A.2d at 1041 n.10.

When, as here, the trial court did not take any additional evidence, an appellate court is limited to determining whether the zoning board committed an abuse of discretion or an error of law in rendering its decision. *Township of Exeter v. Zoning Hearing Bd.*, 962 A.2d 653, 659 (Pa. 2009); *Noah's Ark Christian Child Care Ctr., Inc. v. Zoning Hearing Bd. of W. Mifflin*, 880 A.2d 596, 596 (Pa. 2005) (*per curiam*). A zoning board abuses "its discretion only if its findings are not supported by substantial evidence, which we have defined as relevant evidence which a reasonable mind would accept as adequate to support the conclusion reached." *Marshall*, 97 A.3d at 331 (citation and internal quotation marks omitted).

Here, the Board found that the main objection to the proposed development of the N. 31st Street Property was the removal of the pocket park. While Cummings and Fields testified that they, and other members of the community, benefited from the green space, there was "no evidence . . . that the site was formally established for this use," and still other evidence that "the property is blighted with overgrowth, trash, and broken park furniture" and was in disrepair. (COL ¶¶ 12, 17; FOF ¶¶ 13, 23, 25, 26, 27.) Additional evidence was presented that the Authority would be adding green space, in the form of parks, within several blocks of the N. 31st Street Property. (COL ¶ 17; FOF ¶¶ 24-25.) Evidence was also introduced that developing

the N. 31st Street Property as part of the larger Project would benefit the public by remedying blight and adding much-needed affordable housing, including accessible housing, to Strawberry Mansion. (COL ¶ 14; FOF ¶¶ 13, 15-16, 19, 28-29.)

Councilmember Young does not appear to dispute the existence of this other evidence, arguing instead that Cummings' and Fields' testimony of public harm should not have been ignored. The Board, however, did not ignore that evidence, but weighed it against other evidence questioning the benefit of the pocket park and demonstrating a public benefit of adding affordable, accessible housing, and gave more weight to the latter. The Board has the sole authority as factfinder to weigh the evidence presented to it and make credibility determinations, *Nettleton*, 828 A.2d at 1041 n.10, and there is no abuse of discretion here because the Board's determination that there would be no adverse effect on the public health, safety, and general welfare is supported by substantial evidence, the credited testimony set forth in those findings, *Marshall*, 97 A.3d at 331. Accordingly, this is not a basis upon which to find the Board erred or abused its discretion in granting the variances.

III. CONCLUSION

For the foregoing reasons, we conclude that Councilmember Young has standing to bring this matter based on the Council authorizing him to act on its behalf via the Resolution and that common pleas did not err or abuse its discretion in granting Councilmember Young nunc pro tunc relief or in affirming the Board's Decision granting the requested variances. Accordingly, we affirm common pleas' Order.

RENÉE COHN JUBELIRER, President Judge

Judge Dumas and Judge Wolf did not participate in the consideration of this matter.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Councilmember Jeffery Young, Jr. on behalf of and as representative of Council of the City of Philadelphia and Strawberry Mansion Community Concern	:	
v.	:	No. 688 C.D. 2026
City of Philadelphia, City of Philadelphia Zoning Board of Adjustment, Pennrose, LLC, Strawberry Mansion Housing LLC, and Philadelphia Housing Authority	:	
Appeal of: Jeffery Young, Jr.	:	

O R D E R

NOW, November 17, 2026, the Order of the Court of Common Pleas of Philadelphia, entered in the above-captioned matter, is **AFFIRMED**.

RENÉE COHN JUBELIRER, President Judge