

Commonwealth Court Reverses Zoning Hearing Board Decision

By Eric Brown, Esq., Siana Bellwoar

Understanding the reversal of a local zoning hearing board's decision by the Commonwealth Court delves into a variance that did not meet the legal standard of "unnecessary hardship."

In *Salahub v. North Cornwall Township Zoning Hearing Board*,ⁱ a landowner operating a golf course of approximately 154 acres sought a use variance to establish a bowling alley in an existing accessory structure on the golf course.

The property was located in the township's Agricultural Zoning District, which permitted golf courses by special exception. The township's zoning ordinance also permitted various accessory uses to a golf course, which did not include a bowling alley. The zoning ordinance expressly permitted commercial bowling alleys elsewhere.

Courts require a landowner applicant for a use variance to demonstrate substantial and compelling reasons for the variance.

In this case, the landowner testified that he operated a bowling alley on a different parcel of land. He decided to close the bowling alley for business reasons and relocate its fixtures, equipment,

and operations to an already existing steel-frame building on the golf course property used to store maintenance equipment.

Also, the number of golf rounds played at the property was down, decreasing revenues.

The bowling alley is busiest in the wintertime when the golf course use is basically non-existent. The bowling alley would include sales of food and liquor. According to the landowner, there are golf courses outside of PA that incorporate bowling alleys as an accessory use in the winter time.

Objectors challenged the variance request on the basis that a bowling alley is not an accessory use to a golf course. They also expressed concern over the potential increased traffic volume and high speeds given the local farming use and that the bowling alley would further degrade the agricultural area.

Objectors argued that it was not the purpose of the township or the zoning hearing board to preserve the bowling alley or provide economic relief for the golf course because that was a business problem and not a zoning ordinance problem.

The zoning hearing board upheld the zoning officer's determination that the bowling alley did not constitute an accessory use to the golf course. However, the zoning hearing board granted a variance to allow the bowling alley as an accessory use to the existing golf course.

The board granted the use variance because there were unique physical circumstances or conditions peculiar to the property, specifically, that:

- the property was unique in that it was 154 acres of land developed as a golf course, thus making it difficult to change from a golf course to a different use;
- a new building was not proposed because the bowling alley would be in an existing building;
- the golf course needed to diversify in order to bring in additional income; and
- the variance would not alter the essential character of the neighborhood.

However, the Commonwealth Court rejected the reasoning of the zoning hearing board.

A landowner seeking a variance bears a heavy burden of

demonstrating substantial and compelling reasons for granting the variance. Specifically, a landowner must show:

- An unnecessary hardship stemming from unique physical circumstances or conditions of the property will result if the variance is denied;
- Because of such physical characteristics or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the ordinance;
- The hardship has not been created by the applicant;
- Granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and
- The variance sought is the minimum variance that will afford relief.

To establish the unnecessary hardship required for the grant of a use variance, a landowner must demonstrate that the physical characteristics of the property are such that it cannot be used for a permitted purpose, the cost to conform the property for a permitted purpose is prohibitive, or the property has no value for a permitted purpose.

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Because the landowner in this case failed to demonstrate an unnecessary hardship that would warrant a use variance for an accessory use that is not permitted by the ordinance, the Commonwealth Court reversed the decision of the zoning hearing board.

This decision offers a reminder to that for a use variance the applicant must demonstrate substantial and compelling reasons, in the form of an unnecessary hardship, to justify a variance during the hearing before the zoning hearing board. If there is not an evidentiary record to meet this standard, then there is a risk of reversal of the judgment.

A landowner should evaluate whether he or she will be able to satisfy the standard before filing an application, especially when the proposed use may generate opposition from neighbors.

An alternative option available to a landowner who requires zoning relief, and it is self-evident that a variance application will not meet the legal undue hardship standard, is to request a zoning text amendment from the governing body.

Of course, this option will ultimately require the support of the governing body, which has complete legislative discretion to accept, reject, or modify a proposed zoning text amendment.

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ⁱ No. 1322 C.D. 2017 (Pa. Cmwlth. 2018).