Choose Your Own Adventure - Legal Case Studies for Planning

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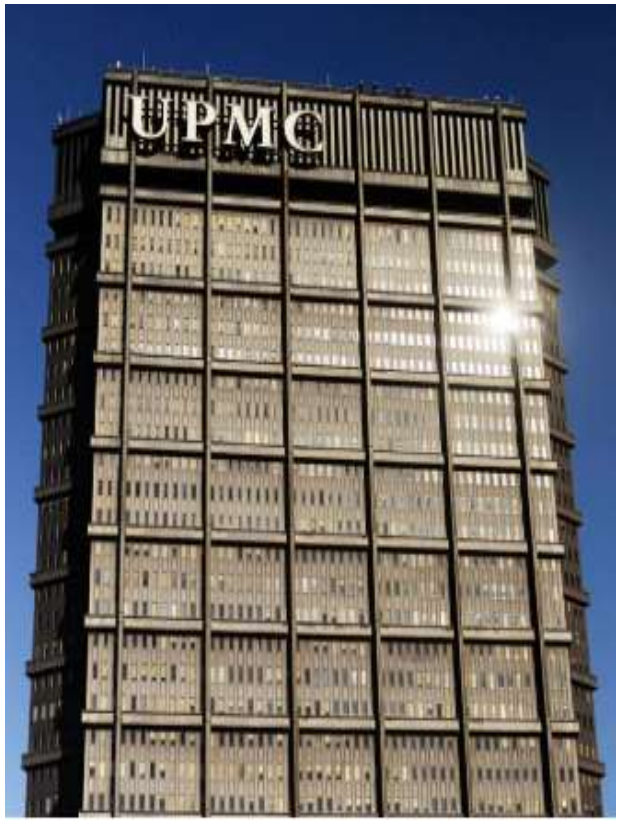
Goals & Outline

1. Engaging conversation – we want to learn from you
2. Update on Pennsylvania case law – hopefully, you learn something from us
3. 6.5 cases to discuss



AUUE, Inc. v. Borough of Jefferson Hills Zoning Hearing Board, 318 A.3d 771 (2024)

- AUUE for UPMC sought a zoning permit to confirm that the proposed hospital use was permitted by right in the applicable zoning district
- Zoning Officer requested more information related to parking and the proposed accessory helipad
- Zoning Officer issued the zoning permit affirming that the use is permitted by right, and that the land use ordinances would need to be complied with
- Neighbors appealed the permit to the Zoning Hearing Board

AUUE, Inc. v. Borough of Jefferson Hills Zoning Hearing Board, 318 A.3d 771 (2024)

- What does “by right” mean?
- Given these facts, would you require the applicant to satisfy all the ordinance’s site design, parking access, etc. provisions *before* issuing the permit, or allow some to be dealt with as conditions after issuance?
- Where should the line be drawn?

AUUE, Inc. v. Borough of Jefferson Hills Zoning Hearing Board, 318 A.3d 771 (2024)

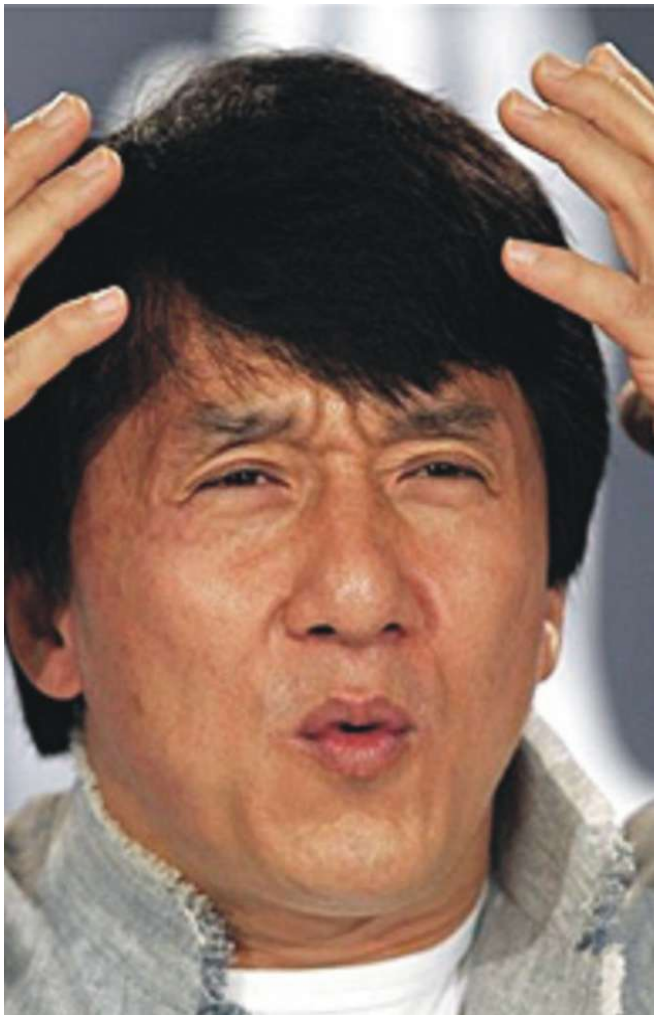
- The PA Supreme Court held that the MPC and the Zoning Ordinance authorized the Zoning Officer to issue a use permit for a use that is "by right" without requiring separate compliance with all land use ordinance provisions in advance.
  - Where a use is permitted by right, the zoning officer may approve the use permit even if not everything is settled, so long as the use is consistent with the ordinance's definitions of "by right."

PC Land LLC v. Board of Commissioners of Bethlehem Township, 320 A.3d 804 (Pa Commw. 2024)

- Board conditionally approved the final plan: "15. The applicant shall obtain all required permits and approvals from other governmental agencies including but not limited to the Easton Suburban Water Authority, Bethlehem Township Municipal Authority, Pennsylvania Department of Environmental Protection, Northampton County Conservation District, Pennsylvania Department of Transportation, United States Army Corps of Engineers, etc. ... prior to presenting the Final Plan for signatures."
- "No plat which will require access to a highway under the jurisdiction of [PennDOT] shall be finally approved unless the plat contains a notice that a [HOP] is required ... before driveway access to a State highway is permitted." Section 508(6) MPC
- "A building code official may not issue a permit for any property requiring access to a highway under [PennDOT's] jurisdiction unless the permit contains **notice** that a [HOP] is required ... before driveway access to a Commonwealth highway is permitted." 34 Pa. Code § 403.63(d)
- "…Required plan notations. The following wording shall be required to be placed on any final subdivision or land development plan, as applicable: (a) If access will be provided onto a state highway, access to a state highway shall only be provided in compliance with a PennDOT [HOP]." Section 230-34 SLDO.

PC Land LLC v. Board of Commissioners of Bethlehem Township, 320 A.3d 804 (Pa Commw. 2024)

- What makes a condition reasonable?
- Do you have standard conditions?
- Thoughts on the condition?
  - "The applicant shall obtain all required permits and approvals from other governmental agencies including but not limited to the Easton Suburban Water Authority, Bethlehem Township Municipal Authority, Pennsylvania Department of Environmental Protection, Northampton County Conservation District, Pennsylvania Department of Transportation, United States Army Corps of Engineers, etc. ... prior to presenting the Final Plan for signatures."



PC Land LLC v. Board of Commissioners of Bethlehem Township, 320 A.3d 804 (Pa Commw. 2024)

- Holding: Condition invalid. A municipality cannot delay final approval pending a PennDOT permit (or any other outside agency approval).
- Concurrent jurisdiction – not hierarchical

Smith Land & Improvement Corporation v. Swatara Township Zoning Hearing Board, 313 A.3d 477 (Pa Commw. 2024)

- Swatara Township permitted warehousing by conditional use in the GC District
- The Board of Commissioners decided to amend the Zoning Ordinance to not permit warehousing in the GC District
- 8.5 hours before the amendment was adopted, Smith Land filed a conditional use application for a warehouse development in the GC District

Smith Land & Improvement Corporation v. Swatara Township Zoning Hearing Board, 313 A.3d 477 (Pa Commw. 2024)

- What is the pending ordinance doctrine?
- Has anyone relied on it?
- Does it apply here?

Smith Land & Improvement Corporation v. Swatara Township Zoning Hearing Board, 313 A.3d 477 (Pa Commw. 2024)

Per Section 917 of the MPC:

When an application for either a special exception or a conditional use has been filed with either the zoning hearing board or governing body, as relevant, and the subject matter of such application would ultimately constitute either a land development as defined in section 107 or a subdivision as defined in section 107, no change or amendment of the zoning, subdivision or other governing ordinance or plans shall affect the decision on such application adversely to the applicant, and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed.

RDM Group v. Pittston Township Zoning Hearing Board, 311 A.3d 1216 (Pa Commw. 2024)

- Proposal to build a 164,640 SF warehouse on 17.9 acres
- Zoned R-1 but surrounded in large part by I-1 and developed industrial tracts
- Warehouses not permitted in R-1; required a use variance from the ZHB
- The property was "not marketable [for residential use] and has 'extremely minimal' and 'distressed' value because it is 'shoehorned' between industrial properties on two sides."
- "[U]se of the Property for residential purposes is 'impractical' and 'defies conventional wisdom' because…the entire neighborhood has been developed in an industrial character."
- The nearest residential property is located approximately 1,000 feet away, and the nearest residential development is approximately 2,000 feet away
- Undisputed: Single-family home (permitted by right) could technically be built on the property

RDM Group v. Pittston Township Zoning Hearing Board, 311 A.3d 1216 (Pa Commw. 2024)

- What do you think?
- Developer's engineer testified that a single-family home could be built on the 17+ acre parcel
- Developer's land planner testified that a single-family home could be built on the 17+ acre parcel

RDM Group v. Pittston Township Zoning Hearing Board, 311 A.3d 1216 (Pa Commw. 2024)

- Changing circumstances
- “Pennsylvania zoning cases have for decades recognized that the character and use of surrounding properties can constitute unique circumstances justifying the issuance of a variance where they are sufficiently dissimilar to, and prohibitive of, the use of the subject property as zoned.”
- “A zoning board, in considering a use variance request, must determine whether the zoning regulations governing the subject property permit the landowner to make any *reasonable* use of the property as zoned. To the extent that the ZHB applied a simple ‘possibility’ standard, it erred as a matter of law.”

In re Bass, 320 A.3d 892 (Pa Commw. 2024)

- City of Philadelphia; vacant parcel; formerly an auto repair shop; commercial neighborhood
- Developer sought a use variance to permit multi-family housing
- Significant environmental remediation required
- Testimony that, although the area is commercial, commercial is failing in the neighborhood
- Cost of remediation and construction would exceed value of a commercial use
- Proposed multi-family would have less traffic and less of an impact than permitted uses

In re Bass, 320 A.3d 892 (Pa Commw. 2024)

Unnecessary Hardship

Objectors:

- Environmental remediation irrelevant because accounted for in the purchase price
- "Economic hardship cannot justify a variance"
- Developer did not try to sell the property as a commercial use
- No study from developer's expert real estate broker witness to support the assertion that the neighborhood was dead as to commercial uses

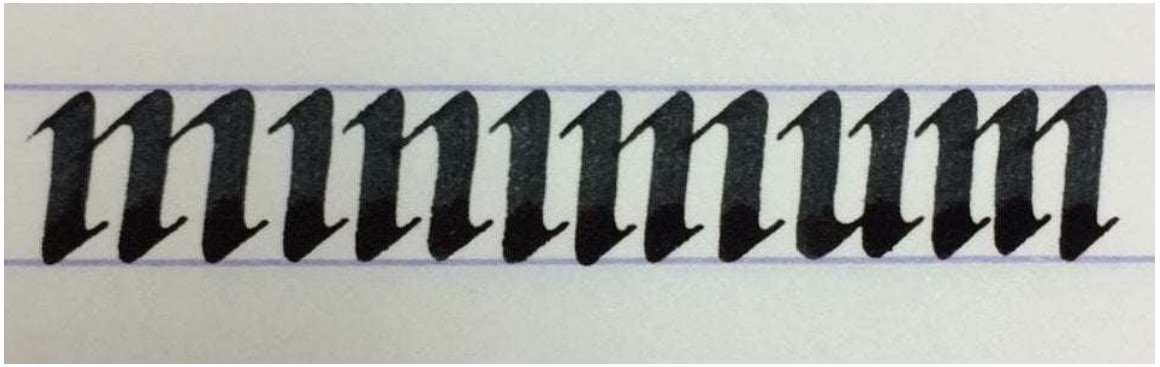
Developer:

- Development of the property is not viable given the blighted condition
- Remediation needed
- No commercial market in the neighborhood
- No rebuttal on these points by Objectors

In re Bass, 320 A.3d 892 (Pa Commw. 2024)

Minimum Variance to Afford Relief

Objectors claim no evidence that 33 units is the minimum number of units necessary for the project to generate a positive return



Developer provided evidence that:

1. The project will be less impactful than permitted uses
2. Multi-family residences already within the neighborhood
3. Comp plan = residential; surrounding area had become more residential

In re Bass, 320 A.3d 892 (Pa Commw. 2024)

Anyone on a ZHB or work with one?

Practical board or a legal board?

What makes practical sense here?

What makes legal sense here?

In re Bass, 320 A.3d 892 (Pa Commw. 2024)

Unnecessary Hardship

- "…blight and environmental degradation of the Property constitute 'unique physical circumstances or conditions' that are 'peculiar to the property.'"
- The prohibitive remediation cost must be considered
- No rebuttal to real estate broker's opinion
- Criteria met

Minimum Variance to Afford Relief

- Quantitative (dimensional) vs. qualitative (use)
- Less intense use
- Changing conditions?
- Criteria met

Canivan v. Honesdale Borough Zoning Board, 289 A3d 551 (Pa Commw. 2022)

Church sought a dimensional variance to expand its parking lot

Historically, there had been a lot of on-street public parking

The Borough made street improvements and built a new bridge which eliminated most of the on-street public parking

ZHB and Court found:

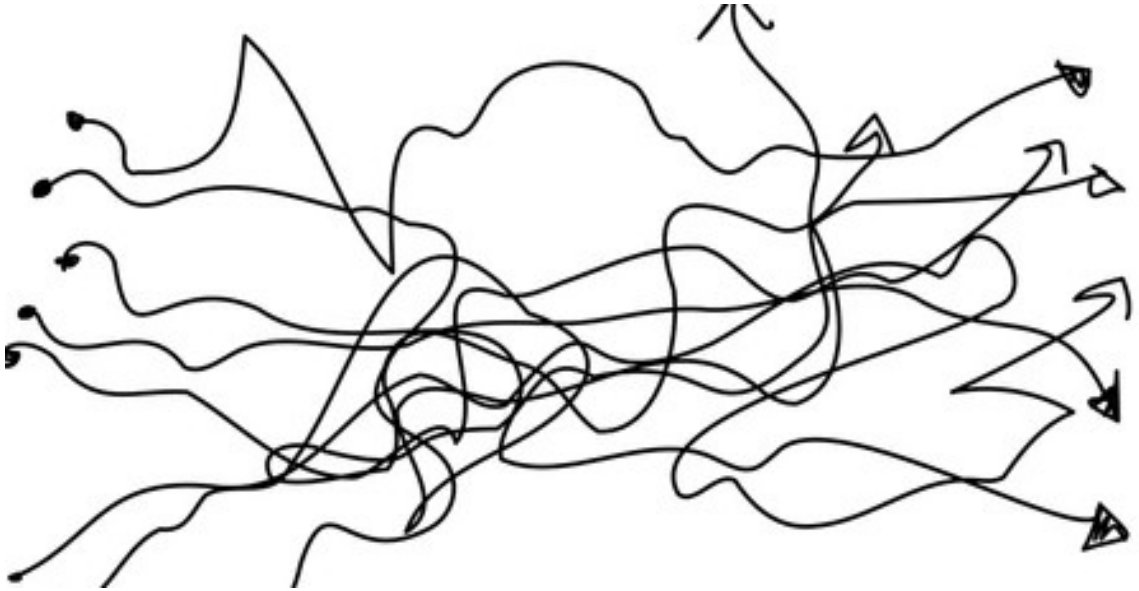
- No significant impact to opposition neighbor
- Expansion is “needed to provide for the increased size of the congregation”
- Expansion is “needed…due to the reduction of the number of street parking in the area…”
- Minimum relief necessary in that church drastically reduced the size of the parking lot from its original request

Canivan v. Honesdale Borough Zoning Board, 289 A3d 551 (Pa Commw. 2022)

Protect Elizabeth Township v. Elizabeth Township, 2025 WL 1672263 (Pa Commw. 2025)

- Conditional use applications for unconventional natural gas wells on lots with single family homes; lot sizes were 32, 63, and 187 acres
- Zoning Ordinance mandates that "[i]n all zoning districts where single-family dwellings or two-family dwellings are an authorized use or are a legally nonconforming use, the single-family dwelling or two-family dwelling shall be the only principal structure on the lot."
- "Principal building or structure" - "[t]he building structure in which the principal use is conducted."
- "Building" - "[a] roofed structure, enclosed by walls to be used for shelter, enclosure or protection of persons, goods, materials and animals."
- "Structure" - "[a]ny man-made object having an ascertainable stationary location on or in land or water whether or not affixed to the land."
- "Principal use" - "[t]he primary or predominant use to which the property is or may be devoted, and to which all other uses on the premises are accessory."
- "Accessory use or structure" - "[a] use or structure, located on the same lot with the principal use or structure, that is subordinate and incidental to the principal structure or use of the property and that may occupy a separate structure and/or area on or in the ground ...."

Protect Elizabeth Township v. Elizabeth Township, 2025 WL 1672263 (Pa Commw. 2025)



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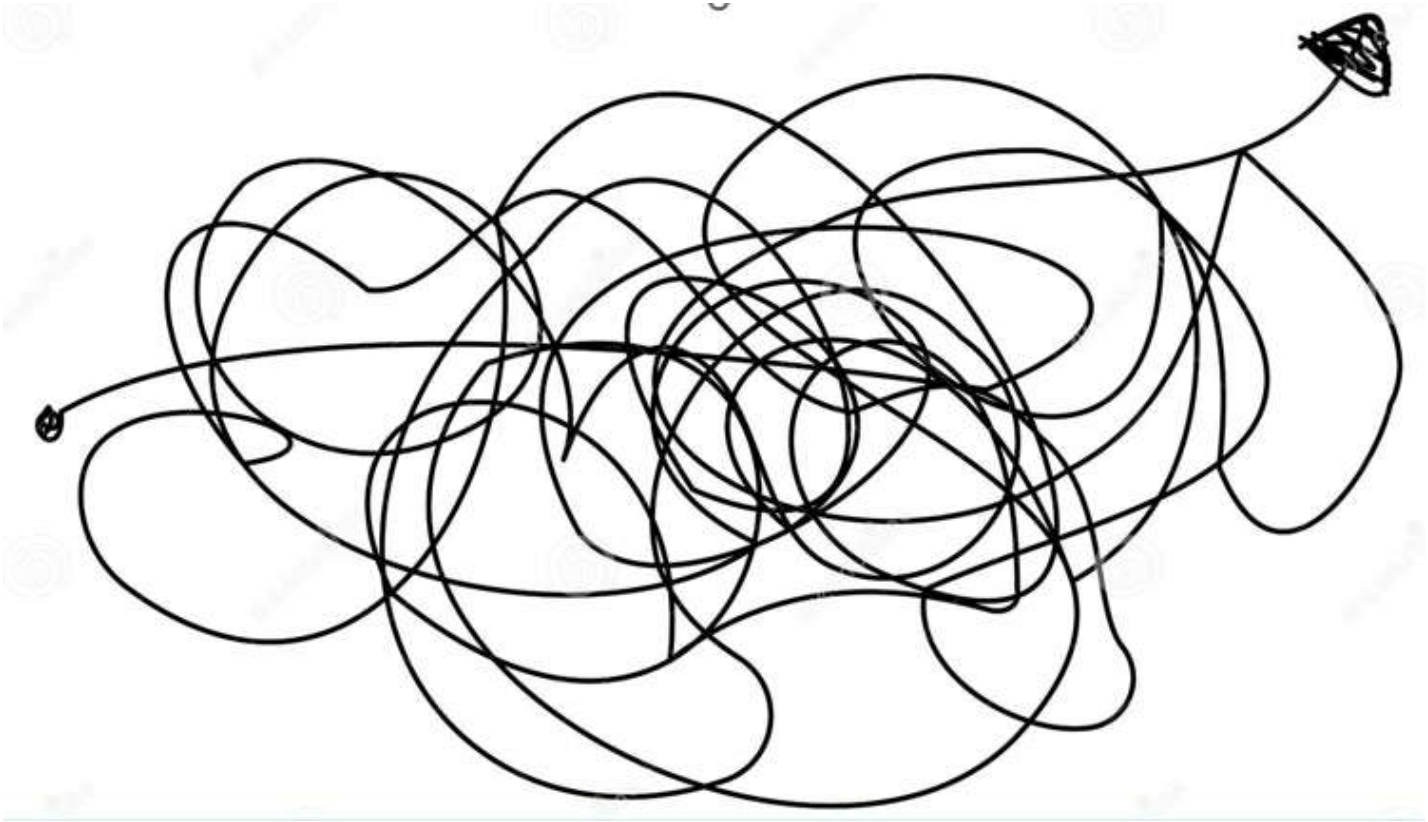

Protect Elizabeth Township v. Elizabeth Township, 2025 WL 1672263 (Pa Commw. 2025)

Importance of defined terms

Principal vs. Accessory

Building vs. Structure

Abut vs. Adjoin

Height

Protect Elizabeth Township v. Elizabeth Township, 2025 WL 1672263 (Pa Commw. 2025)

The court determined that the definition of "principal building or structure" must be read as "**The building or structure in which the principal use is conducted**." This interpretation was necessary to give independent meaning to the word "structure" separate from "building."

The court found the drilling pads are a **"structure"** because they are man-made objects fixed on the land.

The pads are also considered a **"principal use"** of the lots, which the parties agreed upon, since "oil and gas drilling" is listed as a principal use in the ordinance.

Because the Pads are **"principal structures"** and each proposed lot already contains an existing **single-family dwelling**, they are **prohibited** under Section 303(C) of the Zoning Ordinance.

Questions?

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