

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kristine Karol, :  
Appellant :  
 :  
v. : No. 1481 C.D. 2024  
 : Argued: May 14, 2026  
Smithfield Township, Smithfield :  
Township Zoning Hearing Board, :  
Healthy Minds Partners, LLC, Water :  
Gap Acquisitions Partners, LLC, and :  
Water Gap Capital Partners, LLC :

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

OPINION

BY SENIOR JUDGE LEAVITT

FILED: August 27, 2026

Kristine Karol (Karol) has appealed the September 23, 2024, order of the Court of Common Pleas of Monroe County (trial court) that denied her *nunc pro tunc* appeal of Smithfield Township (Township) Zoning Ordinance No. 238 (Ordinance No. 238), which became effective on September 14, 2020. Karol asserts that the Township Supervisors did not comply with the procedural requirements for the enactment of a zoning ordinance amendment, thereby denying her due process. Concluding that Karol did not present a cognizable procedural challenge to Ordinance No. 238, the trial court denied her leave to pursue a *nunc pro tunc* appeal. Karol asserts that the trial court erred, arguing that the Township Supervisors made substantive revisions to the version of Ordinance No. 238 that had been advertised to the public, which revisions required another round of advertising and public hearings before the ordinance could be enacted. Discerning no merit to Karol's argument, we affirm.

## **Background**

Water Gap Acquisition Partners, LLC (Water Gap) owns property located at 288 Mountain Road in the Township (Property). The Property consists of approximately 130 acres in the Township's R-1 Low Density Residential District (R-1 District), where a hotel and golf course had previously operated for many years. Karol owns land adjacent to the Property.

On June 12, 2020, Water Gap filed a curative amendment to the Township's Zoning Ordinance<sup>1</sup> to allow a residential drug, alcohol and/or substance abuse treatment facility in the R-1 District as a conditional use. Reproduced Record at 18a (R.R. \_\_\_\_). The text of Water Gap's proposed curative amendment follows:

3.5 Residential Drug, Alcohol and/or Substance Abuse Treatment Facility where permitted shall be subject to the following standards:

- a. The minimum lot area for the facility shall be twenty-five (25) acres; and,
- b. All drug, alcohol and/or substance abuse treatment shall be rendered on site and not off-premises;
- c. The overall maximum number of patients in treatment at any one time shall be no more than sixty (60) persons.

Karol Brief on Preliminary Objections, Attachment A; R.R. 334a. The Township advertised the curative amendment and referred it to the Township Planning Commission and the Monroe County Planning Commission for review and comment. On August 11, 2020, the Township Supervisors conducted a public hearing on the proposed curative amendment.

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<sup>1</sup> Smithfield Township Zoning Ordinance, Ordinance No. 187, adopted April 18, 2008, *as amended* (ZONING ORDINANCE).

On September 9, 2020, the Township Supervisors held a second hearing on the proposed curative amendment, at which they made the following changes to the amendment:

3.5 Residential Drug, Alcohol and/or Substance Abuse Treatment Facility where permitted shall be subject to the following standards:

- a. The minimum lot area for the facility shall be twenty-five (25) acres; and,
- b. All drug, alcohol and/or substance abuse treatment *and related activities* shall be rendered on site and not off ~~premises~~ *site*;
- c. The overall maximum number of ~~patients~~ *persons* in treatment at any one time shall be no more than sixty (60) persons.

Water Gap Preliminary Objections, Exhibit A at 4; R.R. 358a.<sup>2</sup> These changes were not advertised prior to the September 9, 2020, meeting, when Ordinance No. 238 was enacted, with an effective date of September 14, 2020.

On August 22, 2023, pursuant to Ordinance No. 238, Healthy Minds Partners, LLC (Healthy Minds) applied for a conditional use permit to operate a 60-bed inpatient treatment center on a 31-acre part of the Property. The Township held several hearings, and on June 12, 2024, granted a permit to Healthy Minds that contained 28 conditions.<sup>3</sup>

On May 22, 2024, Karol filed a “Petition for Leave to Appeal *Nunc Pro Tunc* Procedural Validity of Ordinance” (Petition). The Petition asserted that Ordinance No. 238 was improperly enacted because its final language was different

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<sup>2</sup> The deleted language is shown with strikethroughs, and the new language is shown in italics.

<sup>3</sup> Karol opposed the conditional use application of Healthy Minds but did not challenge the validity of Ordinance No. 238 in that proceeding. *See Karol v. Smithfield Township* (C.P. Monroe, No. 4832 CV 2024, filed November 12, 2024).

than the version that was advertised to the public. Conceding that a procedural challenge to an ordinance must be filed within 30 days of its intended effective date, Karol explained that her late challenge should be allowed because the Township Supervisors had given “insufficient notification to the public” of the terms of Ordinance No. 238. *See* 42 Pa. C.S. §5571.1(e)(2)(ii).<sup>4</sup> She further asserted that the Township’s failure to notify the public of the language changes made to Ordinance No. 238 in advance of the meeting of September 9, 2020, abridged her constitutional right to procedural due process, rendering Ordinance No. 238 void *ab initio*.

The Township filed an answer to Karol’s Petition. In addition, intervention petitions were filed by Water Gap and Water Gap Capital Partners, LLC (collectively, Water Gap Partners) and by Healthy Minds (collectively, Intervenor), which the trial court granted. Thereafter, Intervenor filed preliminary objections, asserting that because the changes made to Ordinance No. 238 after the first hearing were insignificant, re-advertisement and another public hearing were not required before the zoning amendment could be enacted into law.

The trial court sustained Intervenor’s preliminary objections and denied Karol’s Petition. The trial court concluded that the object of Ordinance No. 238 was to permit a substance abuse treatment facility in the R-1 District as a conditional use,

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<sup>4</sup> It states:

In the case of an appeal which is exempt from the 30-day time limitation in accordance with subsection (c), the party alleging the defect must meet the burden of proving each of the following:

....

(ii) That there was a failure to substantially comply with statutory procedure which resulted in insufficient notification to the public of impending changes in or the existence of the ordinance, so that the public would be prevented from commenting on those changes and intervening, if necessary, or from having knowledge of the existence of the ordinance.

42 Pa. C.S. §5571.1(e)(2)(ii).

and the minor language changes to the advertised zoning amendment did not effect a substantive change “in the overall policy of the ordinance.” Trial Court Op., 9/23/2024, at 9. The trial court further concluded that the revisions were severable from Ordinance No. 238 should a further appeal determine that the revisions were substantive.<sup>5</sup> Stated otherwise, Ordinance No. 238 “could stand on all fours without [the revisions].” *Id.* at 10. Finally, the trial court held that Ordinance No. 238 could not be held void *ab initio* because the Township and Intervenors have relied upon the four-year-old ordinance. Karol appealed to this Court.

### **Appeal**

On appeal,<sup>6</sup> Karol raises 13 issues, which we combine and restate for clarity.<sup>7</sup> In her first issue, Karol contends that the trial court erred or abused its discretion in holding that the revisions to the advertised version of Ordinance No. 238 were not substantial and, thus, did not require new advertising and a new public hearing. Second, Karol contends that the trial court erred in holding that the revisions were severable, thereby allowing Ordinance No. 238 to remain valid law, albeit without the revisions. Third, Karol argues that the trial court erred or abused its

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<sup>5</sup> The resolution enacting Ordinance No. 238 contained a severability provision that stated as follows:

Section 4: The provisions of this Ordinance shall be severable and if any provision thereof shall be declared unconstitutional, illegal, or invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. It is hereby declared as a legislative intent of the Township that this Ordinance would have been enacted had such unconstitutional, illegal or invalid provision(s) not been included herein.

Resolution Adopting Ordinance No. 238, 9/9/2020, at 2; R.R. 357a.

<sup>6</sup> The validity of the zoning ordinance is a question of law subject to our plenary review. *Gladstone Partners, LP v. East Union Township*, 26 A.3d 542, 550 (Pa. Cmwlth. 2011).

<sup>7</sup> The issues raised in Karol’s Statement of the Questions Involved repeated the issues raised in her Rule 1925(b) Statement filed with the trial court. Karol Brief at 4-7.

discretion in holding that “people or parties detrimentally relied upon [Ordinance No. 238].” Karol Brief at 7, Statement of Questions Involved, ¶13.

### Analysis

We begin with a review of the applicable legal principles. The General Assembly has established procedural standards for the adoption of zoning ordinance amendments. Likewise, it has provided directives on citizen challenges to a local ordinance on grounds that the procedural standards for ordinance enactment have not been followed.

The Pennsylvania Municipalities Planning Code (MPC)<sup>8</sup> requires that the enactment of amendments to zoning ordinances include an opportunity for public notice, participation, and a review by municipal and county planning commissions. Entitled, “Enactment of zoning ordinance amendments,” Section 609 of the MPC states, in part, as follows:

- (b) (1) *Before voting on the enactment of an amendment, the governing body shall hold a public hearing thereon, pursuant to public notice, and pursuant to mailed notice and electronic notice to an owner of a tract or parcel of land located within a municipality or an owner of the mineral rights in a tract or parcel of land within the municipality who has made a timely request in accordance with section 109. . . .*  
    . . . .
- (c) In the case of an amendment other than that prepared by the planning agency, the governing body shall submit each such amendment to the planning agency at least 30 days prior to the hearing on such proposed amendment to provide the planning agency an opportunity to submit recommendations.
- (d) *If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, or is revised,*

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<sup>8</sup> Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §§10101-11202.

*to include land previously not affected by it, the governing body shall hold another public hearing, pursuant to public notice, mailed notice and electronic notice, before proceeding to vote on the amendment.*

- (e) If a county planning agency shall have been created for the county in which the municipality proposing the amendment is located, then at least 30 days prior to the public hearing on the amendment by the local governing body, the municipality shall submit the proposed amendment to the county planning agency for recommendations.

53 P.S. §10609(b)(1), (c)-(e) (emphasis added).

Where relevant procedural requirements are not followed, Pennsylvania's Judicial Code provides a remedy. It states that "any appeal raising questions relating to an alleged defect in the process of or procedure for enactment or adoption of any ordinance, resolution, map or similar action of a political subdivision" shall be filed with a "court of common pleas." 42 Pa. C.S. §5571.1(a). The Judicial Code requires that this appeal "shall be brought within 30 days of the intended effective date of the ordinance." 42 Pa. C.S. §5571.1(b)(1). Nevertheless, the

*appeal shall be exempt from the time limitation in subsection (b) if the party bringing the appeal establishes that, because of the particular nature of the alleged defect in statutory procedure, the application of the time limitation under subsection (b) would result in an impermissible deprivation of constitutional rights.*

42 Pa. C.S. §5571.1(c) (emphasis added). In the case of an appeal that is exempt from the 30-day time limitation, the appellant must prove the following:

- (i) That there was a failure to strictly comply with statutory procedure.
- (ii) *That there was a failure to substantially comply with statutory procedure which resulted in insufficient notification to the public of impending changes in or the existence of the ordinance, so that*

the public would be prevented from commenting on those changes and intervening, if necessary, or from having knowledge of the existence of the ordinance.

(iii) That there exist facts sufficient to rebut any presumption that may exist pursuant to subsection (d)(2)<sup>[9]</sup> that would, unless rebutted, result in a determination that the ordinance is not void from inception.

42 Pa. C.S. §5571.1(e)(2) (emphasis added).

Karol contends that the Township violated Section 609(d) of the MPC by not holding “another public hearing,” 53 P.S. §10609(d), after it made “substantial” revisions to the advertised version of the zoning ordinance amendment before enacting Ordinance No. 238. She acknowledges that the Judicial Code required her to file her appeal within 30 days of the effective date of Ordinance No. 238, which was September 14, 2020, 42 Pa. C.S. §5571.1(b)(1), and she filed her Petition on May 22, 2024. However, Karol argues that the Township’s “failure to substantially comply with statutory procedure [] resulted in insufficient notification to the public.” 42 Pa. C.S. §5571.1(e). Accordingly, her challenge to Ordinance 238 was exempt from the 30-day deadline in the Judicial Code.

### **I. Revisions to Ordinance No. 238**

In her first issue, Karol asserts that the Township Supervisors’ revisions to Ordinance No. 238 required another public hearing because the proposed curative amendment “changed substantially” after the public hearing on August 11, 2020.

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<sup>9</sup> It states:

In all cases in which an appeal filed in court more than two years after the intended effective date of the ordinance is allowed to proceed in accordance with subsection (c), the political subdivision involved and residents and landowners within the political subdivision shall be presumed to have substantially relied upon the validity and effectiveness of the ordinance.

42 Pa. C.S. §5571.1(d)(2).

Section 609(d) of the MPC, 53 P.S. §10609(d). In so arguing, Karol focuses on the addition of “any related activities” to Ordinance No. 238. She contends that this phrase injected substantial uncertainty into the zoning amendment. She further contends that these unknown activities had the potential to impact the “political subdivision’s regulation of the type of facility.” Karol Brief at 23 (citing *Save Our Local Environment II v. Foster Township Board of Supervisors*, 587 A.2d 30 (Pa. Cmwlth. 1991)).

The Township and Water Gap Partners respond that the language changes were minor ones that did not impact the land use contemplated by the zoning amendment, *i.e.*, an inpatient residential treatment facility use. Healthy Minds concurs and argues that a “substantial” revision is one that changes the overall policy of the legislation, which was to authorize residential treatment facilities in the R-1 District as a conditional use. The minor word revisions had no consequence for that overall policy.

The seminal case on whether an amendment to a proposed ordinance requires another public hearing is *Schultz v. City of Philadelphia*, 122 A.2d 279 (Pa. 1956). There, the ordinance concerned a proposal to amend the Philadelphia Home Rule Charter to exempt certain employees from the Charter’s civil service provisions. After the public hearing, the council amended the ordinance to include all employees in the mayor’s office within the exemption. The Supreme Court affirmed the lower court’s holding that the enactment procedure was fatally defective, thereby voiding the ordinance. In reaching its decision, the Supreme Court explained:

While it is obvious that an insignificant amendment made to a proposed ordinance after advertisement and a public hearing does not require a re-advertisement and public hearing, *the case is clearly otherwise if the amendment is substantial in relation to the legislation as a whole*. The object of a public hearing is to enable

the legislative body to ascertain preliminarily the views of members of the public in regard to the proposed legislation, but *if such views are not sought after the legislation has been substantially amended subsequent to the public hearing the entire purpose of the prescribed procedure would be defeated.*

*Id.* at 281 (emphasis added). The ordinance amendment eliminated the uniformity in the class of employees to which the legislation was intended to apply, and as such, substantial. The Supreme Court affirmed the lower court’s decision that the procedure for enactment of the resolution was fatally defective.<sup>10</sup>

Thereafter, our Supreme Court issued *Appeal of Hawcrest Association (Hawcrest)*, 160 A.2d 240 (Pa. 1960), which considered an amendment to a zoning ordinance intended to authorize clubs and social activities in the “I” Institutional-Civil District in the City of Pittsburgh. Without new advertising, the council added “facilities structurally designed . . . for sports and athletic events” to the list of permitted uses. *Id.* at 242. The Supreme Court concluded that these additions were not substantial because they merely provided a “more meaningful definition of the type of private, noncommercial clubs allowable in an ‘I’ Institutional-Civil District.” *Id.* In so holding, the Supreme Court explained that, under what it called the “*Schultz* rule,” a substantial amendment is one that causes “significant disruption of the continuity of the proposed legislation or some appreciable change in the overall policy of the bill.” *Id.*

More recently, this Court contributed to the “*Schultz* rule” jurisprudence. In *Lamar Advantage GP Company, LLC v. City of Pittsburgh (Lamar)*, 67 A.3d 156 (Pa. Cmwlth. 2013), this Court considered changes to a pending zoning ordinance

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<sup>10</sup> The Supreme Court then went on to hold that, in the alternative, the proposed amendment to the Philadelphia Home Rule Charter violated the Pennsylvania Constitution’s prohibition against the grant of special privileges or immunities by the City.

amendment to regulate electronic advertising signs. The changes made after the public hearing follow:

- Reinstated “Electronic Sign Messages” to the Golden Triangle District;
- Eliminated the provisions for “Community Message Signs”;
- Eliminated Electronic Advertising Signs from Local Neighborhood Commercial (LNC) zoning districts;
- Included additional language for existing electronic signs to provide: “Should an existing electronic advertising sign be reconstructed then it shall be subject to review and approval as a new Electronic Advertising Sign in accordance with 919.02.C;”
- Reduced the permitted dwell time and brightness levels for Electronic Advertising Signs, Electronic Non-Advertising Signs and Major Public Destination Facility Electronic Signs; [and]
- Modified regulations regarding Special Signage Design Districts, including modifying and adding language providing for electronic and non-electronic non-advertising signs, eliminating any requirements or restrictions for brightness and allowing City Council to establish brightness requirements in those districts.

*Lamar*, 67 A.3d at 158. We held that these enumerated changes were not “substantial enough to warrant re-advertisement and rehearing” because they did not effect an “appreciable change in the overall policy of the bill.” *Id.* at 159-60. Salient to this holding was the recognition that the changes made the zoning regulation “more stringent than initially proposed.” *Id.* at 159.

Here, the trial court relied upon *Lamar*, which Karol contends was error. She asserts that unlike *Lamar*, here,

the change does not simply make the Ordinance more stringent, as the changes in *Lamar* did. In fact, adding “and related

activities” serves the opposite purpose by proposing unknown activities that may or may not be regulated in the same ways as the other “drug, alcohol and/or substance abuse treatment” allowed by the unchanged version of the Ordinance.

Karol Brief at 27-28. In support, Karol states that the Township’s Solicitor opined “that the changes were substantive in nature and necessitated another review before [Ordinance No. 238] could be formally adopted.” Karol Brief at 10. We address these contentions *seriatim*.

First, the Township explains that its Solicitor did not recommend re-advertising but merely suggested another review by the Monroe County Planning Commission. R.R. 29a, 35a. The Township notes, further, that Ordinance No. 238 was “adopted with the condition that the changes or revisions” made on September 9, 2020, “would be re-reviewed by the Monroe County Planning Commission,” and that review occurred. Township Brief at 6. The Township states that, in any case, revisions to zoning ordinances made after a public hearing are not, generally, re-submitted to the planning agencies. Karol offers no authority to support a contrary view.

Second, as explained by the trial court, two of the modifications made to Ordinance No. 238 “merely substituted a word with a similar meaning.” Trial Court Op. at 9. The term “premises” and “site” mean the same thing as do the terms “persons in treatment” and “patients in treatment.” *Id.* Karol does not offer a counter argument on these word substitutions. There can be little doubt that these revisions, in the nature of simple copy edits, are “insignificant.”

This takes us to the heart of Karol’s argument, which is that the addition of the phrase “any related activities” constituted a “substantial” amendment “in relation to the legislation as a whole.” *Schultz*, 122 A.2d at 281. To be “substantial,”

the amendment must disrupt “the continuity of the proposed legislation or some appreciable change in the overall policy of the bill.” *Hawcrest*, 160 A.2d at 242.

Karol argues that the addition of “and related activities” to Ordinance No. 238 allows “unknown” uses of the land. Karol fails to appreciate that the phrase “related activities” is limited by the preceding phrase “drug, alcohol and/or substance abuse treatment,” which are defined terms. Ordinance No. 238, §3.5.b; R.R. 358a. Specifically, such treatment consists of “subacute care, personal support services,” counseling, and “services focusing on mental health therapy.” ZONING ORDINANCE, §27-1002.<sup>11</sup> “Related activities” are those that pertain to medical and mental health services, and those activities must take place at the facility. Residents may not leave the facility either for treatment services or for activities related thereto. As we observed in *Lamar*, 67 A.3d at 159, “changes which merely make regulations more stringent than initially proposed are acceptable and do not necessitate the holding of a subsequent public hearing.” Here, the addition of “any related activities” to Ordinance No. 238 effected a “more stringent” use of the land for a residential treatment facility.

Nevertheless, Karol directs this Court to *Save Our Local Environment II*, 587 A.2d 30. There, the post-hearing revision to the zoning ordinance amendment

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<sup>11</sup> Ordinance No. 238 added definitions to Section 1002 of the Zoning Ordinance. It added the following definition:

RESIDENTIAL DRUG, ALCOHOL AND/OR SUBSTANCE ABUSE TREATMENT FACILITY: facilities in which a combination of temporary housing, medically supervised subacute care, personal supportive services and counseling for individuals of all ages seeking rehabilitation for drug, alcohol and substance abuse reasons. Such facilities may include services for individuals requiring temporary skilled nursing services but will also include services focusing on mental health therapy.

R.R. 358a. Ordinance No. 238 also revised the zoning ordinance definition of “medical and health care uses.” *Id.*

designated a former agricultural district to become an industrial district, which was substantial in itself. The revisions also redefined “solid waste disposal facility” and “conditional uses,” thereby substantially revising the zoning regulation of these facilities. *Id.* at 32. Karol also directs our attention to the holding in *Diefenderfer v. Palmer Township Board of Supervisors*, 127 A.3d 881 (Pa. Cmwlth. 2015). There, the post-hearing revision expanded the hours of billboard illumination from 17 hours a day to 24 hours a day, which change was held to be substantial.

Both *Save Our Local Environment II* and *Diefenderfer* are distinguishable because they expanded the scope and impact of the permitted land use. By contrast, here, as in *Lamar*, the addition of “and related activities” constrains the scope and impact of the newly authorized land use. “Activities” related to “drug, alcohol, and/or substance abuse treatment” may only take place at the facility.

We reject Karol’s contention that the revisions to Ordinance No. 238 were “substantial in relation to the legislation as a whole.” *Schultz*, 122 A.2d at 281. The overall policy of the curative amendment was to allow inpatient residential treatment in the R-1 District as long as certain conditions, which remained unchanged, were satisfied. The minor revisions made the zoning regulation “more stringent.” *Lamar*, 67 A.3d at 159. Finally, the revisions to Ordinance No. 238 were not “substantial enough to warrant re-advertisement and rehearing” because they did not effect an “appreciable change in the overall policy of the bill.” *Id.* at 159-60. Accordingly, we affirm the trial court’s conclusion that the revisions to Ordinance No. 238 made on September 9, 2020, did not require “another public hearing.” Section 609(d) of the MPC, 53 P.S. §10609(d).

## II. Severability of Revisions to Ordinance No. 238

In her second issue,<sup>12</sup> Karol argues that the trial court erroneously determined that the revisions to Ordinance No. 238 were severable. She argues that the trial court erred because an improperly enacted ordinance is void *ab initio*. She contends that severing the revisions from Ordinance No. 238 does not cure its unconstitutionality, and the trial court erred in otherwise holding.

Water Gap Partners respond that a severability clause in an ordinance allows the remaining ordinance provisions to have effect so long as the severance does not create an unintelligible ordinance. *Pennsylvania Independent Waste Haulers Association v. Township of Lower Merion*, 872 A.2d 224, 228 n.16 (Pa. Cmwlth. 2005). Removing the five words added to Ordinance No. 238 leaves a complete ordinance. In itself, this result demonstrates that the changes were not substantial and undermines Karol's argument that there was a defect in the procedure for the enactment of Ordinance No. 238.

Karol argues that the sole remedy authorized where an ordinance has deviated from the procedural requirements for enactment is to void the ordinance *ab initio*. Karol acknowledges that the Statutory Construction Act of 1972 (Statutory Construction Act) provides "[t]he provisions of every statute [or ordinance] shall be severable." 1 Pa. C.S. §1925.<sup>13</sup> *See Patricca v. Zoning Board of Adjustment of City*

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<sup>12</sup> In the interest of completeness, we address the severability issue. Because we conclude that the revisions were not substantial, there is no basis for removing them from Ordinance No. 238 in accordance with the severability clause therein.

<sup>13</sup> In its entirety, Section 1925 states as follows:

The provisions of every statute shall be severable. If any provision of any statute or the application thereof to any person or circumstance is held invalid, the remainder of the statute, and the application of such provision to other persons or circumstances, shall not be affected thereby, unless the court finds that the valid provisions of the statute are so essentially and inseparably connected with, and so

*of Pittsburgh*, 590 A.2d 744, 747 (Pa. 1991) (principles of the Statutory Construction Act are to be followed when construing a local ordinance). However, she contends that Section 5571.1 of the Judicial Code effectively trumps Section 1925 of the Statutory Construction Act.<sup>14</sup> Procedural defects cannot be excused because to do so “would obliterate the check and balance available to citizens via the court system[.]” *Glen-Gery Corporation v. Zoning Hearing Board of Dover Township (Glen-Gery)*, 907 A.2d 1033, 1044 (Pa. 2006).

Karol relies upon *Glen-Gery* to support her contention that the only remedy available where an ordinance has been enacted in a procedurally flawed way is to void the ordinance *ab initio*. In *Glen-Gery*, the landowner filed a procedural challenge to a zoning ordinance, asserting, *inter alia*, that the deadlines in former

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depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

1 Pa. C.S. §1925.

<sup>14</sup> There are several flaws to this argument. First, Section 5571.1 of the Judicial Code does not mandate a court to void *ab initio* an ordinance determined to have procedural defects. Rather, the Judicial Code places limits on the grant of this relief, stating that an “*ordinance shall not be found void from inception* unless the party alleging the defect in statutory procedure meets the burden of proving the elements set forth in subsection (e).” 42 Pa. C.S. §5571.1(d)(3) (emphasis added). Second, Karol essentially argues that Section 5571.1 of the Judicial Code impliedly repealed Section 1925 of the Statutory Construction Act, at least with respect to ordinances that have not been enacted in accordance with the procedural requirements. However, repeals by implication “are not favored and will not be implied unless there is an irreconcilable conflict between statutes embracing the same subject matter.” *Kelly v. City of Philadelphia*, 115 A.2d 238, 244 (Pa. 1955). There is no such conflict between the Judicial Code and the Statutory Construction Act. If the invalid language can be stricken from an ordinance without making the remainder “incomplete,” the ordinance is rendered constitutional. 1 Pa. C.S. §1925.

Section 5571(c)(5) of the Judicial Code<sup>15</sup> did not apply to zoning ordinances adopted pursuant to the MPC. The landowner asserted, therefore, that the zoning ordinance which prohibited its proposed mining activity was invalid. The only issue was whether the land use appeal was barred by the 30-day statute of limitations in former Section 5571(c)(5) of the Judicial Code. The Supreme Court explained that “[t]he underlying claim regarding the alleged procedural defect in enacting the ordinance is not before us; rather, we are asked only to address whether such a claim may be heard as timely.” *Glen-Gery*, 907 A.2d at 1035. In short, severability was neither raised nor addressed in *Glen-Gery*, and *Glen-Gery* did not establish that the only remedy for a procedurally defective ordinance is to void the ordinance *ab initio*.

Karol also cites *Messina v. East Penn Township (Messina II)*, 62 A.3d 363 (Pa. 2012), which concerned a procedural challenge to an ordinance brought more than 12 years after its enactment. On the night of the ordinance’s adoption, the supervisors revised the zoning map without advance notice to the public. The Supreme Court agreed that the township failed to comply with the procedural requirements for ordinance enactment. However, because the landowner “failed to

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<sup>15</sup> It stated as follows:

Ordinances, resolutions, maps, etc.-Notwithstanding Section 909.1(a)(2) of the act of July 31, 1968 (P.L. 805, No. 247), known as the Pennsylvania Municipalities Planning Code, questions relating to an alleged defect in the process of enactment of adoption of any ordinance, resolution, map or similar action of a political subdivision, including appeals and challenges to the validity of land use ordinances adopted pursuant to the Pennsylvania Municipalities Planning Code, shall be raised by appeal or challenge commenced within 30 days after the ‘intended effective date’ means the effective date specified in the ordinance, resolution, map or similar action or, if no effective date is specified, the date 60 days after the date the ordinance resolution, map or similar action was finally adopted but for the alleged defect in the process of enactment or adoption.

*Former* 42 Pa. C.S. §5571(c)(5), deleted by Act of July 4, 2008, P.L. 235.

prove” that the change was substantial, it did not “justify a declaration that the [o]rdinance is void *ab initio*.” *Messina II*, 62 A.3d at 372.

*Messina II* clarified that after 30 days, substantial compliance with the procedural requirements for enactment will allow the resulting ordinance to stand. “As time passes, the natural and unavoidable reliance of the public and the municipality on the validity of the ordinances causes the presumption of validity to wax as the rationale for undoing the ordinance wanes.” *Messina II*, 62 A.3d at 372. Reliance by municipalities and landowners is presumed where an ordinance has been in effect for more than two years. 42 Pa. C.S. §5571.1(d)(2). The Supreme Court further explained as follows:

[T]here are numerous reasons to decline to apply the void *ab initio* doctrine, and *an overly aggressive application of the doctrine could result in excessive uncertainty*. The purpose of complying with statutory procedure is to ensure public notice, rather than compliance with ministerial filing provisions; this salient result is accomplished once sufficient time has passed, based on acquiescence by landowners and residents through their compliance with a municipality’s application of an ordinance.

*Messina II*, 62 A.3d at 369-70 (emphasis added) (quotations omitted). *Messina II* does not support Karol’s position.

The changes made to Ordinance No. 238 on September 9, 2020, were so minor that they could be easily severed without affecting the meaning of Ordinance No. 238. This, in itself, demonstrates that the changes were not substantial enough to require another hearing. Karol’s argument that severability is not a remedy available in the case where an ordinance has a procedural defect need not be decided here because there was no deviation from the procedural requirements applicable to Ordinance No. 238. Given our Supreme Court’s discourse in *Messina II*, severability may be identified as another reason not to employ the void *ab initio* doctrine, even

where a procedural flaw is demonstrated. That is because severability eliminates the flaw, whether procedural or substantive in nature.

### **III. Substantial Reliance on Ordinance No. 238**

In her third issue, Karol argues that the trial court erred or abused its discretion in determining that Ordinance No. 238 has been substantially relied upon by the Township and residents. The Judicial Code states as follows:

Void ordinances.--A determination that an ordinance is void from inception shall *not affect any previously acquired rights of property owners who have exercised good faith reliance on the validity of the ordinance* prior to the determination.

42 Pa. C.S. §5571.1(f) (emphasis added). At the time Karol filed her *nunc pro tunc* petition, the Township had not issued any conditional use permits. Thus, no party can be said to have detrimentally relied on the validity and effectiveness of Ordinance No. 238.<sup>16</sup>

Healthy Minds responds that Karol's suggestion that reliance was not shown prior to the filing of the Karol petition is "bewildering and unreasonable." Healthy Minds Brief at 15. Significant resources were expended in reliance on the validity of Ordinance No. 238 before the filing of the Karol petition. The Township, Healthy Minds, and other Township residents, including Karol herself, prepared and reviewed the conditional use application, for compliance with the objective criteria contained in the Zoning Ordinance. *See Karol v. Smithfield Township*, No. 4832 CV 2024. This required expert legal, engineering, and planning assistance; the

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<sup>16</sup> Cases cited by Karol on reliance actually support the trial court's holding that the Township and residents relied upon Ordinance No. 238. *See, e.g., Nockamixon Township v. Nockamixon Township Zoning Hearing Board*, 8 A.3d 434 (Pa. Cmwlth. 2010) (declining to find an ordinance void *ab initio* where there was evidence of reliance on the subject ordinance); *Geryville Materials, Inc. v. Lower Milford Township Zoning Hearing Board*, 972 A.2d 136 (Pa. Cmwlth. 2009) (declining to find an ordinance void *ab initio* where there was evidence of reliance on the ordinance).

preparation, submission, and review of engineered plans and supporting documentation; and advertising and holding of multiple public hearings, among other things. Healthy Minds seeks assurance that its permit is valid under authority of 42 Pa. C.S. §5571.1(f).

Karol acknowledges that where an appeal is filed “more than two years after the intended effective date of the ordinance,” “the political subdivision involved and residents and landowners within the political subdivision *shall be presumed to have substantially relied upon* the validity and effectiveness of the ordinance.” 42 Pa. C.S. §5571.1(d)(2) (emphasis added). However, a party may rebut this presumption by showing a “failure to substantially comply with statutory procedure which resulted in *insufficient notification to the public*[.]” 42 Pa. C.S. §5571.1(e)(2)(ii) (emphasis added). Accordingly, challenges have been allowed many years after the enactment of an ordinance.<sup>17</sup> By contrast, Karol filed her *nunc pro tunc* appeal before Healthy Minds had been issued its conditional use permit, and Ordinance No. 238 had only been “on the books” for less than four years. Karol Brief at 35.

For an ordinance appeal to be exempt from the 30-day limitation, the appellant must establish “insufficient notification to the public of impending changes in or the existence of this ordinance, so that the public would be prevented from commenting on those changes[.]” 42 Pa. C.S. §5571.1(e)(2)(ii). This inability to participate in the process of ordinance enactment would “result in an impermissible

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<sup>17</sup> See, e.g., *Nockamixon Township*, 8 A.3d 434, which concerned a challenge to two ordinances, decades old, that were allowed. The two challenged ordinances had existed for 40 years and 18 years; residents testified they had acquired property in the township in reliance on the ordinances; and the township had considered applications and issued numerous permits pursuant to the challenged ordinances. In *Geryville Materials, Inc.*, 972 A.2d 136, a challenge was allowed to proceed where the ordinance had been “on the books” for 39 years, resulting in the issuance of 3,000 permits.

deprivation of constitutional rights.” 42 Pa. C.S. §5571.1(c). At the same time, “Section 5571.1 of the Judicial Code embodies the legislative intent to promote the finality of enactment of ordinances.” *Gladstone Partners, LP v. East Union Township*, 26 A.3d 542, 547 (Pa. Cmwlth. 2011). The concept of due process is a flexible one and imposes only such procedural safeguards as the situation warrants. *Messina v. East Penn Township (Messina I)*, 995 A.2d 517, 533 (Pa. Cmwlth. 2010). Importantly, “[d]emonstrable prejudice is a key factor in assessing whether procedural due process was denied.” *Id.*

Karol failed to show that there was “insufficient notification” to the public because she did not demonstrate that the Township did not “substantially comply with statutory procedure.” 42 Pa. C.S. §5571.1(e)(2)(ii). Thus, there was no “impermissible deprivation of constitutional rights.” 42 Pa. C.S. §5571.1(c). As such, Ordinance No. 238 could “not be found void from inception,” 42 Pa. C.S. §5571.1(e), and Karol was bound by the 30-day deadline for appealing Ordinance No. 238.

### **Conclusion**

We affirm the trial court’s denial of Karol’s request to file a *nunc pro tunc* appeal of Ordinance No. 238. The revisions to the proposed amendment to the Township’s Zoning Ordinance were not substantial and, thus, did not require another public hearing. Karol’s Petition did not present a cognizable procedural challenge to Ordinance No 238, let alone one that met the 30-day statute of limitations.

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MARY HANNAH LEAVITT, President Judge Emerita

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

|                                     |   |                    |
|-------------------------------------|---|--------------------|
| Kristine Karol,                     | : |                    |
| Appellant                           | : |                    |
|                                     | : |                    |
| v.                                  | : | No. 1481 C.D. 2024 |
|                                     | : |                    |
| Smithfield Township, Smithfield     | : |                    |
| Township Zoning Hearing Board,      | : |                    |
| Healthy Minds Partners, LLC, Water  | : |                    |
| Gap Acquisitions Partners, LLC, and | : |                    |
| Water Gap Capital Partners, LLC     | : |                    |

**ORDER**

AND NOW, this 27th day of August, 2026, the order of the Court of Common Pleas of Monroe County, in the above-captioned matter, dated September 23, 2024, is AFFIRMED.

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MARY HANNAH LEAVITT, President Judge Emerita