

**[J-57-2021] [OAJC: Todd, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

METAL GREEN INC. AND NOA PROPERTIES INC.	:	No. 9 EAP 2021
	:	
	:	Appeal from the Order of
	:	Commonwealth Court entered on
v.	:	7/28/20 at No. 373 CD 2019
	:	reversing the order entered on
	:	2/26/19 (dated 2/25/19) in the Court
CITY OF PHILADELPHIA AND CITY OF PHILADELPHIA ZONING BOARD OF ADJUSTMENT AND WICKHAM KRAEMER III AND MARY KRAEMER, HUSBAND AND WIFE	:	of Common Pleas, Philadelphia County, Civil Division at No. 0180102735.
	:	ARGUED: September 22, 2021
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	:	
APPEAL OF: METAL GREEN INC.	:	

CONCURRING OPINION

JUSTICE SAYLOR

DECIDED: December 22, 2021

I respectfully concur in the result.

In some material respects, my sentiments are more in line with positions advanced by Justice Wecht in his dissenting opinion than the lead Justices' approach. For example, although the concept of a minimum variance requirement already is confounding in the context of use (as opposed to dimensional) variance scenarios, I agree with Justice Wecht that blight should be considered in the assessment. In reaching this conclusion, I recognize that such consideration injects additional layers of abstractness and subjectivity into the calculus. However, the alternative of ignoring blight when attempting to reconcile the degree of impact of a non-conforming use upon the character of a neighborhood with the burden suffered by the applicant appears to me to be the less palatable alternative.

Ultimately, while I find that the zoning board's failure to render a reasoned decision tests the limits of arbitrariness, I support the lead Justices' approach of implementing the mainstream remedy of a remand for appropriate consideration. When Appellant purchased the subject property, the relevant the local zoning restrictions and the rigorous requirements which must be met to evade them were in place; moreover, there is an element of discretion associated with the affordance of extraordinary treatment. Absent a constitutional challenge to those requirements or such discretionary overlay, it seems to me to be within the purview of the local board to enforce the requirements upon an exercise of sound discretion while providing an adequate explanation. And, although I acknowledge that the dissenting opinion gives me great pause, my circumspection about whether such an explanation may be provided based on the present record falls short of the wholesale rejection posited by the dissent.