

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Owen F. Fields and Gerald Stein	:	
	:	
v.	:	
	:	
Upper Uwchlan Township Zoning	:	
Hearing Board	:	
	:	
Appeal of: Toll Mid-Atlantic LP	:	No. 1472 C.D. 2024
Company, Inc.	:	Argued: May 14, 2026

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE STELLA M. TSAI, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION BY JUDGE TSAI

FILED: August 31, 2026

Appellant Toll Mid-Atlantic LP Company, Inc. (Toll) appeals from an order of the Court of Common Pleas of Chester County (Common Pleas) that reversed a decision of the Upper Uwchlan Township Zoning Hearing Board (ZHB). In its decision, the ZHB granted Toll a variance to permit the disturbance of prohibitively steep slopes for the construction of roads, retaining walls, sidewalks, and utilities for a planned 64-unit residential development (Plan). We vacate and remand for further proceedings.

I. BACKGROUND

Toll is the equitable owner of two adjoining parcels (Property) located at 100 Greenridge Road, Upper Uwchlan Township (Township). ZHB Decision, Finding of Fact (F.F.) ¶ 1, Reproduced Record (R.R.) 137a. The Property, which is irregularly shaped, borders Greenridge Road to the east and the existing Stonehedge

residential development to the west. *Id.*, F.F. ¶ 17, R.R. 139a. The Property is situated in the R-2 Residential Zoning District and the F-1 Flexible Development Overlay Zoning District. *Id.*, F.F. ¶ 9, R.R. 139a. As part of the Plan, Toll would demolish the existing single-family dwelling, pool, tennis court, garage, and accessory structure on the Property. *Id.*, F.F. ¶ 14, R.R. 139a.

A band of steep slopes, consisting of both precautionary and prohibitive slopes as defined in the Township Zoning Ordinance (Ordinance),¹ traverses the Property from north to south and separates the developable portion of the Property from Greenridge Road. *Id.*, F.F. ¶ 24, R.R. 140a. Of the 65.95 total acreage of the Property, 26.08 acres are classified as precautionary slopes, and 7.3 acres are classified as prohibitive slopes. *Id.*, F.F. ¶ 22, R.R. 140a. In addition, a small stream runs on the eastern portion of the Property surrounded by wetlands, floodplain, and riparian buffer. *Id.*, F.F. ¶¶ 19, 20, R.R. 139a-140a.

Appellees Owen F. Fields and Gerald Stein own and reside at 129 Greenridge Road and 125 Greenridge Road, respectively. *Id.*, F.F. ¶ 45, R.R. 142a. Appellees' parcels are situated directly across Greenridge Road from the Property. *Id.*

In 2021, Toll filed an application with the Township Board of Supervisors (Board) seeking conditional use approval for the Plan to permit portions of the dwellings, roads providing primary access to the lots, and sanitary and storm sewer conveyances within areas of precautionary slopes. Conditional Use Decision at 1-2, R.R. 191a-192a. On October 11, 2022, the Board issued a decision and order approving Toll's conditional use application. The Board imposed 45 conditions on the Plan, including that Toll provide primary access to the 64 homes from

¹ Precautionary slopes are land areas with slopes between 15% and 25%, and prohibitive slopes are areas with slopes of 25% or greater. Ordinance § 200-107.C(1)(a), (b), R.R. 157a.

Greenridge Road through a to-be-constructed road identified as “Road A.” *Id.* at 49, R.R. 239a. The Board directed that Road A have a median, sidewalks, and a 28-foot-wide cartway. *Id.* at 51-52, R.R. 241a-242a. In addition, the Board conditioned approval of the Plan on Toll’s construction of a gated, emergency access route via Lauren Lane, an existing Township right-of-way within the Stonehedge development. *Id.* at 49, R.R. 239a; Hearing Transcript (H.T.) at 9, R.R. 19a.

Appellees and residents of the Stonehedge development participated in the conditional use proceedings. With respect to the Stonehedge residents’ concerns, the Board stated in its decision as follows:

Prior to filing the [a]pplication, [Toll] filed a sketch plan of a subdivision of the Property using the flexible/open space development option in . . . the Ordinance which proposed the primary access to the development extending from Lauren Lane in the Stonehedge subdivision.^[2] This sketch plan was presented to the [Township] Planning Commission and Board in public meetings. Residents from the Stonehedge development, many of whom are parties to this [a]pplication, raised objections to the proposed development due to concerns over the safety of the Stonehedge residents. As a result of the strong opposition voiced by many Stonehedge residents, as well as a recommendation from the Planning Commission, [Toll] revised the design of the proposed subdivision and presented the Plan that was filed with the [a]pplication. The Plan now proposes the primary means of access from Greenridge Road and limits use of Lauren Lane as an emergency access only. Given the configuration of the Property, the only other viable access to the Property is from Greenridge Road which necessitates disturbance to precautionary and prohibitive slopes. Applicant’s engineer and the Township engineer both agree that any access from Greenridge Road would cause disruption to precautionary and prohibitive steep slopes and requires Applicant to seek conditional use[and variance relief] under Section 200-107 [of the Ordinance]. **The Board listened attentively to the concerns expressed by many residents in Stonehedge and prefers that the development be accessed from Greenridge Road.** The Board recognizes that if the

² The original sketch plan was admitted as Exhibit P-1 at the ZHB hearings and appears at page 460 of the electronic certified record.

access to the development was from Lauren Lane, as originally presented in the sketch plan, the traffic from the development would ultimately lead to Greenridge Road. Thus, the traffic impact of the development on residents who live and travel Greenridge Road is similar with both development scenarios.

The Board recognizes that the Ordinance allows disturbance to precautionary steep slopes and prohibitive slopes for certain improvements enumerated in Section 200-107. [Toll] has proven compliance with the conditional use criteria to disturb the precautionary slopes for the improvements proposed on the Plan The Board does not have the legal authority to grant [Toll] a variance from Section 200-107.D(2) to allow Road A to be built in areas of prohibitive slopes and thus [Toll] will be required to seek a variance for such use.

Conditional Use Decision at 42-43, R.R. 232a-233a (emphasis added).

On March 1, 2023, Toll filed with the ZHB an application for variance relief from Section 200-107.D(2) of the Ordinance to disturb areas of prohibitive slopes to construct Road A, sidewalks, retaining walls, and utilities.³ The ZHB conducted public hearings on the application on April 12 and May 31, 2023. At the hearings, Toll presented two plans for construction of Road A; the first with a maximum slope of 10% that was compliant with the Township’s Subdivision and Land Development Ordinance (SALDO) and the second with a maximum slope of 11% that was not compliant with the SALDO. Exhibits A-9, A-10, R.R. 257a-258a. The 10% Road A plan would disturb as much as 1.12 acres of prohibitive slopes, while the 11% Road A plan would disturb a maximum of 1.04 acres. *Id.*; H.T. at 38-39, R.R. 48a-49a.

Toll’s civil engineering expert, John Baionno, P.E., testified that there was “no feasible way” to provide access from the 64 homes envisioned in the Plan to Greenridge Road without affecting prohibitive slopes because of the north-south

³ Section 200-107.D(2) of the Ordinance sets forth the uses permitted in areas of prohibitive slopes—including parks, passive recreation, logging, and woodcutting—and expressly excludes construction of streets. Ordinance § 200-107.D(2), R.R. 159a.

band of slopes on the Property. H.T. at 42, R.R. 52a. Baionno opined that the Road A proposals represented the minimum disturbance of prohibitive slopes necessary to afford relief and allow reasonable development of the Property. *Id.* at 44-45, 117, R.R. 54a-55a, 127a. Baionno stated that, even if primary access was through Lauren Lane, “a development of this size would need a second access” via Greenridge Road, which would require disturbance of prohibitive slopes. *Id.* at 112, R.R. 122a. According to Baionno, disturbance of prohibitive slopes would still be required for the placement of utilities, including storm and sanitary sewer, with connection to Greenridge Road. *Id.* at 117-18, R.R. 127a-128a. While Baionno indicated that utilities could follow the path of the existing driveway, its current width would likely be insufficient for placement of all required utilities. *Id.*

On cross-examination, Baionno testified that Toll’s original sketch plan for the Property provided for single access via Lauren Lane, but Toll created a new plan with primary access from Greenridge Road at the Township’s direction after “outcry” from Stonehedge development residents.⁴ *Id.* at 54-57, R.R. 64a-67a; Exhibit P-1. Baionno further stated:

Q. And . . . one of the other things that you have to have is, you have to have a second entrance, correct?

A. For this many units, correct.

. . . .

Q. But you’re familiar enough with the [O]rdinance and [SALDO], correct? You’ve reviewed them?

A. Yes.

⁴ Toll’s initial sketch plan depicted a similar number of units as the Plan, with primary access via Lauren Lane and emergency access via the existing driveway on the Property. Exhibit P-1. However, Baionno testified at the hearing that the existing driveway could not be used as an emergency access route because it was “too meandering, [had] too tight of a curve[,] and [was] too narrow.” H.T. at 119, R.R. 129a.

Q. So if you were to have less density, you might be able to only have one access road?

A. There's one house on the lot today. They have one access. Potentially, yes, you can put ten lots up. I'm not quite sure what the [T]ownship would want us to do.

Q. Well, it's not going by the [T]ownship and what they want, it's governed by some kind of formula. There's some sort of density?

A. And I don't know what that formula is off hand.

Id. at 56-57, R.R. 66a-67a. Baionno testified that, if Toll developed the Property with the same density as the Plan but made Lauren Lane the primary access, the secondary access route to Greenridge Road potentially could be narrower and steeper. *Id.* at 116-17, R.R. 126a-127a.

Appellees participated as parties at the hearings. Appellee Fields testified that his and Stein's properties experienced frequent flooding and silting from the stream on the Property, which runs in a culvert under Greenridge Road and onto Appellees' properties. *Id.* at 90-99, R.R. 100a-109a. Fields stated that water levels have reached a maximum depth of two feet during flood events. *Id.* at 97, R.R. 107a. Responding to concerns regarding water runoff, Baionno testified that the Property accounts for only 5% of the drainage area for the stream that drains onto Appellees' properties and the Township's stormwater regulations would require Toll to reduce the peak rate of water runoff from the Property. *Id.* at 102-03, R.R. 112a-113a.

Appellees also presented the testimony of Robert E. Flinchbaugh, P.E., an expert in planning and subdivision. Flinchbaugh opined that the Property could be developed without variance relief with a less dense development that would be served by a single-access cul-de-sac street connected to Lauren Lane. *Id.* at 86-88, R.R. 96a-98a.

On July 25, 2023, the ZHB issued a decision and order granting a variance from the prohibitive steep slope provisions of the Ordinance. The ZHB noted that,

in light of objections from Stonehedge residents regarding use of Lauren Lane as primary access to the Property, the Board “determined that Road A from Greenridge Road would be the appropriate main route notwithstanding the presence of precautionary and prohibitive slopes.” ZHB Decision at 10-11, R.R. 145a-146a. The Board cited Baionno’s testimony that even assuming “Lauren Lane were the principal access, Road A would be required as an emergency secondary access which would traverse the same steep slopes and would still require a variance.” *Id.* at 10, R.R. 145a. Recognizing that Toll’s variance application was subject to a less stringent hardship requirement, the ZHB found that Toll had proven its entitlement to the requested relief. *Id.* at 11, R.R. 146a. The ZHB reasoned that “[w]ith the irregular shape and contour of the Property, . . . the proposed disturbance to prohibitive slopes of approximately one acre[] is the minimum necessary to afford relief.” *Id.*

Appellees appealed to Common Pleas, which considered the matter without taking additional evidence. In a September 20, 2024 decision and order, Common Pleas found that the ZHB “overlook[ed] . . . entirely” the expert witness testimony that placing fewer homes on the Property would have allowed for a single-access entrance through Lauren Lane. Common Pleas Decision at 11-12. Common Pleas determined that the ZHB failed to perform the required “analysis into whether [Toll] created the unnecessary hardship[] in that lowering the density of homes planned would eradicate the need for the second access road.” *Id.* at 12. Common Pleas further noted that an unnecessary hardship will not be found “where the asserted hardship amounts to a landowner’s desire to increase profitability or maximize development potential.” *Id.* at 13 (quoting *Soc’y Hill Civic Ass’n v. Philadelphia Zoning Bd. of Adjustment*, 42 A.3d 1178, 1187 (Pa. Cmwlth. 2012)). Common Pleas

concluded that the ZHB erred by not “sufficiently address[ing] the hardship issue” and reversed the grant of variance relief. *Id.*

II. ISSUES

On appeal,⁵ Toll argues that Common Pleas reversed the ZHB based on a misconception that the Pennsylvania Municipalities Planning Code (MPC)⁶ demands consideration of every variance factor in every case, when in fact a zoning hearing board need only consider the factors relevant to a specific case. Toll contends that the variance criteria Common Pleas found absent from the ZHB’s ruling—whether Toll’s unnecessary hardship was self-inflicted—has been limited by Pennsylvania courts to specific circumstances not germane to this case. Toll asserts that, in light of the relaxed standard applicable to steep slope variance applications, the ZHB did not err or abuse its discretion in finding that Toll met each of the relevant criteria for variance relief. In the alternative, Toll contends that Common Pleas’ reasoning that the ZHB did not properly consider all the variance factors warranted only a vacatur and remand for further proceedings by the ZHB, rather than a reversal of the grant of a variance.

⁵ Where the court of common pleas does not take additional evidence, appellate review of a zoning hearing board decision is limited to determining whether the board abused its discretion or committed an error of law. *Twp. of Exeter v. Zoning Hearing Bd. of Exeter Twp.*, 962 A.2d 653, 659 (Pa. 2009). An abuse of discretion will be found only if the board’s findings are not supported by substantial evidence. *Id.* Substantial evidence is “that relevant evidence which a reasonable mind would accept as adequate to support the conclusion reached.” *Id.* (citation omitted). This court may not substitute its interpretation for that of the board, as it is the board’s function to weigh the evidence before it and determine the credibility of witnesses. *Tidd v. Lower Saucon Twp. Zoning Hearing Bd.*, 118 A.3d 1, 13 (Pa. Cmwlth. 2015) (*en banc*). As to questions of law, our standard of review is *de novo*, and our scope of review is plenary. *Gorsline v. Bd. of Supervisors of Fairfield Twp.*, 186 A.3d 375, 385 (Pa. 2018).

⁶ Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §§ 10101-11202.

Appellees respond that Common Pleas properly found that Toll created its own hardship by formulating a plan to develop the Property in such a way that required an emergency entrance even though a less intensive plan would obviate the need for a second entrance. Appellees aver that “[t]his is a clear-cut case of a developer creating a situation where they need a variance simply because they **want** to use the property in a particular way—in this case by building as much density as possible—not because they have to use the property in that way.” Appellees’ Brief at 9 (emphasis in original). Finally, Appellees assert that Common Pleas did not err by reversing the ZHB and Toll merely seeks “‘a second bite at the apple’ for its case when it had multiple hearings to present its evidence before the ZHB.” *Id.* at 21.

III. DISCUSSION

A. Variance Standard

Section 910.2 of the MPC⁷ governs a zoning hearing board’s authority to grant a variance, providing as follows:

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

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning

⁷ Added by the Act of Dec. 21, 1988, P.L. 1329, 53 P.S. § 10910.2. The variance standard of the Ordinance does not appear in the original or reproduced records. The parties agree, however, that the Ordinance sets forth a substantially similar variance standard as Section 910.2 of the MPC. Toll’s Brief at 18 n.2; Appellees’ Brief at 18.

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 appellant.

(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). “Section 910.2(a) of the MPC requires a zoning hearing board to make findings regarding the variance criteria ‘where relevant,’ meaning that ‘not all criteria must be satisfied in every case and that the quantum of proof necessary to establish a particular criterion may vary depending on the type of variance sought.’” *Hunt v. Zoning Hearing Bd. of Conewago Twp.*, 61 A.3d 380, 384 (Pa. Cmwlth.), *appeal denied*, 72 A.3d 605 (Pa. 2013) (quoting *Laurel Point Assocs. v. Susquehanna Twp. Zoning Hearing Bd.*, 887 A.2d 796, 801 n.9 (Pa. Cmwlth. 2005)).

Section 910.2’s standard applies to both use and dimensional variances. *Slate Hills Enters., Inc. v. Zoning Hearing Bd. of Portland Borough*, 303 A.3d 846, 850 (Pa. Cmwlth. 2023); *see also Hertzberg v. Zoning Board of Adjustment of City of Pittsburgh*, 721 A.2d 43, 47 (Pa. 1998) (stating that a request for a dimensional variance “is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations,”

while a use variance “involves a proposal to use the property in a manner that is wholly outside the zoning regulation”). In *Hertzberg*, our Supreme Court concluded that “the grant of a dimensional variance is of lesser moment than the grant of a use variance,” and, therefore, “the quantum of proof required to establish unnecessary hardship is . . . lesser when a dimensional variance, as opposed to a use variance, is sought.” *Hertzberg*, 721 A.2d at 47-48. Under *Hertzberg*, “courts may consider multiple factors [when addressing a dimensional variance request], including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.” *Id.* at 50. Despite this “more relaxed standard, . . . [t]he burden on an applicant seeking a variance is a heavy one, and the reasons for granting the variance must be substantial, serious[,] and compelling.” *Slate Hills*, 303 A.3d at 855 (quoting *Pequea Twp. v. Zoning Hearing Bd. of Pequea Twp.*, 180 A.3d 500, 507 (Pa. Cmwlth. 2018) (citation omitted)).

This Court has recognized that an application for a variance from steep slope regulations “falls into a grey area” between use and dimensional variances. *Pohlig Builders, LLC v. Zoning Hearing Bd. of Schuylkill Twp.*, 25 A.3d 1260, 1267 (Pa. Cmwlth.), *appeal denied*, 34 A.3d 834 (Pa. 2011) (quoting *Zappala Grp., Inc. v. Zoning Hearing Bd., Town of McCandless*, 810 A.2d 708, 711 (Pa. Cmwlth. 2002), *appeal denied*, 828 A.2d 351 (Pa. 2003) (emphasis in *Pohlig Builders* omitted)). As a “hybrid” variance, a request for relief from steep slope requirements is subject to the less stringent hardship requirement outlined in *Hertzberg*. *Id.*

B. Application of Variance Criteria

Toll first argues that the ZHB appropriately declined to address whether the hardship was self-inflicted because that factor is not relevant in the present case. *See* 53 P.S. § 10910.2(a) (providing that a zoning hearing board may only grant a variance where it makes findings regarding all variance criteria “relevant in a given case”). Citing *Wilson v. Plumstead Township Zoning Hearing Board*, 936 A.2d 1061 (Pa. 2007), Toll contends that our Supreme Court has limited a finding of a self-inflicted hardship to very narrow circumstances, none of which are applicable here.

In *Wilson*, our Supreme Court held that landowners do not create their own hardship merely by purchasing property with full knowledge of its conditions and zoning restrictions. *Wilson*, 936 A.2d at 1068-70. Rather, the Court concluded that a self-inflicted hardship arises only where the purchaser “paid an unduly high price . . . assum[ing] the anticipated variance would justify the price, . . . the size and shape of the parcel was affected by the transaction itself,” or the landowner “created the condition of the land due to neglect.” *Id.* at 1069 & n.12 (citations omitted); *see also Pohlig Builders*, 25 A.3d at 1273 (holding that *Wilson* “restricted the concept [of a self-inflicted hardship] to a situation where the purchase price is too dear, the owner allowed the property to deteriorate, or where the transfer itself caused the hardship”).

We agree with Toll that the record before the ZHB does not implicate the self-inflicted hardship variance factor, as set forth in *Wilson*. No evidence was submitted at the ZHB hearings regarding the purchase price for the Property, nor was there any indication that the transfer affected the size or shape of the Property or that Toll’s conduct created the Property’s steep slopes. *Wilson*, 936 A.2d at 1069 & n.12; *Pohlig Builders*, 25 A.3d at 1273. Rather, the uncontested evidence showed that

Toll's variance request related to a natural feature of the land—the band of steep slopes bisecting the Property—which impeded Toll's construction of an access route from Greenridge Road to the planned homes on the Property. *See Solebury Twp. v. Solebury Twp. Zoning Hearing Bd.*, 914 A.2d 972, 976-77 (Pa. Cmwlth. 2007) (holding landowners that purchased lot aware of property's characteristics and steep slope zoning restrictions did not create unnecessary hardship where the "topography" of the property and location near a historic district created the hardship).

Nevertheless, this does not end our analysis, as Common Pleas also found that the ZHB failed to analyze the "threshold issue" of whether Toll faced an unnecessary hardship in developing the Property generally or whether its claimed hardship related only to its chosen use for the Property. *In re Boyer*, 960 A.2d 179, 183 (Pa. Cmwlth. 2008), *appeal denied*, 147 A.3d 896 (Pa. 2010). It is a "well-established principle, unchanged by *Hertzberg*," that "a substantial burden must attend **all** dimensionally compliant uses of the property, not just the particular use the owner chooses." *Slate Hills*, 303 A.3d at 851 (citation omitted and emphasis in original). "[W]here the asserted hardship amounts to a landowner's desire to increase profitability or maximize development potential, the unnecessary hardship criterion required to obtain a variance is not satisfied even under the relaxed standard set forth in *Hertzberg*." *Soc'y Hill Civic Ass'n*, 42 A.3d at 1187 (collecting cases holding applicants' dimensional variance requests failed because property could be developed under zoning ordinance and hardship related only to applicants' desired use of property).

In *Slate Hills*, a landowner seeking to build a six-unit apartment building on a one-acre lot applied for variances from setback requirements and restrictions on

the amount of the building that could be built within steep slopes. *Slate Hills*, 303 A.3d at 848. This Court affirmed the zoning hearing board’s denial of relief on the grounds that, although the landowner “may want to construct a building of this size for its own financial reasons[,] . . . nothing in the [zoning o]rdinance require[d the landowner] to construct . . . the proposed structure when a different plan may [have] fit within the [district] with lesser variance requests, if any at all.” *Id.* at 856.

In *Boyer*, a property owner sought variances to build an in-ground swimming pool in a portion of her property burdened by steep slopes and not sufficiently set back from the lot line. *Boyer*, 960 A.2d at 180. We noted: “There was no indication that the [zoning c]ode . . . burden[ed] all dimensionally compliant uses of [the owner’s] property, but only the particular use she has chosen. In fact, [the owner] could, and is willing to, construct a smaller pool within the requirements of the [c]ode.” *Id.* at 184. Concluding that the unnecessary hardship arose from the owner’s planned location and size of the pool, we reversed the grant of variance relief. *Id.*

In the present matter, the evidence at the ZHB hearing squarely raised the question of whether Toll’s claimed hardship attended all dimensionally compliant uses or whether it was the result of Toll’s effort to maximize the Property’s development potential. The evidence on this issue cut both ways. On one hand, Toll’s variance application was based on the Board’s express condition that Toll build Road A as primary access from Greenridge Road to the homes to be built on the Property. Conditional Use Decision at 49, 51-52, R.R. 239a, 241a-242a. Baionno, Toll’s expert, explained that Toll designed Road A to minimize the disturbance of the prohibitive slopes on the Property. H.T. at 45, 117, R.R. 55a, 127a. Baionno further testified that the existing driveway was not suitable as a

primary or emergency access route and, while Toll could run utilities on the existing driveway, the driveway would likely need to be widened to allow for proper spacing of utilities. *Id.* at 117-20, R.R. 127a-130a.

On the other hand, Baionno acknowledged that Toll initially planned to develop the Property with primary access from Lauren Lane and that Toll could build a less intensive development with only one entrance. *Id.* at 54-57, R.R. 64a-67a; *see also id.* at 112, R.R. 122a (Baionno testifying that only “a development of this size” would require two entrances). Appellees’ expert similarly opined that Toll could build a development on the Property with fewer homes with a single entrance via Lauren Lane and no secondary emergency access.⁸ *Id.* at 86-88, R.R. 96a-98a. Moreover, the Board stated in its conditional use decision only that it “**prefers** that the development be accessed from Greenridge Road” based on the “concerns” of Stonehedge residents. Conditional Use Decision at 42-43, R.R. 232a-233a (emphasis added). There is no indication in the record that the Board would deny use of the Lauren Lane Township right-of-way if Toll proposed a single-access development with fewer homes.

In its decision, the ZHB cited the Board’s condition that Toll provide primary access from Greenridge Road and Baionno’s testimony that if Lauren Lane were the primary access, Toll would still need to build Road A as emergency secondary access for a 64-unit development. ZHB Decision at 10-11, F.F. ¶ 25, R.R. 140a, 145a-146a. However, the ZHB did not address the testimony indicating that Toll had the option of building a less-intensive, single-access development via Lauren Lane. Furthermore, the ZHB did not find that a substantial burden attended any

⁸ Neither expert clarified exactly how many homes Toll could build on the Property with a single entrance under the Township’s land use provisions.

zoning-compliant use of the Property. Indeed, the ZHB’s decision is devoid of **any** finding that Toll faced an unnecessary hardship in developing the Property. We therefore agree with Common Pleas’ conclusion that the ZHB’s analysis did not “sufficiently address the hardship issue.” Common Pleas Decision at 13; *see also Hunt*, 61 A.3d at 384 (stating that a zoning board must make findings regarding all zoning criteria relevant to the variance request before the board).

C. Common Pleas’ Disposition of Appeal

Toll further argues that, even assuming Common Pleas was correct that the ZHB’s analysis was deficient, Common Pleas should have vacated, rather than reversed, the ZHB order and remanded for the ZHB to fully address the relevant variance criteria. We agree with Toll that a remand for further proceedings is appropriate in these circumstances to allow the ZHB to conduct the necessary analysis absent from its prior decision. *See In re Bass*, 320 A.3d 892, 905-07 (Pa. Cmwlth. 2024) (holding zoning board failed to adequately explain its conclusion that granted variance represented minimum variance to afford relief and remanding for the board to “explain its conclusion in this regard and, if it deems it appropriate, take additional evidence”). Following remand, the ZHB shall issue a new decision in which it addresses the question of whether Toll faced an unnecessary hardship in developing the Property generally or whether its claimed hardship related only to its chosen use for the Property.

IV. CONCLUSION

For the reasons set forth above, we vacate the Common Pleas order and remand for further proceedings.

STELLA M. TSAI, Judge

Judge Fizzano Cannon did not participate in the decision of this case.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Company, Inc.	:	No. 1472 C.D. 2024

ORDER

AND NOW, this 31st day of August, 2026, the September 20, 2024 order of the Court of Common Pleas of Chester County (Common Pleas) is hereby VACATED. This matter is REMANDED to Common Pleas, which shall remand to the Upper Uwchlan Township Zoning Hearing Board for further proceedings consistent with this opinion.

Jurisdiction relinquished.

STELLA M. TSAI, Judge