[J-9A-2026, J-9B-2026, J-9C-2026 and J-9D-2026]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, McCAFFERY, JJ.

DOROTHY SOLAND, DANIEL SOLAND, MARK OUIMET, AND ANNA OUIMET	:	No. 8 MAP 2025
	:	Appeal from the Order of the Commonwealth Court at No. 395 CD 2022 dated February 20, 2024, Reversing the Decision of the Chester County Court of Common Pleas, Civil Division, at No. 2018-03763-ZB dated March 23, 2022
v.	:	
ZONING HEARING BOARD OF EAST BRADFORD TOWNSHIP AND EAST BRADFORD TOWNSHIP BOARD OF SUPERVISORS AND JOHN MARSHALL AND DARA GANS-MARSHALL EAST BRADFORD TOWNSHIP BOARD OF SUPERVISORS	:	ARGUED: March 11, 2026
v.	:	
EAST BRADFORD TOWNSHIP ZONING HEARING BOARD AND JOHN MARSHALL AND DARA GANS-MARSHALL	:	
APPEAL OF: EAST BRADFORD TOWNSHIP BOARD OF SUPERVISORS	:	
DOROTHY SOLAND, DANIEL SOLAND, MARK OUIMET, AND ANNA OUIMET	:	No. 9 MAP 2025
	:	Appeal from the Order of the Commonwealth Court at No. 990 CD 2022 dated February 20, 2024, Reversing the Decision of the Chester County Court of Common Pleas, Civil Division, at No. 2018-03764-ZB dated March 23, 2022
v.	:	
ZONING HEARING BOARD OF EAST BRADFORD TOWNSHIP AND EAST BRADFORD TOWNSHIP BOARD OF	:	

SUPERVISORS AND JOHN MARSHALL AND DARA GANS-MARSHALL	:	ARGUED: March 11, 2026
APPEAL OF: EAST BRADFORD TOWNSHIP BOARD OF SUPERVISORS	:	
DOROTHY SOLAND, DANIEL SOLAND, MARK OUIMET, AND ANNA OUIMET	:	No. 10 MAP 2025
v.	:	Appeal from the Order of the Commonwealth Court at No. 395 CD 2022 dated February 20, 2024, Reversing the Decision of the Chester County Court of Common Pleas, Civil Division, at No. 2018-03763-ZB dated March 23, 2022
ZONING HEARING BOARD OF EAST BRADFORD TOWNSHIP AND EAST BRADFORD TOWNSHIP BOARD OF SUPERVISORS AND JOHN MARSHALL AND DARA GANS-MARSHALL EAST BRADFORD TOWNSHIP BOARD OF SUPERVISORS	:	ARGUED: March 11, 2026
v.	:	
EAST BRADFORD TOWNSHIP ZONING HEARING BOARD AND JOHN MARSHALL AND DARA GANS-MARSHALL	:	
APPEAL OF: DOROTHY SOLAND AND DANIEL SOLAND	:	
DOROTHY SOLAND, DANIEL SOLAND, MARK OUIMET, AND ANNA OUIMET	:	No. 11 MAP 2025
v.	:	Appeal from the Order of the Commonwealth Court at No. 990 CD 2022 dated February 20, 2024, Reversing the Decision of the Chester County Court of Common Pleas, Civil Division, at No. 2018-03764-ZB dated March 23, 2022
ZONING HEARING BOARD OF EAST BRADFORD TOWNSHIP AND EAST BRADFORD TOWNSHIP BOARD OF	:	ARGUED: March 11, 2026

SUPERVISORS AND JOHN MARSHALL AND DARA GANS-MARSHALL :
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APPEAL OF: DOROTHY SOLAND AND DANIEL SOLAND :

OPINION

CHIEF JUSTICE TODD **DECIDED: November 18, 2026**

In these consolidated appeals, we consider whether a zoning hearing board may grant a use variance on the basis that the variance sought is *de minimis*, and, if so, whether the grant of a use variance was appropriate in the instant case. For the reasons that follow, we hold that a use variance cannot be considered *de minimis*, and, thus, that the use variance granted in the instant case was improper. Accordingly, we reverse the Commonwealth Court's decision below.

I. Factual and Procedural History

Appellees John Marshall and Dara Gans Marshall ("the Marshalls") own approximately eleven acres of property in East Bradford Township ("Township"), Chester County, Pennsylvania (the "Property"). The Property contains several structures, including a residential home known as the Paxson House, which is occupied by the Marshalls and their three children; a currently-unoccupied building known as the Tenant House, which previously was used as a veterinary clinic; and a barn.

The Marshalls desire to operate a bed-and-breakfast ("B&B") on the Property, using the Paxson House, which, under the East Bradford Township Zoning Ordinance ("Ordinance"), is deemed a Class I historic resource,[1] as their main residence, and using

[1] Pursuant to Section 115-122(A)(1)(a) of the Ordinance, Class I historic resources include: all buildings, sites, structures, and objects listed individually in the National Register of Historic Places; all buildings and structures classified as certified historic (continued…)

the Tenant House, which is deemed a Class II historic resource,[2] as the guest quarters. Section 115-48.2(A) of the Ordinance, however, provides that "[t]he only buildings eligible for a bed-and-breakfast estate use shall be owner-occupied Class I historic resources." Ordinance § 115-48.2(A). Additionally, the Ordinance specifies that a B&B must consist of at least four, but no more than ten, guest rooms. *Id.* § 115-48.2(B).

Thus, in December 2017, the Marshalls filed with the East Bradford Township Zoning Hearing Board ("ZHB") an application for a use variance that would allow them to locate the guest rooms of the proposed B&B in the Tenant House, and retain the Paxson House as their private residence. At a hearing before the ZHB on January 29, 2018, the Marshalls testified that they have three children and a large extended family which they often host, and that the Paxson House is not large enough to accommodate their family and the required minimum number of four guest rooms. The Township Zoning Officer, Melissa Needles, testified that, while a B&B estate normally is located in "a historic house on the property . . . it's just a way to utilize a historic house." N.T. Hearing, 1/29/18, at 11 (Reproduced Record ("R.R.") at 90a). Needles also noted that the Property is unusual in that it contains multiple buildings she believes are historic. Finally, the solicitor for the ZHB opined that the existence of buildings on the Property provided "a good reason" to

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structures by the Secretary of the Interior; all buildings, sites, structures, and objects documented as contributing resources in a National Register Historic District; any resources which have received a Determination of Eligibility by the Pennsylvania Historical and Museum Commission; and any resources deemed by the Chester County Historic Preservation Office to substantially meet the National Register criteria under the Chester County Certification Program.

[2] Class II historic resources include buildings, sites, structures, objects and districts included in the historic resources inventory of the East Bradford Historical Commission which do not meet Class I historic resource criteria, but which have been "determined to be of historical or architectural significance to East Bradford and appropriately documented to that effect by the East Bradford Historical Commission." Ordinance § 115-122(A)(3).

use the Tenant House for the guest rooms of the proposed B&B estate. *Id.* at 12 (R.R. at 91a).

On March 16, 2018, the ZHB granted the Marshalls' application for a use variance. In doing so, the ZHB acknowledged that, under the Pennsylvania Municipalities Planning Code ("MPC"), 53 P.S. § 10910.2,[3] and Section 115-85 of the Ordinance,[4] an applicant

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[3] Section 10910.2(a) provides that a variance may be granted if the ZHB makes all of the following findings, if 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 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.
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> (3) That such unnecessary hardship has not been created by the appellant.
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> (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)(1)-(5).

[4] With the exception of some differences in punctuation, Section 115-85 of the Ordinance is identical to Section 10910.2(a) of the MPC.

seeking a variance must demonstrate: (1) an unnecessary hardship will result if the variance is not granted due to the unique physical circumstances or conditions of the property; (2) because of the physical circumstances or conditions of the property, the property cannot be developed in strict conformity with the provisions of the applicable zoning code, and a variance is necessary to allow reasonable use of the property; (3) the hardship is not self-inflicted; (4) the grant of a variance will not alter the essential character of the neighborhood or be detrimental to public welfare; and (5) the variance sought is the minimum variance that will afford relief. ZHB Opinion, 3/16/18, at 4-5 (R.R. at 19a-20a) (citing *Arter v. Philadelphia Zoning Bd. of Adjustment*, 916 A.2d 1222 (Pa. Cmwlth. 2007)). The ZHB further recognized that a variance may be granted only where there are substantial, serious, and compelling reasons. *Id.* at 5 (R.R. at 20a).

However, the ZHB observed that a variance may also be granted "where the variation requested is minor, and rigid compliance is not necessary to protect the public policy concerns of the ordinance." *Id.* (quoting *Lench v. Zoning Bd. of Adjustment of City of Pittsburgh,* 13 A.3d 576 (Pa. Cmwlth. 2011) (finding no abuse of discretion by the zoning hearing board in granting homeowner a *de minimis* dimensional variance allowing him to replace his roof with a new roof that would exceed the maximum allowable height by four inches)). The ZHB concluded that the Marshalls' request for a use variance to allow them to locate the B&B's guest rooms in the Tenant House was reasonable, as the proposed use is in keeping with "the intent and spirit of the adaptive reuse of the historic structures upon the Property."[5] *Id.* at 5-6 (R.R. at 20a-21a).

[5] The ZHB additionally noted that "it is a physical challenge to fit a family in the main dwelling and also accommodate guest rooms – there simply is not enough space based upon the testimony presented during the hearing." ZHB Opinion, 3/16/18, at 6 (R.R. at 21a).

Dorothy and Daniel Soland (collectively, "the Solands"), who are neighboring property owners,[6] and the East Bradford Township Board of Supervisors ("Board") appealed the ZHB's decision to the trial court.[7] Following intervening procedural litigation not relevant to the issues on which we granted review, the trial court reversed the ZHB's decision, finding that the Marshalls failed to satisfy the requirements for a variance under the MPC.

Specifically, the trial court concluded that the Marshalls did not demonstrate the existence of an unnecessary hardship that prevented the Property from being developed in strict conformity with the Ordinance's provisions and, further, that they neglected to show that a variance was needed in order to permit reasonable use of the Property. In the trial court's view, the Marshalls' desire to use the Tenant House to accommodate the B&B guest rooms and maintain the Paxson House as their private residence was a self-imposed hardship that could be overcome or avoided by reasonable reallocation of their living space. The trial court further rejected the ZHB's finding that the variance requested by the Marshalls was *de minimis*, concluding that use variances can never be *de minimis.* The Marshalls appealed to the Commonwealth Court arguing, as relevant herein, that the *de minimis* doctrine may be applied to use variances, and that the ZHB properly granted their application for a use variance in the instant case.

In a divided, published opinion, a three-judge panel of the Commonwealth Court reversed the trial court's decision and ordered the decision of the ZHB be reinstated. *See Soland v. Zoning Hearing Bd. of East Bradford Twp.*, 311 A.3d 1208 (Pa. Cmwlth. 2024) ("*Soland*"). Writing for the majority, Senior Judge Bonnie Brigance Leadbetter, who was

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[6] Mark and Anna Quimet are also neighboring property owners who appealed the ZHB's decision. However, because they failed to file an appellate brief as directed, they were not permitted to file additional briefs or argue before the court.

[7] The Solands and the Township filed separate cross-appeals, and their appeals were consolidated by the trial court. The appeals remain consolidated before this Court.

joined by President Judge Renee Cohn Jubelirer, concluded that a use variance can, in fact, be *de minimis*. Relevant herein, the court initially observed that "[*d*]*e minimis* variance relief has no set criteria and the grant of a *de minimis* variance depends upon the circumstances of each case." *Id.* at 1213. The court conceded that, "[h]istorically, application of the *de minimis* variance doctrine has been exclusively applied in cases where 'only minor deviations from dimensional zoning ordinances have been the basis for the variance sought.'" *Id.* (quoting *Coyle v. City of Lebanon Zoning Hearing Bd.*, 135 A.3d 240, 245 (Pa. Cmwlth. 2016)). However, the court opined: "[w]hile the doctrine has been repeatedly rejected in use variance cases, *Coyle* and the cases cited therein do not create a rigid rule against applying the *de minimis* doctrine to use variances. Rather, they say only that such a variance has never been approved in the past." *Id.* The court further recognized that the "theory underlying the skepticism in applying the *de minimis* doctrine to use variances is that 'the effect of a use variance on the public interest is greater than the effect of a minor deviation from a dimensional requirement.'" *Id.* at 1213-14 (quoting *Coyle*, 135 A.3d at 245). Nevertheless, the court concluded that "this is not necessarily always the case," opining that "the present case proves the point." *Id.* at 1214.

Specifically, the court noted that, although the Tenant House is not classified as a Class I historic resource, "the entire 10-acre property is listed as a Class I historic property on the Township's Historic Resources map and besides the Paxson House there is at least one other Class I historic resource structure on the property (the Barn, which the Marshalls planned to use for events)." *Id.* The court also remarked that the Tenant House is not visible from the road, and that "the proposed B&B estate would be permitted under the Ordinance as a conditional use if the Marshalls would utilize Paxson House to lodge guests rather than the Tenant House." *Id.* Thus, the court opined that the "variance requested is more technical than substantial"; that the proposed use of the Tenant House

is consistent with the intent and spirit of the adaptive reuse of historic structures; and that the variance "poses no adverse effect on the public interest." *Id.*

Judge Ellen Ceisler authored a dissent, wherein she agreed with the majority that the *de minimis* doctrine may be extended to apply to use variances, but disagreed that a *de minimis* use variance was appropriate in the instant case. Despite observing that Section 115-48.2(A) of the Ordinance provides that only owner-occupied Class I historic resources may be used to house guest rooms at a B&B estate, Judge Ceisler suggested that a use variance allowing the Tenant House, a Class II historic resource, to be used to house the B&B guest rooms "would be an appropriate use of the *de minimis* variance doctrine because Section 115-120(A) of the Ordinance expresses a public policy determination that the public interest is served through preservation of Class II historic resources." *Id.* at 1215 (Ceisler, J., dissenting). However, Judge Ceisler found that it is "unclear . . . what public policy interest is furthered by granting the Marshalls relief from the owner-occupied requirements of Section 115-48.2(A)," the import of which are demonstrated by the requirement of the submission of drawings which detail the owner's living areas, the guest rooms, and the common area. *Id.* Stating that she was "hard pressed to differentiate a B&B that utilizes a non-owner-occupied structure for its guest rooms from a motel," Judge Ceisler would have affirmed the trial court's reversal of the ZHB's grant of the Marshalls' application for a use variance.

Following the denial of its application for reargument, the Board and the Solands filed separate petitions for allowance of appeal with this Court. We granted review to consider: (1) whether the Commonwealth Court erred in holding that the *de minimis* doctrine may apply to use variances; and (2) if the *de minimis* doctrine may be applied to use variances, whether the Commonwealth Court erred in finding that a use variance was appropriate in the instant case.

Preliminarily, pursuant to Article I, Section 1 of the Pennsylvania Constitution, Pennsylvania landowners generally have the right to use their property as they wish. Pa. Const. art. I, § 1 (declaring as an inherent right the acquisition, possession, and protection of property). This right, however, is not without limits, as "[t]he Constitution grants the General Assembly broad and flexible police powers . . . to enact laws for the purpose of promoting public health, safety, morals, and the general welfare." *Robinson Township, Washington County v. Commonwealth*, 83 A.3d 901, 946 (Pa. 2013). Accordingly, pursuant to the MPC, a landowner's rights may be reasonably restricted by zoning ordinances enacted by municipalities pursuant to the police power granted to them by the General Assembly. *See Metal Green Inc. v. City of Philadelphia*, 266 A.3d 495, 506 (Pa. 2021) (Opinion Announcing the Judgment of the Court).

Nevertheless, landowners may seek relief from compliance with a particular zoning ordinance by requesting a variance. Critically, there are two types of variances: dimensional variances and use variances. As we explained in *Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh*, a use variance is distinct from a dimensional variance, in that a party seeking 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 zoning regulations," whereas a party seeking a use variance is proposing to use the property "in a manner that is wholly outside the zoning regulation." 721 A.2d 43, 47 (Pa. 1998).

The requirements for obtaining a variance are legislative in nature,[8] and are subject to the terms of the applicable municipal zoning enactment. *Metal Green,* 266

[8] Although the Statutory Construction Act, 1 Pa.C.S. §§ 1921-39, is not expressly applicable to the construction of local ordinances, we apply the principles contained therein when interpreting local ordinances. *Borough of Fleetwood v. Zoning Hearing Bd.*, 649 A.2d 651, 656 (Pa. 1994).

A.3d at 507. The party seeking a variance bears the burden of proof. *Id.* at 506. As set forth in both the MPC and the Ordinance, a zoning board may grant a variance if it determines, *inter alia*, that an unnecessary hardship exists which is caused by the unique physical circumstances of the property for which the variance is sought; that the unnecessary hardship was not created by the landowner; that a variance is needed to enable the party's reasonable use of the property; that the variance will not alter the essential character of neighborhood, or substantially or permanently impair the use or development of the adjacent property so as to be detrimental to the public's welfare; and that the variance is the least intrusive solution. *See* 53 P.S. § 10910.2(a)(1)-(5); Ordinance § 115-85; *see generally Larsen v. Zoning Bd. of Adjustment of City of Pittsburgh*, 672 A.2d 286, 289 (Pa. 1996). The failure of a zoning board to consider each of these factors prior to granting a variance is an error of law. *Larsen*, 672 A.2d at 289-90.

Notwithstanding the above, if a landowner is unable to establish the aforementioned grounds for a traditional variance, as set forth in the MPC or the applicable zoning ordinance, a zoning board may grant a variance where the requested variance is *de minimis*. As this Court explained in *Nettleton v. Zoning Bd. of Adjustment of City of Pittsburgh*:

> [t]he *de minimis* zoning doctrine authorizes a variance in the absence of a showing of the unnecessary hardship traditionally required to support such relief where the violation is insignificant and the public interest is protected by alternate means. . . . In those cases where the *de minimis* doctrine applies, there is no need to resort to any other theory of relief.

828 A.2d 1033, 1038 (Pa. 2003) (internal footnote omitted); *see also Beecham Enterprises, Inc. v. Zoning Hearing Bd. of Kennedy Twp.*, 608 A.2d 1018, 1020 n.4 (Pa. 1992) (observing that this Court and the Commonwealth Court have approved "*de*

minimis dimensional variances where there was no proof that without the variance the property could not be . . . devoted to any permissible use").

Moreover, in contrast to the established requirements for the grant of a traditional variance, "[t]here are no set criteria for determining what will be considered *de minimis*. Instead, the grant of a *de minimis* variance depends upon the circumstances of each case." *Hawk v. City of Pittsburgh Zoning Bd. of Adjustment*, 38 A.3d 1061, 1066 (Pa. Cmwlth. 2012) (internal footnote and citation omitted). Indeed, the grant of a *de minimis* variance "is a matter of discretion with the local zoning board." *Id.* (emphasis omitted). Nevertheless, "the *de minimis* doctrine is an extremely narrow exception to the heavy burden of proof that a party seeking a variance must normally bear." *Pequea Twp. v. Zoning Hearing Bd. of Pequea Twp.*, 180 A.3d 500, 505 (Pa. Cmwlth. 2018); *see also West Bradford Twp. v. Evans*, 384 A.2d 1382, 1384 (Pa. Cmwlth. 1978) ("In the typical case the party seeking a variance carries a very heavy burden, and must show that unless the variance is granted he will suffer unnecessary hardship. Only in rare instances . . . will this Court refrain from applying the traditional requirements for a variance."). With this background in mind, we turn to the arguments of the parties.

II. Arguments

Herein, the Board contends that the Commonwealth Court in this case abused its discretion in holding that the Marshalls are entitled to a *de minimis* use variance because, for over 50 years, this Court and the Commonwealth Court have limited the application of the *de minimis* doctrine to dimensional variances. The Board further submits that the panel's determination that case law "do[es] not create a rigid rule against applying the *de minimis* doctrine to use variances," *Soland*, 311 A.3d at 1213, is expressly contradicted by the decisions of this Court and the Commonwealth Court. *See Board's Brief* at 31-33 (citing*, inter alia, Nettleton*, 828 A.2d at 1038 n.6 ("The zoning *de minimis* doctrine . . . is

limited to the grant of dimensional variance relief where the deviation is relatively minor and strict compliance is not necessary to protect the public interest."); *Beecham Enterprises, Inc.,* 608 A.2d at 1020 n.4 (observing that this Court and the Commonwealth Court have approved "*de minimis* dimensional variances where there was no proof that without the variance the property could not be . . . devoted to any permissible use"); *Segal v. Zoning Hearing Bd. of Buckingham Twp.*, 771 A.2d 90, 94-95 (Pa. Cmwlth. 2001) (stating "[a] *de minimis* variance may be granted 'in very limited situations where the proposed *dimensional* deviations from the zoning requirement is relatively minor, and where the insistence in rigid compliance is not absolutely necessary to preserve the public policy to be obtained.'" (emphasis original, citation omitted)); *East Allegheny Cmty. Council v. Zoning Bd. of Adjustment of City of Pittsburgh*, 563 A.2d 945, 952 (Pa. Cmwlth. 1989) (explaining that, following this Court's decision in *Pyzdrowski v. Bd. of Adjustment of City of Pittsburgh*, 263 A.2d 426, 431 (Pa. 1970) (observing that while use and dimensional variances are controlled by the same principles, the effect on the public interest of a use variance usually is greater than the effect of a variance necessitated by a minor deviation from a lot restriction), the Commonwealth Court "has applied the doctrine of the *de minimis* variance only where minor deviations from *dimensional* zoning ordinances have been the basis for the variance" (emphasis original)); *Rollins Outdoor Advert., Inc. v. Zoning Bd. of Adjustment*, 529 A.2d 99, 103 (Pa. Cmwlth. 1987) (noting that the *de minimis* doctrine "has exclusively been applied in cases where only minor deviations from dimensional zoning ordinances have been the basis for the variances sought"); *Kensington S. Neighborhood Advisory Council v. Zoning Bd. of Adjustment of Philadelphia*, 471 A.2d 1317, 1319 (Pa. Cmwlth. 1984) ("There is no precedent . . . for

approving a *use* variance based on the '*de minimis'* approach" (emphasis original))).[9] The Board submits that, because case law holds that the *de minimis doctrine* may not be applied to use variances, the Marshalls were required to demonstrate the hardship criteria for obtaining a traditional variance under Section 10910.2(a)(1)-(5) of the MPC.

Additionally, the Board argues that, if left in place, the Commonwealth Court's decision will result in a flood of new variance applications, which will place an undue burden on zoning boards and the courts, and, further, "gut the variance directives of the MPC, strip municipal legislative bodies of their zoning prerogatives, and imbue zoning hearing boards and courts with the liberty to effectively re-write local codes in some cases." Board's Brief at 38.

Finally, the Board argues that, even if this Court determines that the *de minimis* doctrine may, in certain instances, be applied to use variances, the evidence does not support the grant of a use variance to the Marshalls. In this regard, the Board offers that there was no evidence presented that the Paxson House is not large enough to house the Marshall family and the requisite number of guest rooms; rather, the Marshalls simply stated that their preference is to locate the guest rooms in the Tenant House so that they can retain the Paxson House for their own private use. The Board submits that this preference does not meet the "heavy burden" of establishing an unnecessary hardship under the MPC and the Ordinance. *Id.* at 41 (citation omitted). The Board further avers that there was no evidence that there were any "unique physical circumstances or conditions" of the Property which would preclude the Marshalls' compliance with the

[9] In their brief, the Board notes that Robert S. Ryan and John E. Ryan state in their treatise Pennsylvania Zoning Law: "[T]he cases to date have held uniformly that a variance in a use provision of a zoning ordinance cannot be *de minimis*," and, despite the "theoretical possibility of application to a use variance," the possibility "seems remote enough to justify adopting the rule that a use variance cannot be considered *de minimis*." Pennsylvania Zoning Law § 6.6.3, 2024 Supp. (1970).

Ordinance. *Id.* at 42. Moreover, the Board claims that the Marshalls were, in fact, granted *two* use variances – one allowing the guest rooms of the B&B to be located in a structure not classified as a Class I historic resource, and one permitting the guest rooms to be located in a structure that is not owner-occupied.

The Solands, in their brief, expressly incorporate the arguments contained in the Board's brief. However, they emphasize that, in order for a dimensional variance to be considered *de minimis*, the deviation from the zoning ordinance must be "relatively minor," such that strict compliance is not necessary to protect the public interest. Solands' Brief at 21. Maintaining that no lesser standard should be applied to use variances, the Solands contend that the variances sought by the Marshalls are not minor, as they would "nullif[y] the Township's baseline [b]ed-and-breakfast estate scheme." *Id.* at 22. Specifically, the Solands assert that the variances requested by the Marshalls "strip away those fundamental criteria" of the Ordinance that limits the location of guest rooms in a B&B estate to owner-occupied, Class I historic resources. *Id.*

Further, with respect to the Commonwealth Court's suggestion that the grant of a *de minimis* variance to allow the Marshalls to use the unoccupied, Class II Tenant House to accommodate the guest quarters is consistent with the spirit and intent of adaptive historic repurposing, the Solands aver that the "spirit and intent" are "secondary considerations in the *de minimis* context," and the primary consideration is the extent of deviation from the ordinance. *Id.* at 23. Observing that neither the ZHB, nor the Commonwealth Court, addressed the question of the extent of deviation in the Marshalls' requested variances, the Solands submit that, because the variances "do not merely modify the pertinent ordinance provisions, they completely extinguish them," the extent of deviation is 100%. *Id.* at 23-24. Thus, the Solands contend that the variances sought in the instant case are not *de minimis*.

In response to the Solands' argument, the Marshalls emphasize that, of the 24 criteria imposed by the Ordinance, they applied for, and were granted, a variance as to only one – Section 115-48.2(A)'s provision that "[t]he only buildings eligible for a bed-and-breakfast estate use shall be owner-occupied Class I historic resources." Ordinance, § 115-48.2(A). The Marshalls further argue that a variance's degree of deviation must be measured qualitatively, as opposed to quantitatively. In this respect, the Marshalls maintain that their variance is "nothing more than a trifle," because the entire Property, including the Tenant House, is historic, and they intend to reside in the Paxson House, "which is within close proximity to the Tenant House." Marshalls' Brief in Response to Solands' Brief at 5.

Responding to the Board's arguments, the Marshalls maintain that there is "no statutory, public policy, or logical reason" to prohibit application of the *de minimis* doctrine to use variances. Marshalls' Brief in Response to Board's Brief at 5. They highlight that the *de minimis* doctrine has been applied in several areas of the law, including criminal prosecutions, election cases, and trespass matters, and they submit that, when this Court has determined that the doctrine does not apply, we have done so based on the express language of the relevant statute. *Id.* at 8 (citing *In re Amazon, Inc.*, 255 A.3d 191, 208 (Pa. 2021) (holding that the "all hours worked" language in the Pennsylvania Minimum Wage Act evinced the legislature's intent "that any portion of the hours worked by an employee does not constitute a mere trifle," and, therefore, the *de minimis* doctrine does not apply to claims under the Act)). They further emphasize that the MPC does not contain any language to suggest that the legislature intended to limit use of the *de minimis* doctrine to only dimensional variances. *Id.* at 9.

The Marshalls additionally contend that, while there is a distinction between dimensional variances and use variances, that distinction is relevant only with respect to

the quantum of proof an applicant must offer to satisfy the "unnecessary hardship" requirement for a non-*de minimis* dimensional variance in Section 10910.2. *Id.* at 11. They stress that, unlike cases involving a variance which is non-*de minimis*, there is no set criteria to obtain a *de minimis* variance, as the right thereto is "premised upon the insignificance of the variance and is appropriate only where rigid compliance with the ordinance is unnecessary to protect the public policy concerns underlying the ordinance." *Id.* (citing, *e.g.*, *Nettleton*, *supra*).

The Marshalls further aver that use and dimensional variance classifications may fall into "grey areas," as is the case with requests for variances from "steep slope regulations." *Id.* at 13 (citing *In re Merion Ridge, LLC*, 2024 WL 5038507 at *9-10 (Pa. Cmwlth. filed Dec. 9, 2024) (unpublished memorandum) ("Requests for variances from steep slope regulations are often considered a 'hybrid' request falling into a 'grey area' because they fit neither as dimensional variances nor use variances.")). They submit that the Ordinance at issue is a "prime example of the imprecision of variance classification," positing that "if a property could qualify as a bed-and-breakfast estate, a variance from the [Ordinance] would not meet the accepted use variance definition because the variance is not a proposal 'to use property in a manner that is wholly outside zoning regulations.'" *Id.* at 14 (citation omitted).

Acknowledging that appellate court case law discussing the application of the *de minimis* doctrine to use variances is "sparse," *id.* at 15, the Marshalls stress that neither the MPC nor the Ordinance differentiate between use variances and dimensional variances, and they maintain that this Court has never expressly held that there is a *per se* prohibition against applying the *de minimis* doctrine to use variances. In this vein, the Marshalls claim that the Board "overstates" this Court's precedent regarding the limitation of *de minimis* variance relief to dimensional variances. *Id.* at 16. For example, they assert

that our statement in *Nettleton* that the *de minimis* doctrine is limited to the grant of dimensional variance relief was *dicta* because the case involved an existing nonconformity, to which the *de minimis* doctrine does not apply. They further note that, although we cited several cases in *Bailey v. Zoning Bd. of Adjustment of City of Philadelphia*, 801 A.2d 492 (Pa. 2002), for the proposition that *de minimis* variances generally have been granted only in cases involving a dimensional variance, *Bailey* involved the Philadelphia Zoning Code rather than a variance request under the MPC. Last, the Marshalls observe that, while this Court "addressed dimensional variance relief under the MPC" in *Beecham*, we did not apply the *de minimis* doctrine, finding that the applicant was seeking a non-*de minimis* dimensional variance. *Id.* at 18.

The Marshalls additionally challenge the Board's prediction that application of the *de minimis* doctrine to use variances will result in a flood of requests for use variances, pointing to the fact that, since the Commonwealth Court's decision in the instant case, no other courts have cited to or applied that decision.

Finally, the Marshalls contend that the question of whether they actually occupy the Tenant House is "a trifle," because they *could* occupy the Tenant House if they so desired. *Id.* at 22-23. They likewise assert that the issue of whether the Tenant House is a Class I or Class II historic is "a trifle," because the distinction between Class I and Class II historic resources is "nebulous," and the entire Property is considered historic. *Id.* at 23. Thus, they argue that "[a]llowing a bed-and-breakfast estate to operate out of a Class II historic resource, on a property designated as a Class I historic resource, is an insignificant deviation from the . . . Ordinance and does not offend the public policy underlying the ordinance," such that a use variance is warranted in this case. *Id.* at 24.[10]

[10] In their Reply Brief, the Solands submit that the Marshalls' extended discussion of the specific considerations that render their requested variance *de minimis* proves the point that allowing a *de minimis* use variance "would introduce subjectivity and great complexity (continued…)

III. Analysis

As noted above, there are two distinct types of variances: dimensional variances and use variances. A party seeking a dimensional variance is merely requesting "a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations." *Hertzberg,* 721 A.2d at 47. In contrast, a party who seeks a use variance is proposing to use the property "in a manner that is wholly outside the zoning regulation." *Id.* It is for this reason that we have held that "the grant of a dimensional variance is of lesser moment than the grant of a use variance." *Id.; see also Pyzdrowski*, 263 A.2d at 431 ("[T]he effect upon the public interest of a use variance usually is greater than the effect of a variance necessitated by only a minor deviation from a lot restriction.").

Further, where a landowner is unable to meet the requirements for a traditional variance, a zoning board may grant a *de minimis* variance if the proposed deviation is relatively minor, and strict compliance with the applicable ordinance is not necessary to protect the public policy contemplated therein. Importantly, in applying the *de minimis* doctrine, courts "must be mindful that zoning boards and courts function, *inter alia*, to enforce zoning ordinances in accordance with applicable law; not to impose their concepts of what the ordinance ought to be." *Pequea Twp.*, 180 A.3d at 505.

Although we have not, to date, expressly prohibited application of the *de minimis* doctrine to use variances, courts have expressed doubt as to whether a use variance can be considered *de minimis*. *See, e.g.*, *Cook v. Zoning Hearing Bd. of Ridley Township*, 408 A.2d 1157, 1159 (Pa. Cmwlth. 1979) (noting it was difficult for the court to conceive of a use variance which would be *de minimis*, because "the effect upon the public interest

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into the variance world," an issue that does not exist with respect to dimensional variances, "where the focus is very narrow and is quantitative, not qualitative." Solands' Reply Brief at 3-4.

of a use variance is ordinarily greater than the effect of a dimensional variance"); *Coyle*, 135 A.3d at 246 (same).

The reason for this concern is apparent. In determining that a dimensional variance is *de minimis*, a zoning board or court simply must find that the proposed deviation from the dimensional requirements is so minor that it will not undermine the public policy concerns the ordinance is intended to protect. Although there is no bright-line rule for what constitutes a *de minimis* dimensional variance, case law provides guidelines for such assessment. For example, in *Lench*, the Commonwealth Court determined that a landowner's request for a dimensional variance to add two feet, four inches to the height of his home was *de minimis*, and, in doing so, suggested that "[t]here is authority that a dimensional change of less than 10 percent will be treated as *de minimis*." 13 A.3d at 582 (citing *Pyzdrowski*, 263 A.2d at 431-32 (suggesting that a dimensional variance of 8.4 inches, or 7/100 of the required 10-foot width, was *de minimis*); *Township of Middletown v. Zoning Hearing Bd. of Middletown Twp.*, 682 A.2d 900, 901 (Pa. Cmwlth. 1996) (property owner's variance request to add 167 square feet to a building, which amounted to an increase of 6.76%, was *de minimis*); *In re Appeal of Ressler Mill Foundation*, 573 A.2d 675, 676 (Pa. Cmwlth. 1990) (holding that a seven-foot, or 4.7%, variance from a 150-foot lot width requirement was *de minimis*)).

Conversely, in *Pittsburgh Cultural Trust v. Zoning Bd. of Adjustment of City of Pittsburgh*, 604 A.2d 298 (Pa. Cmwlth. 1992), the court held that, even if the variance sought by property owners to establish an amusement arcade within 200 feet of a historic district could be considered a dimensional variance, as opposed to a use variance, it was not *de minimis* because the applicable ordinance required a 500-foot buffer. Similarly, in *Beecham Enterprises,* this Court held that a motel operator was not entitled to a *de minimis* dimensional variance because the sign he wished to erect was 17 times larger

than the largest sign permitted in the combined residential/commercial district where motel was located. 608 A.2d at 1020.

In contrast to *de minimis* dimensional variances, which may be granted where the proposed deviation is *measurably* minor and will not subvert the public policy concerns underlying the ordinance, the grant of *de minimis* use variances would require zoning boards and courts to improperly engage in a wholesale assessment of a municipality's considered legislative judgment in enacting a particular ordinance. In *Kensington South Neighborhood Advisory Council*, the appellant applied for and was granted a *de minimis* use variance allowing him to use a space zoned for retail sales to sell wholesale produce. In holding that the zoning board improperly granted the variance on the ground that the difference between the retail and wholesale dispensing of goods is *de minimis*, the Commonwealth Court succinctly explained the reason for limiting the *de minimis* doctrine to dimensional variances:

> The reason for our restriction of the "de minimis" rule is made clear by the instant case, where to apply the rule *would subvert the legislative judgment reflected in the Code that uses involving sales at retail on the one hand and wholesale on the other are to be treated differently for zoning purposes.* . . . Thus, for the Board to rule that the distinction between retail and wholesale operations is "de minimis" and may be ignored in considering variance applications, *is to disregard the legislative judgment that such a distinction is significant to zoning in Philadelphia.*

471 A.2d at 1319–20 (emphasis added); *see also Zimmerman v. Zoning Bd. of Adjustment of City of Philadelphia*, 654 A.2d 1054, 1057 (Pa. 1995) (citing *Kensington South Neighborhood Advisory Council*, *supra*, for proposition that applying *de minimis* rule to use variance "would contradict legislative judgment reflected in the [Zoning] Code"); *West Bradford Twp.*, 384 A.2d at 1384 (observing that "there is no invasion of the legislative function in a minor dimensional variance" (citation omitted)).

For the reasons set forth above, we hold that the *de minimis* doctrine is not applicable to use variances. Accordingly, we conclude that the ZHB erred in granting the Marshalls a *de minimis* use variance. As the Commonwealth Court reversed the decision of the trial court, which correctly determined that the ZHB's grant of a *de minimis* use variance was improper, we reverse the Commonwealth Court's order.[11]

Justices Donohue, Dougherty, Wecht, Mundy, Brobson and McCaffery join the opinion.

[11] In light of our determination that the *de minimis* doctrine does not apply to use variances, we find it unnecessary to consider the separate question of whether the variance sought by the Marshalls was properly granted under that doctrine.