IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Paul Hennessy and Beverly Girgenti, Appellants	:	
v.	:	No. 693 C.D. 2025
	:	Submitted: October 13, 2026
East Rockhill Township Zoning Hearing Board, Lynn Builders, LLC, and East Rockhill Township	:	

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 16, 2026

Neighboring property owners Paul Hennessy and Beverly Girgenti (Neighbors) appeal from the Order of the Court of Common Pleas of Bucks County (trial court) dated April 9, 2025 (Order), affirming the Zoning Hearing Board (ZHB) of East Rockhill Township's (Township) Decision (ZHB Decision), which granted two variances to Roger and Patti Jones (Applicants). The variances offer relief from Section 27-602(b) of the Township's Zoning Ordinance (Ordinance),[1] allowing Lynn Builders, LLC (Lynn Builders), successor in interest to Applicants, to build a single-family home on the property identified as Tax Map Parcel 12-011-033-005(B) (Lot 5 or the Property). Upon careful review, we affirm.

[1] EAST ROCKHILL TOWNSHIP ZONING ORDINANCE OF 1970, *as amended*, § 27-602(b) (2024). The Ordinance is available at https://ecode360.com/9647638 (last visited November 13, 2026).

I. BACKGROUND

This appeal concerns the proposed development of a single-family home on Lot 5 by Lynn Builders. (ZHB Decision,[2] Findings of Fact (FOF) ¶ 9.) Lot 5 is a heavily wooded lot approximately 0.861 acres in size and 125 feet in lot width, located in the Rural Residential (RR) zoning district in the Township. (*Id.* ¶¶ 8, 18, 20.) The minimum required lot size for the RR zoning district is 1.8 acres, while the minimum required lot width is 150 feet, making Lot 5 undersized. (*Id.* ¶¶ 19-20.) Lot 5 was created in 1969, pursuant to a plan for a two-lot subdivision. (*Id.* ¶ 13.) Lot 5 has never been improved with any buildings or structures. (*Id.* ¶¶ 13, 15.) Immediately south of Lot 5 is Lot 2 (collectively, with Lot 5, sometimes referred to as the Lots), which was created from this same 1969 two-lot subdivision. (*Id.* ¶ 14.) A house, which has not been occupied since at least 2018 or 2019 is located on Lot 2. (*Id.* ¶¶ 39, 42.)

With respect to ownership of Lots 2 and 5, Christabel R. Hudack owned Lot 5 at the time of its creation in 1969, while **both** Christabel R. Hudack and Robert E. Hudack (the Hudacks) owned Lot 2. (*Id.* ¶¶ 13, 46-47.) The Hudacks conveyed Lot 2 to Tyler Gibson on January 12, 2006,[3] while Mrs. Hudack, as sole owner, conveyed Lot 5 to Tyler Gibson in 2006. (*Id.* ¶¶ 46-47; Reproduced Record (R.R.) at 247a, 295a; Trial Ct. Op. at 2-3 & n.1-2.) On January 17, 2007,[4] Tyler Gibson conveyed

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[2] The ZHB's Decision is found at pages 4a to 11a of the Reproduced Record.

[3] As noted by the Trial Court's Opinion, the ZHB Decision appears to have mistakenly transposed the number of the date and the year when describing the first conveyances of Lots 2 and 5 as occurring on January 6, 2012. (FOF ¶¶ 46-47; Trial Ct. Op. at 2-3 & n.1-2.) The parties appear to agree that these conveyances both occurred in 2006, as corrected by the Trial Court.

[4] As noted by the Trial Court's Opinion, the ZHB Decision mistakenly states the date of this conveyance as January 7, 2017. (FOF ¶ 47; Trial Ct. Op. at 3 n.2.) The parties agree that the date of this conveyance was January 17, 2007.

Lot 2 to Charles Gibson and Tyler Gibson.[5] (FOF ¶ 47; Trial Ct. Op. at 3 n.2.) Tyler Gibson conveyed Lot 5 to APS Trust on August 10, 2021, which remains the current owner. (FOF ¶ 3; R.R. at 235a, 273a-75a.)

Applicants are under an agreement of sale to purchase Lot 5 from APS Trust, contingent on approval of the zoning relief requested. (FOF ¶ 4; R.R. at 241a-49a.) Applicants intend to construct a single-family detached dwelling on Lot 5, for which they seek variances. Specifically, Applicants applied for the following three variances from Section 27-602: (1) a variance for a minimum lot size of 0.86 acres where 1.8 acres is required; (2) a variance for a minimum lot width of 125 feet where 150 feet is required; and (3) a minimum side yard setback of 12 feet where 30 feet is required. (FOF ¶ 9; R.R. at 235a-38a, 264a.) Applicants alternatively applied for a variance from Section 27-1702, to build a detached dwelling on a lot less than one acre. (FOF ¶ 9.) The proposed dwelling would be approximately 2,348 square feet. (*Id.* ¶ 23.)

The ZHB held public hearings on Applicants' variance requests on February 20,[6] April 10, and April 29, 2024. (R.R. at 31a-229a.) On the second hearing date, Applicants presented Stephen Yates, licensed professional engineer and home builder employed by Lynn Builders, and Applicant Roger Jones. (*Id.* at 65a; 79a-80a.) Neighbors presented themselves as owners of the property adjacent to Lot 5, as well as Luke Heverly, a neighbor who resides on the property adjacent to Lot 2. (*Id.* at 156a; 162a.) In addition, the following neighboring or nearby property

[5] Although Neighbors' Brief states that Lot 2 is currently owned by Charles Gibson's Trust based on a September 2, 2020 deed, no such deed is in the record. Rather, the most recent evidence of current ownership of Lot 2 is tax assessment documentation naming Tyler Gibson and Charles Gibson as the current owners. (R.R. 293a.)

[6] The parties presented no testimony on this first date, as the matter was continued so that Applicants could appear with counsel. (FOF ¶ 1.)

owners (Objectors) testified concerning their objections: Robert Napor, Ronald Smolen, Lori Fegley, Bevan Kohan, and Paul Hennessy.[7] (R.R. at 174a; 180a; 204a; 211a; 213a; 221a.) Following the presentation of the above witnesses, the parties reconvened on a third day so that Applicants could introduce an amended plan. (FOF ¶¶ 50-51.) The amended plan reduced the width of the proposed single-family dwelling and relocated it so that it no longer protruded into a side yard setback. (*Id.*; R.R. at 197a, 240a, 297a-98a.)

On May 14, 2024, the ZHB Decision granted Applicants' requests for two variances from Section 27-602 to: (1) allow for a minimum lot size of 0.86 acres where 1.8 is required; and (2) allow for a minimum lot width of 125 feet where 150 is required. (ZHB Decision at 7.) The ZHB Decision also denied Applicants' request for a variance from Section 27-602 to allow for a reduced side yard setback, as Applicants' amended plan alleviated the need for this relief. (*Id.*) Further, the ZHB Decision imposed several conditions, including mandatory compliance with the Township's Stormwater Management Ordinance.[8] (*Id.* at 7-8.) In reaching this decision, the ZHB rejected Neighbors' argument that the variances must be denied because Lots 2 and 5 had merged under Section 27-1702. (ZHB Decision, Conclusions of Law (COL) ¶ 5.) The ZHB concluded that the lots had not merged because Lot 2 was not "vacant" within the meaning of this Section. (*Id.*) The ZHB also concluded that the conditions and circumstances of Lot 5 posed a hardship for Applicants that was not self-created, as Lot 5 was a "lawful pre-existing

[7] The ZHB granted Objectors and Neighbors party status. (FOF ¶ 10.) Neighboring or nearby property owners Maurie Heverly, Larry and Kimberly Marr, and David Cairns also had party status but declined to testify. (*Id.*)

[8] EAST ROCKHILL TOWNSHIP STORMWATER MANAGEMENT ORDINANCE, *as amended*, §§ 26-301-26-358 (2022). The Stormwater Management Ordinance is available https://ecode360.com/31220773#31220773 (last visited November 13, 2026).

nonconforming lot." (*Id.* at ¶ 7.) The ZHB concluded that the revised plan presented by Applicants supported that the requested variances afforded the minimum necessary relief under the circumstances and that the variances would not alter the essential character of the neighborhood. (*Id.* ¶¶ 8-9.) The ZHB likewise concluded that Neighbors and Objectors offered only speculative concerns regarding potential stormwater impacts and other harms, which did not warrant denial of the variances. (*Id.* ¶¶ 10-11.)

Neighbors timely appealed the ZHB's Decision to the trial court on June 13, 2024, and the Township and Lynn Builders intervened.[9] (R.R. at 14a-19a, 311a-12a; Original Record (O.R.) Item 5.) Following briefing, the trial court held oral argument on March 28, 2025. (*Id.* at 388a-417a.) Without taking any additional evidence, the trial court issued its Order, determining that the ZHB properly granted the two variances because (1) Lots 2 and 5 have not merged under Section 27-1702, where neither have been both vacant and held in joint ownership at the same time; (2) Applicants' hardship is not self-created; and (3) Applicants seek only the minimum necessary relief. (Order at 5-7.) Accordingly, the trial court held that the ZHB did not commit an error of law or abuse its discretion, and, therefore, affirmed the ZHB Decision. (*Id.* at 7-8.) Neighbors filed a Motion for Reconsideration of the Order and a Motion for Post-Trial Relief, both of which were denied by the trial court. (O.R. Items 27-28, 30.) Neighbors now appeal to this Court.[10]

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[9] Lynn Builders intervened as successor in interest to Applicants, in its capacity as equitable owner of the Property.

[10] "Where the trial court does not take additional evidence, we are limited to determining whether the zoning hearing 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

II. PARTIES' ARGUMENTS[11]

Neighbors contend that Section 27-1702(b) of the Ordinance resulted in the merger of Lots 2 and 5, minimizing any area and dimensional nonconformity and requiring that the ZHB deny the variances. (Neighbors' Brief (Br.) at 7-12.) As a result, Neighbors argue that the ZHB misinterpreted Section 27-1702(b) by not concluding that Lots 2 and 5 merged. (*Id.*) Specifically, Neighbors argue that the ZHB should have found that Lots 2 and 5 satisfied the requirements for merger under the Ordinance because they were both vacant (at least as of 2016), contiguous, shared common ownership, and Applicants never established a tangible boundary. (*Id.*) As to vacancy, Neighbors assert that Lot 2 is vacant under Section 27-1702, as the house on Lot 2 has been unoccupied and in disrepair since 2016. (*Id.*) Neighbors next argue that the ZHB erred by not assigning Applicants the burden to rebut the presumption that Lots 2 and 5 merged. (*Id.* at 12-14.) Further, Neighbors argue that the ZHB erred by not concluding that any hardship to Applicants was self-created and, therefore, did not meet the standard for granting a variance. (*Id.* at 14-18.) Finally, Neighbors assert that the ZHB improperly granted variances that were more expansive than the minimum relief necessary. (*Id.* at 18-20.)

Lynn Builders responds that Neighbors incorrectly assert that the lots merged based on their misinterpretation of several phrases in Section 27-1702. (Lynn Builders' Br. at 3-11.) As to hardship, Lynn Builders argues mere knowledge of the merger language in Section 27-1702 does not mean Applicants "self-created" any hardship and that, in any event, the merger provision does not apply to Lots 2 and 5

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evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id*. (citation omitted).

[11] Neither the ZHB nor the Township present arguments in this appeal, as the ZHB filed a notice of non-participation and the Township did not file a brief.

because the elements in the Ordinance are not met. (*Id.* at 11-13.) Last, Lynn Builders argues that Neighbors' arguments that Applicants have sought more than the minimum relief necessary are unavailing, as Neighbors complain of the size or square footage of the house, which is not the subject of the variances sought. (*Id.* at 13-15.) Rather, having withdrawn their request for a side yard setback, Applicants seek only relief from lot area and lot width requirements, which relief is the minimum necessary because they cannot otherwise change the size and width of Lot 5. (*Id.*)

III. DISCUSSION

A. Merger of Lots[12]

Before we reach the merits of Neighbors' issues concerning merger, we begin with a review of general merger principles.

i. General Merger Principles

"The term 'merger' as it is being used by these courts and in this context is meant to describe the effect of a zoning ordinance on undersized lots held in common ownership." *Township of Middletown v. Middletown Twp. Zoning Hearing Bd.*, 548 A.2d 1297, 1299 (Pa. Cmwlth. 1988). "In general, mere common ownership of adjoining properties does not automatically result in a physical merger of the properties for zoning purposes." *Cottone v. Zoning Hearing Bd. of Polk Twp.*, 954 A.2d 1271, 1275 (Pa. Cmwlth. 2008) (emphasis omitted) (citations omitted). "On the other hand, adjoining properties under common ownership can merge when a zoning ordinance provision causes one or more of the adjoining lots to become undersized, depending on the facts and circumstances of each case." *Id.* (citation

[12] We have reordered Neighbors' merger arguments for ease of review.

omitted). "The focus of the inquiry is upon (1) when the properties in question came under common ownership and (2) the effective date of the applicable zoning ordinance." *Id.* at 1275.

"[A] merger of lots provision in the applicable ordinance is the starting point in the analysis of whether merger has taken place." *Loughran v. Valley View Devs., Inc.*, 145 A.3d 815, 822 n.8 (Pa. Cmwlth. 2016) (citation omitted). The "merger of lots doctrine is only triggered where a local municipality has adopted a merger of lots provision." *Id.* at 821–22. "It is axiomatic that merger of lots shall not be presumed merely because two adjoining lots come into common ownership; first and foremost, merger of lots is a creature of local ordinance, not common law." *Id.* at 822 (citing *Tinicum Township v. Jones*, 723 A.2d 1068, 1071 (Pa. Cmwlth. 1998); *Township of Middletown*, 548 A.2d at 1300).

"If a municipality has adopted a merger of lots provision, the next step is to determine the effective date of the ordinance provision that has altered the area or dimension of conforming lots, as the effective date generally controls which party carries the evidentiary burden." *Id.* at 822 n.8. In *Cottone*, this Court explained the interplay between the effective date of an ordinance and the identity of the party that carries the burden in merger cases:

> [I]f two adjoining, but separately-owned, lots are rendered undersized by a zoning ordinance enactment, the two properties will not be affected by the ordinance. Each lot will continue to be a lawful, non-conforming size for purposes of the zoning ordinance. If those two lots **later come under common ownership**, the **burden is upon the municipality** to prove that the new owner intended to use the two lots as one integrated parcel. On the other hand, if the same two adjoining lots are under **common ownership when a zoning ordinance is passed** that renders each property undersized, then the two lots are **presumed to have merged.** The **burden is on the landowner** to rebut the presumption.

954 A.2d at 1277 (emphasis added); *see also Appeal of Gregor*, 627 A.2d 308, 311 (Pa. Cmwlth. 1993) ("The burden is placed upon the party who asserts a physical merger to establish the landowner's intent to integrate the adjoining lots into one large parcel."). "The burdened party must then establish an overt, unequivocal physical manifestation of the owner's intent to integrate or to keep separate commonly held adjoining lots." *Loughran*, 145 A.3d at 822 n.8 (citations omitted).

ii. Burden of Proof

Neighbors argue that the ZHB misallocated Applicants' burden of rebutting a presumption of merger. We disagree.

We begin our analysis by examining the Ordinance for a merger provision, as the adoption of such a provision is a necessary trigger for the merger of lots doctrine to apply. *Loughran*, 145 A.3d at 822 n.8. In this case, the Township has adopted a merger provision in Section 27-1702 of the Ordinance. Section 27-1702(a) of the Ordinance sets forth an exception to Section 27-602(b)'s area and dimensional requirement from which the ZHB granted variances, allowing for construction of a detached dwelling on an undersized lot under certain conditions:

> **§ 27-1702. Exceptions to Minimum Lot Areas.**
>
> a. The provisions of Parts 4 through 15 shall not prevent the construction of a detached dwelling on any lot that was lawful when created and which, prior to the effective date of this chapter, was in separate ownership duly recorded by plan or deed and provided that:
>
> > (1) Such lot is not less than one acre in the RR and [Resource Protection] [(]RP[)] districts and not less than 80% of the minimum lot area in all other districts.
> >
> > (2) Those lots not served by public water and sewers shall meet all requirements of the Bucks County Department of Health.

> (3) The percentage of lot area covered by the detached dwelling shall not exceed 15% of the area of the lot.
>
> (4) The front and rear yards shall aggregate at least 60% of the total lot depth or meet the normal requirements of the district in which the lot is located, but in no case shall either the front yard or the rear yard be less than 30 feet.
>
> (5) The side yards shall aggregate at least 40% of the total lot width or meet the normal requirements of the district in which the lot is located, but in no case shall either side yard be less than 12 feet.

Id. § 27-1702(a).

Section 27-1702(b) provides an exception to the exception set forth in Section 27-1702(a) above and constitutes the requisite merger provision, setting forth the conditions where two lots would merge:

> b. This exception shall not apply to any **two or more vacant contiguous lots in a single ownership** as of or subsequent to the effective date of this chapter. These lots shall be consolidated to minimize the nonconformity.

Id. § 27-1702(b) (emphasis added).

Having established the existence of a merger provision under the Ordinance, we must determine its effective date to resolve which party carries the evidentiary burden. *Loughran*, 145 A.3d at 822 n.8. We find, as did the trial court, that the effective date of the Ordinance (and to the extent relevant, Chapter 27) is 1987. (Trial Ct. Op. at 13.) The parties agree that 1987 is the controlling effective date of the Ordinance for purposes of our merger analysis. (Neighbors' Br. at 5; Lynn Builders' Br. at 2.)

With the merger provision and its effective date in mind, we turn back to Neighbors' burden misallocation argument. Neighbors assert that the ZHB erred by

not finding that Lots 2 and 5 were presumed to merge and failing to place the burden on Applicants to rebut this presumption, contrary to Neighbors' interpretation of *Polish Hill Civic Association v. City of Pittsburgh Zoning Board of Adjustment*, 285 A.3d 718 (Pa. Cmwlth. 2022). This argument misapprehends well-established case law on merger and the facts of record in this case.

As set forth above, determination of whether a municipality or landowner carries the evidentiary burden in merger cases depends on whether two adjoining lots came under common ownership before or after the effective date of the zoning ordinance. *Cottone*, 954 A.2d at 1277. We adopted this same burden framework in *Polish Hill*, 285 A.3d at 725-26 (quoting *Cottone*, 954 A.2d at 1275-76). As in this case, the objector in *Polish Hill* appealed a zoning board of adjustment's grant of requested variances. *Id.* at 720. This Court ultimately remanded to the trial court with instructions to remand to the zoning board of adjustment to take further evidence, if necessary, as the zoning board of adjustment had "failed to address whether the lots were in common ownership prior to the adoption of the [zoning c]ode's minimum lot size requirement, or whether they came into common ownership after that time." *Id.* at 725 (footnote omitted).

Here, Neighbors cite *Polish Hill* for the proposition that the burden was on Lynn Builders or Applicants to rebut the presumption that Lots 2 and 5 merged. Counter to this proposition, however, *Polish Hill* establishes that the landowner's burden is only triggered where lots "are under common ownership **prior** to the passage of the ordinance," whereas the burden is on the municipality to show the owner merged the lots where they were acquired by a "single owner" **after** the passage of the ordinance. *Id.* at 726 (emphasis added). In this case, the ZHB made findings, supported by substantial evidence in the record before it, concerning the

ownership of Lots 2 and 5 **both prior to and after** the passage of the Ordinance. (FOF ¶¶ 13, 46-47; COL ¶ 5.) These findings establish that Lots 2 and 5 **were not in single ownership prior to the passage of the Ordinance**, which the parties agree was enacted in 1987. Consequently, the burden would have been on the municipality (Township), or Neighbors, as the other party asserting a physical merger, to prove that the new common/single owner has merged the Lots. *Appeal of Gregor*, 627 A.2d at 311. As will be discussed in more detail below, this burden was not met, where Neighbors and the Township did not prove both Lots were "vacant" at any point in time, let alone when the Lots were under single ownership or as of or subsequent to 1987.

Neighbors do not offer support for their assertion that the Lots were in single ownership prior to the Ordinance's enactment, apart from a single citation to "RR2, ¶13." (Neighbors' Br. at 8.) To the extent "RR2" was meant to refer to the Reproduced Record, page 2a of the Reproduced Record corresponds to this Court's Docket Sheet and contains no reference to ownership of the Lots. (R.R. at 2a.) If Neighbors instead intended to refer to page 2, paragraph 13 of the ZHB Decision, this paragraph merely states, "The Property is a vacant lot and was created in 1969 pursuant to a plan for a two (2) lot subdivision recorded at the Bucks County Recorder of Deeds Office on June 20, 1969 at Plan Book 67 and Page 41 (See Exhibit A-2)." (*Id.* at 5a (FOF ¶ 13).) That Lot 5 was created pursuant to a June 20, 1969 two-lot subdivision does not lend support for finding single ownership before the Ordinance and ignores that the ZHB Decision later plainly finds that in 1969, Lots 2 and 5 **did not have the same record owners**. (FOF ¶¶ 46-47.) To any extent that Neighbors assert that Lots 2 and 5 were each owned by the Hudacks upon subdivision in 1969, this is contrary to the ZHB's finding that Lot 5 was owned

solely by Christabel R. Hudack rather than both Hudacks on the date of subdivision—a fact supported by a deed admitted at the hearing.[13] (*Id.* ¶¶ 13, 46; R.R. at 273a.) In sum, the ZHB walked through the history of ownership and conveyances of Lots 2 and 5 both prior to and after the adoption of the Ordinance and found separate ownership upon the creation of the Lots in 1969, and Neighbors do not dispute that no other conveyances of the Lots occurred until 2006, **after** the passage of the Ordinance. In light of the foregoing, the Lots were not in common ownership **before** the adoption of the Ordinance in 1987. Accordingly, the landowners' evidentiary burden never triggered under *Polish Hill*, and Neighbors' arguments concerning misallocation of the burden on Applicants and/or Lynn Builders is without merit. 285 A.3d at 725-26.

Moreover, "merger of lots **shall not be presumed** merely because two adjoining lots come into common ownership," as "merger of lots is **a creature of local ordinance, not common law**." *Loughran*, 145 A.3d at 822 (citation omitted) (emphasis added). In this case, even if the evidentiary burden fell on landowners under these facts—which it did not—the conditions necessary to trigger the Ordinance's merger provision were not met. That is, for reasons that will be set forth in more detail in the next section, the Lots were not both vacant during the period the Lots were under single ownership, as required under Section 27-1702(b).

[13] Insofar as Neighbors' Statement of Questions Involved raises the issue that the trial court erred by concluding that "single ownership could not include one or more joint owners or of a different named trust or commercial entity," (Neighbors' Br. at 3), this issue was not developed in the Brief and is, therefore, waived. *See Commonwealth v. Johnson*, 985 A.2d 915, 924 (Pa. 2009) ("[W]here an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived."). Even if sufficiently briefed, we agree with the trial court's assessment that this issue is waived for Neighbors' having not developed the issue before the trial court. (Trial Ct. Op. at 15 n.7.)

Accordingly, no presumption of merger was triggered for Applicants or Lynn Builders to have rebutted, even if the ZHB misallocated an evidentiary burden that fell on landowners—which it did not.

iii. Merger under the Ordinance

Next, we consider Neighbors' argument that the ZHB misinterpreted Section 27-1702(b) by not finding that Lots 2 and 5 merged because the Lots were vacant, contiguous, and under single ownership as of the effective date of the Ordinance.[14]

We first examine whether the ZHB erred in its interpretation of "vacant" under the Ordinance. As a threshold matter, for Lots 2 and 5 to have merged under Section 27-1702(b), they must have both been "vacant" for at least some period that the Lots were in single ownership, as of or subsequent to 1987. While Neighbors argue that a lot is vacant so long as it is unoccupied (even if improved by a dwelling), Lynn Builders argues, consistent with the ZHB's interpretation, that a lot is vacant only if it is undeveloped. The ZHB ultimately found that the dwelling on Lot 2 has been in existence since at least Lot 2's creation in 1969; thus, Lot 2 cannot satisfy the vacancy requirement for merger under Section 27-1702(b). (COL ¶ 5.) Upon careful review, we agree.

"When interpreting a zoning ordinance, we apply the rules of statutory construction, with the primary mission of determining legislative intent, which is best indicated by the plain language of the statute." *City of Clairton v. Zoning Hearing Bd. of City of Clairton*, 246 A.3d 890, 909 (Pa. Cmwlth. 2021) (citation omitted). Section 1903(a) of the Statutory Construction Act of 1972 provides that "[w]ords and phrases shall be construed . . . according to their common and approved usage . . . ." 1 Pa.C.S. § 1903(a); *City of Hope v. Sadsbury Twp. Zoning Hearing*

[14] The parties do not dispute that Lots 2 and 5 are contiguous.

Bd., 890 A.2d 1137, 1144 (Pa. Cmwlth. 2006) ("When interpreting zoning ordinances, this Court relies on the common usage of words and phrases and construes language in a sensible manner."). "Undefined terms are given their plain meaning, and any doubt is resolved in favor of the landowner and the least restrictive use of the land." *Caln Nether Co., L.P. v. Bd. of Sup'rs, Thornbury Twp.*, 840 A.2d 484, 491 (Pa. Cmwlth. 2004). It is a well-settled principle that "ambiguities in an ordinance must be interpreted in favor of the landowner." *Bethlehem Manor Vill., LLC v. Zoning Hearing Bd. of City of Bethlehem*, 251 A.3d 448, 466 (Pa. Cmwlth. 2021); *see also Riverfront Dev. Grp., LLC v. City of Harrisburg Zoning Hearing Bd.*, 109 A.3d 358, 366 (Pa. Cmwlth. 2015) (holding that a zoning hearing board "has an obligation to construe the words of an ordinance as broadly as possible to give the landowner the benefit of the least restrictive use when interpreting its own [z]oning [c]ode"). It is a "well-settled principle that a zoning hearing board's interpretation of its own zoning ordinance is entitled to great weight and deference." *City of Hope*, 890 A.2d at 1143 (citation omitted). "Such deference is appropriate because a zoning hearing board, as the entity charged with administering a zoning ordinance, possesses knowledge and expertise in interpreting that ordinance." *Id.*

Here, the word "vacant" is not defined in the Ordinance, nor is "vacant lot." In the absence of any definition of "vacant" or "vacant lot," and in light of the divergent interpretations proposed by the parties, we turn to the dictionary definitions of "vacant" to determine the word's plain meaning and how it is interpreted in its common and approved usage. *See THW Grp., LLC v. Zoning Bd. of Adjustment*, 86 A.3d 330, 336 (Pa. Cmwlth. 2014) (citation omitted) ("[W]here a court needs to define an undefined term, it may consult dictionary definitions for guidance."). Black's Law Dictionary defines "vacant" in relevant part as follows:

> 1. Empty; unoccupied <a vacant office>. [] Courts have sometimes **distinguished vacant from unoccupied**, holding that **vacant means completely empty** while unoccupied means not routinely characterized by the presence of human beings . . . .
>
> 2. **Absolutely free, unclaimed, and unoccupied <vacant land>.**

Vacant, BLACK'S LAW DICTIONARY (12th ed. 2024) (emphasis added). In addition, Merriam-Webster's Dictionary defines "vacant" as "**not put to use**," in the context of "vacant **land**." *See* "Vacant," MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/vacant (last visited November 13, 2026) (emphasis added). Merriam-Webster alternatively defines "vacant" as "not occupied by an incumbent, possessor, or officer," in the context of an office or throne, or as "being without content or occupant," in the context of a "vacant seat on a bus" or a "vacant room." *Id.* Turning back to the Ordinance, "lot" is defined as:

> **A parcel of land**, used or set aside and available for use as the site of one or more buildings and any buildings accessory thereto or for any other purpose, in one ownership and not divided by a street, nor including any land within the right-of-way of a public street upon which said lot abuts, even if the ownership to such right-of-way is in the owner of the lot. A lot, for the purpose of this chapter, may or may not coincide with a lot record. A lot shall front on a public street.

ORDINANCE § 27-230(a) (emphasis added). Where the Ordinance specifically defines a "lot" as referring to land, the definition defining "vacant" as "not put to use" is most consistent with its common and approved usage.

As set forth above, the ZHB Decision contains findings that a dwelling is currently located on Lot 2 and has existed there since Lot 2's creation in 1969, including upon the adoption of the Ordinance. (COL ¶ 5.) Lot 2, in other words, has always been a parcel of land associated with some use—specifically, a detached dwelling use permitted by right in the RR zoning district under Section 27-601(a).

See ORDINANCE § 27-601(a). This finding is supported by substantial evidence, as Applicants introduced, and the ZHB admitted into the record, 2024 tax assessment records confirming the existence of a residence on Lot 2, which was constructed in 1964. (R.R. at 294a.) In the absence of any language in the Ordinance defining "vacant" as meaning unoccupied, and where the ZHB's interpretation of "vacant" as meaning undeveloped or not "put to use" is consistent with the common and approved usage of the term in relation to land, we discern no error with the ZHB's conclusion that Lot 2 was always improved by a dwelling and, therefore, was never vacant to trigger merger under Section 27-1702(b). Further, we discern no conflict between the ZHB's interpretation and the provisions of the Ordinance governing interpretation of Chapter 27. *See* ORDINANCE § 27-103 ("In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience and general welfare.").[15]

To hold otherwise would be to read the word "unoccupied" into the Ordinance and sanction the absurd result that two contiguous lots (satisfying all other conditions under the Ordinance) may inadvertently merge, simply because they are unoccupied for even extremely short or temporary periods of time. For instance, an owner of

[15] Even if we adopted Neighbors' interpretation of the Ordinance and concluded that the ZHB should have based its findings of vacancy on the dates of occupancy of the house on Lot 2, we would find the ZHB's error to be harmless and would affirm for the same reason the trial court agreed with an "occupancy"-focused definition of "vacant" but rejected Neighbors' theory of merger. (Trial Ct. Op. at 14 & n. 6.) That is, even if we were to agree with Neighbors that vacancy depends on "occupancy," Lot 2 only became "vacant" in 2018 or 2019; therefore, merger would still not trigger unless the Lots were **also** under single ownership at the same time as this non-occupancy or vacancy. (*Id.*) As discussed at length herein, the Lots were only under single ownership for an approximate one-year period from 2006-07, for which there is no evidence that the Lots were vacant or unoccupied; thus, there is no support for finding merger under the Ordinance even under Neighbors' interpretation of "vacant."

two contiguous lots who has constructed detached dwellings for purposes of renting on both lots may face merger if there were a short window where tenant vacancies overlapped, or an inheritor of two contiguous lots may be faced with merger if there is any period of time the properties are both unoccupied as she transitions the lots into her physical possession. These absurd results necessarily flow from the interpretation advanced by Neighbors, and the ZHB did not err by rejecting this construction. *See In re Thompson*, 896 A.2d 659, 669 (Pa. Cmwlth. 2006) ("One of the primary rules of statutory construction is that an ordinance must be construed, if possible, to give effect to all of its provisions. An interpretation of an ordinance which produces an absurd result is contrary to the rules of statutory construction.").[16]

B. Self-Created Hardship

Next, we address Neighbors' argument that Applicants improperly claimed a hardship that was "self-created" by purchasing Lot 5 with "the intention of pursuing non-permitted uses" while being "aware the merger doctrine will apply." (Neighbors' Br. at 17.) "When seeking a dimensional variance within a permitted use, the owner 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." *Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 721 A.2d 43, 47 (Pa. 1998). In cases of dimensional variances, a relaxed standard for establishing unnecessary hardship is applied. *Id.*

"An undersized lot constitutes the physical circumstances which may entitle one to a variance provided the other variance criteria are met." *Riccio v. Newtown*

[16] Having concluded that the ZHB did not err in finding Section 27-1702(b) inapplicable because Lots 2 and 5 were never vacant at the same time, we need not reach Neighbors' allegations concerning the timeline of single ownership of the Lots in order to uphold the ZHB's Decision. Notwithstanding, we examine the ZHB's ownership findings in our assessment of Neighbors' burden of proof arguments in the next Section.

Twp. Zoning Hearing Bd., 308 A.3d 928, 942 (Pa. Cmwlth. 2024) (citations omitted). "Where a lot is too small to conform with the minimum lot area requirements, and cannot be made to conform by merging lots or by re-subdividing a larger tract, enforcement of the ordinance would sterilize the land, creating the necessary hardship which will justify the granting of a variance." *Id.* (alteration omitted and internal quotation marks omitted) (quoting *West Goshen Township v. Crater*, 538 A.2d 952, 955 (Pa. Cmwlth. 1988)). This Court has repeatedly found in circumstances where the lot size of a property is less than that required by an ordinance, a lot is nonconforming and its undersized area creates a necessary hardship, to the extent merger of lots is not found. *Id.* at 942-43; *see, e.g.*, *JMAC Invs., LLC v. Lower Southampton Twp. Zoning Hearing Bd.*, (Pa. Cmwlth., No. 68 C.D. 2025, filed April 6, 2026), slip op. at 22 (citation omitted) ("The undersized lot constitutes an unnecessary hardship because without a variance from the minimum lot size and lot width requirements, [o]wner cannot develop the [p]roperty for a residential use.");[17] *N. Pugliese, Inc. v. Palmer Twp. Zoning Hearing Bd.*, 592 A.2d 118, 121 (Pa. Cmwlth. 1991) ("[I]t was error for the [b]oard to hold that a purchaser of [an undersized lot] creates his own hardship when he buys with knowledge that the lot is undersized.").

Here, the ZHB found that "the undersized nature of the Property and the undersized lot width" were hardships that existed and were not self-created, as Lot 5 is a pre-existing nonconforming lot. (COL ¶¶ 3, 7.) The record contains substantial evidence, and the parties agree, that Lot 5 is undersized and a pre-existing nonconforming lot. Because the nonconformity flows from Lot 5's undersized area

[17] This unreported decision is cited as persuasive authority pursuant to Rule 126(b) of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P 126(b), and Section 414(a) of this Court's Internal Operating Procedures, 210 Pa. Code § 69.414(a).

and dimensions, and because Lot 5 does not merge with Lot 2 for the reasons set forth above, Applicants are faced with the same or similar conditions as those deemed to be necessary hardship in *Riccio*, *N. Pugliese, Inc.,* and *JMAC Invs. LLC*, and we discern no error in the ZHB having concluded that the conditions and circumstances imposing a hardship were not self-created. (COL ¶ 7.)

As to Neighbors' allegations of Applicants' pursuit of "non-permitted uses" as evidence of self-created hardship, Applicants did not seek any use variances, but rather, dimensional variances. The proposed use was for a single-family dwelling, which, contrary to Neighbors' references to "non-permitted uses," is a use **permitted by right** in the RR zoning district. *See* ORDINANCE, § 27-601(a).

Moreover, because we find that Section 27-1702(b)'s merger provision does not apply for reasons set forth above, we do not agree that Applicants' awareness of merger language in the Ordinance is grounds to find self-created hardship. Even if Section 27-1702(b) applied to merge Lots 2 and 5, our Supreme Court has held:

> **[I]t is not enough that an applicant knew or should have known how the property was zoned** to demonstrate that a hardship was self-inflicted; such a holding, the Court concluded, would mean that only the owner of the property at the time the alleged hardship was created could seek a variance and that the variance could be denied simply because of the use an applicant sought.

Nowicki v. Zoning Hearing Bd. of Borough of Monaca, 91 A.3d 287, 296 (Pa. Cmwlth. 2014) (emphasis added) (citation omitted); *see also Manayunk Neighborhood Council v. Zoning Bd. of Adjustment of City of Philadelphia*, 815 A.2d 652, 657 (Pa. Cmwlth. 2002) ("Pre-purchase knowledge of zoning restrictions limiting development, without more, does not create a hardship."). Accordingly, Applicants' knowledge of the potential effect of the Ordinance's merger provision or zoning restrictions generally does not warrant finding self-created hardship.

C. Minimum Variance Necessary

Finally, we turn to Neighbors' argument that the ZHB erred by granting variances that sought relief in excess of the minimum relief necessary. (Neighbors' Br. at 18.) Neighbors argue that the granted variances afforded more than the minimum relief necessary, on the grounds that (1) Applicants could have proposed a smaller house; and (2) the ZHB did not consider whether the zoning relief would alter the essential character of the neighborhood, as the proposed square footage exceeds the square footage of any other house. These arguments either misunderstand the nature of the variances sought or the ZHB Decision.

First, whether Applicants could have requested a smaller house has no bearing on whether the variances afforded the minimum relief necessary. In this case, Applicants applied for and were granted variances from Section 27-602(b) of the Ordinance. Section 27-602(b) provides the area and dimensional requirements for lots with a "B1" use, defined in Section 27-601(a) as a "Detached Dwelling" use permitted by right. *See* ORDINANCE §§ 27-601, 27-602(b). Specifically, Section 27-602(b) provides that such detached dwelling uses in the RR zoning district shall meet the following requirements: (1) minimum lot area of 1.8 acres; (2) lot width of 150 feet; and (3) minimum yards of 50 feet (front) by 30 feet (side) by 50 feet (rear). *See id.* § 27-602(b). Nowhere does Section 27-602(b) contain language restricting the size of a proposed single-family detached dwelling.

Further, as set forth above, this is not a case where Applicants needed setback relief to build beyond the building envelope. While Applicants originally sought setback relief, they amended their plan to propose a reduction in the width of the detached single-family dwelling, which now no longer protrudes into a side yard setback and can be built fully within the building envelope setbacks set forth in the

Ordinance. (FOF ¶¶ 50-51; R.R. at 197a, 240a, 297a-98a.) Applicants, in other words, seek only to pursue a by right use within Lot 5's existing dimensions, which present an existing nonconformity that Applicants neither created nor can change. Where the ZHB found (and Neighbors do not contest) that the proposed home is compliant with all setback requirements, and the variances would simply allow for construction on an existing, nonconforming, undersized lot, it is unclear what lesser relief Applicants could have sought while still being allowed to pursue the by right use proposed.

Second, as to Neighbors' argument that the ZHB erred by not properly considering whether the variances granted would alter the essential character of the neighborhood, this argument is belied by the ZHB Decision and the record. The ZHB Decision specifically set forth that the ZHB considered the effect of the variances on the essential character of the neighborhood:

> The variances will not alter the essential character of the neighborhood, as this is [a] residential neighborhood with other similar size lots that all contain single-family dwellings. While this proposed single-family dwelling is larger than some homes in the neighborhood, it is smaller than others.

(COL ¶ 8.) We find no legal error or abuse of discretion in connection with this conclusion. While various Objectors and Neighbors testified to homes in the neighborhood having square footage less than that of Applicants' proposed detached dwelling, the record also contains testimony supporting that the neighborhood contains dwellings of a nature similar to the proposed home, with some larger and some smaller than that proposed by Applicants. (R.R. at 101a-03a; 200a.) The ZHB sitting as fact-finder was free to judge the credibility of the witnesses and weigh the evidence before it, and we will not substitute our interpretation of the evidence for

that of the ZHB. *See, e.g.*, *Taliaferro v. Darby Twp. Zoning Hearing Bd.*, 873 A.2d 807, 811 (Pa. Cmwlth. 2005). Accordingly, the ZHB has granted no more than the minimum relief necessary.

IV. CONCLUSION

For the foregoing reasons, we affirm the trial court's Order affirming the ZHB Decision.

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Paul Hennessy and Beverly Girgenti, Appellants	:	
v.	:	No. 693 C.D. 2025
East Rockhill Township Zoning Hearing Board, Lynn Builders, LLC, and East Rockhill Township	:	

O R D E R

NOW, November 16, 2026, the April 9, 2025 Order of the Court of Common Pleas of Bucks County is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, President Judge