

ONTELAUNEE TOWNSHIP,	:	IN THE COURT OF COMMON PLEAS
Appellant,	:	OF BERKS COUNTY, PENNSYLVANIA
v.	:	
	:	
ONTELAUNEE TOWNSHIP ZONING	:	
HEARING BOARD,	:	No. 25-17136
Appellee,	:	Land Use Appeal
and	:	
	:	
PHYLLIS YODER,	:	
Intervenor.	:	Assigned to J. Benjamin Nevius, J.

DECISION

July 2, 2026

The within land use appeal involves unusual circumstances.¹ At issue is the determination of the Ontelaunee Township Zoning Hearing Board (the “ZHB”) granting Intervenor, Phyllis Yoder (“Ms. Yoder”), a dimensional variance permitting her to have one turkey—Lenny²—amongst other birds, on her one-acre residential lot located in Ontelaunee Township, Berks County, Pennsylvania (the “Township”). Aggrieved by the ZHB’s decision, the Township’s Board of Supervisors (the “Supervisors”) appeals to the Court of Common Pleas.

Lenny, it seems, is at the center of the legal knot that has consumed considerable resources of various government officials in the Township, and a handful of respected members of the local legal community. The ZHB addressed the subject of this dispute over several meetings and public hearings, utilizing the services of two separate solicitors. The Supervisors addressed the matter outside the context of these proceedings as well, drafting and adopting a change in regulations for keeping certain birds in the Township. Two more solicitors then entered into different parts of the

¹ It is not unusual for this Court to be tasked with making difficult decisions that directly affect where someone will live and whom they may reside with. However, these issues are generally in context of custodial arrangements in family court, the termination of parental rights, the eviction from a residence in a landlord-tenant case, or the incarceration of convicted defendants in criminal matters. Seldom is the Court called upon to rule upon the lawful presence of a live domesticated bird—the very issue involved in this land use appeal.

² Lenny is a domestic turkey (*Meleagris gallopavo domesticus*). Of some interest, it appears there are only two extant turkey species: the wild turkey (*Meleagris gallopavo*) of Southern, Central and Eastern North America, and the ocellated turkey (*Meleagris ocellata*) of the Yucatán Peninsula in Mexico.

case on behalf of the Supervisors, while Ms. Yoder hired private counsel to represent her before the ZHB and now before this Court. Upon consideration of the certified record of proceedings before the ZHB (the “Record”), and after argument held, the Court, with careful and thorough consideration, now endeavors to resolve the matter, as it has turned into a proverbial albatross.³

I. BACKGROUND AND PROCEDURAL HISTORY

Ms. Yoder has resided at 161 Bewley Lane (the “Property”) since 1993. At all times since acquiring the Property, Ms. Yoder has kept poultry birds as pets—most regularly ducks and chickens, but more recently a turkey as well. The Property is located within but at one edge of the Township’s R-1 Low Density Residential District (the “R-1 District”). Aside from neighboring residential properties, it immediately abuts a farm (in an agricultural district) and train tracks. The Property is approximately one acre in size. In addition to a residence, the Property includes a swimming pool, storage shed, and enclosed chicken coop and pen area. Ms. Yoder possesses nine chickens, three ducks, and one turkey—all of which she keeps in her backyard. The birds are confined to covered structures on the Property for their protection from predators, most especially foxes. She considers the birds to be her pets.⁴

On June 20, 2025, Ms. Yoder received a Notice of Violation (the “Notice”) from the Township’s Zoning Officer informing her that she was in violation of Sections 503.2D and 507 of the Ontelaunee Township Zoning Ordinance of 2000 (the “Zoning Ordinance”) for keeping a rooster, turkey, and chickens at the Property. Ms. Yoder appealed to the ZHB, contending that the Notice was the first she learned that her birds violated the Zoning Ordinance.

³ It is with rhetorical jest that the Court asks: has any single turkey before Lenny generated so much litigation?

⁴ The Supervisors do not dispute the birds are pets. As set forth below, the Supervisors instead argue that keeping poultry as pets is not an agricultural use.

Township Poultry Regulation 1972 to Present

When Ms. Yoder moved to the Property in 1993, there was no general ban or specific regulation to the number of poultry birds permitted on a property in the R-1 District. Raising poultry was a specific concern of hers when purchasing a residence in the Township—her realtor at the time assured her that keeping birds was permissible. Prior to the Zoning Ordinance’s iterative adoption in 2000, the Township’s zoning regulations dated back to a previous version enacted in 1972 (the “1972 Ordinance”) which permitted live poultry for agricultural use in the R-1 District. With its adoption in 2000, the Zoning Ordinance no longer allowed for the keeping of live poultry in the R-1 District.

It appears that, for more than 30 years—and most especially for the quarter of a century since the updated Zoning Ordinance went into effect—no one took issue with Ms. Yoder’s birds. With some synchronicity, during the pendency of Ms. Yoder’s appeal to the ZHB, the Township had apparently been considering an amendment to the Zoning Ordinance to provide additional restrictions/guidance pertaining live poultry in the R-1 District. The Township adopted these changes in 2025 (the “2025 Amendment”), *after* Ms. Yoder appealed the Notice to the ZHB, but before resolution of the matter.⁵

Among other things, the 2025 Amendment provides specific guidance on what the Township will allow when it comes to live poultry in the R1-District. Section 554 (“Accessory

⁵ Although the Record does not contain any direct evidence that the 2025 Amendment was adopted directly and specifically in response to the Ms. Yoder’s situation, it seems beyond mere coincidence that the types of birds specifically referenced in the new update are ducks, chickens, turkeys, and roosters—the exact birds Ms. Yoder keeps at the Property. Further, the latest iteration does not mention geese or pigeons, even though they are referenced elsewhere in the Zoning Ordinance when defining “POULTRY FARMING” as “the raising of birds and fowl, including but not limited to, chickens, ducks, pigeons, roosters, geese, and turkeys.”

Ducks, chickens, and turkeys are permitted in the R1 District by the 2025 Amendment, with restrictions. Roosters are specifically prohibited in the R-1 District in the 2025 Amendment.

Keeping of Chickens, Ducks, and Turkeys”) sets forth the number and kinds of birds permitted, with a sliding scale based on property area.⁶ The scale addresses lots of less than one acre (no birds permitted), lots between one and two acres in size, lots between two and two-and-a-half acres, and then additional allocations for each half acre beyond two-and-a-half. The Property is one acre, meaning that, under the 2025 Amendment, Ms. Yoder is eligible to have 15 total chickens and/or ducks, but no turkeys. Turkeys are not permitted under the 2025 Amendment unless the lot is at least two acres, which would allow for 20 total chickens, ducks, and/or turkeys (no more than two of which can be turkeys). For each half acre beyond two-and-a-half acres, five more birds are permitted (no more than one of which can be a turkey). So, a four-acre lot could have 35 total birds (no more than five could be turkeys).

The Hearing and Record

On August 25, 2025, the ZHB commenced a public hearing on Ms. Yoder’s appeal and variance request before the ZHB. The two-day hearing concluded on September 25, 2025.⁷ The Township’s solicitor informed the ZHB at the August 25 date that the Supervisors would be considering an amendment to the Zoning Ordinance at their next meeting, and that the proposed amendment could impact Ms. Yoder’s matter and requested zoning relief. Mindful of impending action by the Supervisors, the parties agreed to continue the hearing to September 25, 2025. The Supervisors approved the 2025 Amendment in the intervening time between the start and conclusion of the hearing.

⁶ As discussed in the previous footnote, these permitted birds are ducks, chickens (no roosters), and turkeys.

⁷ These hearing dates were advertised in the *Reading Eagle*, posted on the Property and at the Township building, and mailed to Ms. Yoder and her neighbors. Nobody has raised an issue that the hearing notices were improper or untimely.

Over the course of the two hearing dates, the ZHB created a substantial record—approximately 430 pages of notices, documents, exhibits, and transcripts of testimony, as well as two videos and an audio recording submitted by Ms. Yoder and one of her neighbors (the “Record”). Because of the impending vote by the Supervisors on what would ultimately become the 2025 Amendment, the solicitor for the ZHB largely limited the initial hearing date to the identification of exhibits and parties/witnesses, as well as procedural matters.

The ZHB received testimony at the September 25, 2025, continued hearing date. Ms. Yoder testified on her own behalf, as did her daughter, Melissa (“Melissa”), who also resides at the Property. Jeff Hogg, the Township Zoning Officer (the “Zoning Officer”), testified for the Township; Amy Haas-Rohricht (“Ms. Haas-Rohricht”), a neighbor of Ms. Yoder, testified as an objector. Attorney Michelle Mayfield appeared on behalf of the Supervisors, and Attorney Leah Rotenberg appeared on behalf of Ms. Yoder. [See Notes of Testimony, Sept. 25, 2025 (“N.T.”)].

In her testimony, Ms. Yoder recounted that she has had pets at the residence since first moving there in 1993—initially cats, dogs, and ducks. Ms. Yoder explained she became interested in poultry from living on a farm as a child. [N.T. at 24-25]. She testified that she keeps ducks, chickens, and turkey as pets; she does not eat them or sell them. [*Id.*]. Ms. Yoder testified that Lenny is noisiest when she goes outside to feed him, and that she cannot hear him from inside her home. [*Id.* at 28]. Prior to 2025, Ms. Yoder had never previously had contact with the Zoning Officer or received complaints from neighbors about her animals. [*Id.* at 33].

According to Ms. Yoder, Lenny was two years old at the time of the ZHB hearing. [*Id.* at 38]. She said his expected lifespan is four to five years. [*Id.*]. Ms. Yoder testified she was willing to commit to not getting any additional turkeys in the future in the event the ZHB might let her keep the pets she currently has. [*Id.* at 39]. The Township’s solicitor asked Ms. Yoder in detail

about the care of the birds, including how they are fed, housed, and cleaned up after. Ms. Yoder appears to be knowledgeable in the care and keeping of her birds.

Melissa's testimony was relatively brief and focused on confirming that there has been some form of poultry living at the Property since 1993. The Zoning Officer testified as to his role with the Township, further offering his opinion that the chickens and ducks are now conforming accessory uses under the 2025 Amendment. The Zoning Officer did not believe Ms. Yoder's animals should be considered as part of agriculture because, at least in part, she considers them to be pets.

Ms. Haas-Rohricht testified that she lives next to Ms. Yoder. She and her husband moved to the neighborhood in 2017. She claimed that the combination of the turkey and the rooster resulted in enough of an annoyance to complain. "It wasn't until the turkey got involved that it's almost like the rooster and the turkey played off each other. And that's when my husband and I literally could not even stand being outside... you can hear the ducks, sometimes the chickens. But it was the rooster and the turkey specifically that were the biggest nuisance." [*Id.* at 81]. Ms. Haas-Rohricht also testified that things noticeably improved in the time between having complained about the noise and the hearing:

[R]ight now, I don't know what change they made but it's actually quite peaceful. I do not hear a turkey and I don't hear a rooster. And I will say the first time in the last several weeks or so, I'm actually enjoying living again in my house because I don't hear any of that.

[*Id.* at 82].

What appears to have been central to Ms. Haas-Rohricht's testimony is that Ms. Yoder's poultry birds were not a nuisance from the time she moved next door in 2017 until sometime in 2025, when the rooster and the turkey combined into an unbearable cacophony. According to Ms.

Haas-Rohricht, however, something had changed to return the neighborhood to a calmer place without rooster-turkey noise.⁸

The Court notes that, as part of her argument to the ZHB, the Township’s solicitor stated: “While we oppose the keeping of the animals, should [the ZHB] grant the relief requested, which the Township opposes, we would ask that it only be a turkey and not the rooster and turkey. Definitely not the rooster and turkey together.” [*Id.* at 96]. This is the same sentiment as Ms. Haas-Rohricht who, when asked by the ZHB if it had to be one or the other, said “[t]he rooster is definitely a no.” [*Id.* at 100].

All interested parties agreed that the train tracks behind the properties of Ms. Yoder and Ms. Haas-Rohricht are in active use, with trains rumbling by at least once a day and sometimes several times. All parties expressed that they felt they had a fair opportunity to present their respective positions to the ZHB.

The Decision

On November 7, 2025, the ZHB issued its decision (the “Decision”).⁹ In its discussion, the ZHB recognized that Ms. Yoder had kept some form of poultry at the Property continuously since 1993, which was before the Township enacted the Zoning Ordinance in 2000 prohibiting domestic farm animals on lots under two acres. The ZHB also recognized that Ms. Yoder’s live poultry was a nonconforming accessory use, and that the newly enacted 2025 Amendment now included “regulations regarding the accessory keeping of chickens, ducks, and turkeys on residential lots.”

⁸ The change appears to be that Ms. Yoder relocated the rooster. Lenny remains at the Property, but he apparently no longer presents a noticeable disturbance to Ms. Haas-Rohricht or other neighbors.

⁹ “Decision of the Zoning Hearing Board of Ontelaunee Township, Berks County Pennsylvania In re: Application of Phillis Yoder, appealing Zoning Officer’s June 20, 2025 Notice and/or requesting a variance from Sections 554(A)(3) and 554(A)(5)(B), in order to keep fowl and construct a new chicken coop on the property located at 161 Bewley Ln, Reading, PA 19605, identified as Property ID 68541005099505, located in the R-1 District, specifically to keep one (1) rooster and one (1) turkey along with the existing chickens and ducks at the Property.”

[Decision at 7]. Because of the newly enacted 2025 change to the Zoning Ordinance, Ms. Yoder's nine chickens and three ducks were now considered a conforming accessory use. As such, the ZHB turned its attention to the question(s) of whether Ms. Yoder is permitted to keep either or both her rooster and her turkey on the Property.

The ZHB determined it would be contrary to the public interest to allow both the rooster and the turkey to remain at the Property. Therefore, the ZHB denied the variance request permitting a rooster at the Property but granted the variance allowing for a turkey (the "Turkey Variance"). The Turkey Variance came with conditions identical to those proposed at the ZHB hearing and agreed to by Ms. Yoder: (a) she would not replace the turkey with another should Lenny pass or move elsewhere, and (b) she would not house more than ten total birds at the Property—despite the 2025 Amendment permitting up to 15 on one acre—while the turkey is still there. The condition would effectively restrict the number of birds kept as pets on the Property to five less than the maximum now permitted under the Zoning Ordinance.

The ZHB recognized that Ms. Yoder had kept live poultry on the Property for more than 32 years without interruption, establishing a longstanding, continuous use predating the current Zoning Ordinance. The ZHB found that granting the Turkey Variance would be dimensional in nature because turkeys are permitted on lots in the R-1 District (albeit on lots of two acres or larger), and that Ms. Yoder is unable to increase the acreage of the Property. The ZHB cited to the Pennsylvania Supreme Court's determination in *Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh* that "[w]hen 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." 721 A.2d 43, 47 (Pa. 1998). The ZHB also

noted that Ms. Yoder's proposed new chicken coop would improve Property aesthetics by combining bird spaces into one instead of a disconnected turkey pen and chicken house.

Additionally, the ZHB found that granting the Turkey Variance was appropriate for the Property, the neighborhood, and the R-1 District. The ZHB held that a Turkey Variance would not be detrimental to the public welfare; was in conformity with the general purpose and intent of the Zoning Ordinance; and is a reasonable adjustment to the Zoning Ordinance (subject to the conditions imposed). As part of the Decision, the ZHB determined that the Notice was no longer applicable due to the recent adoption of the 2025 Amendment.

In accordance with its reasoned findings, the ZHB ordered:

- (1) The appeal of the Notice was moot, as the cited violations were no longer applicable under the updated Zoning Ordinance;
- (2) The request for a variance to have a rooster was denied;
- (3) The request for a variance to have a turkey was granted (subject to the aforementioned restrictions, as well as getting a permit for the proposed chicken coop).

Supervisors' Appeal to the Court of Common Pleas

On November 20, 2025, the Supervisors filed this timely land use appeal to the Court of Common Pleas. Ms. Yoder entered the matter as an Intervenor by right through her Notice of Intervention, filed on December 8, 2025. On February 24, 2026, Ms. Yoder's counsel filed a Brief in support of the Decision; the ZHB filed a Joinder in Support of Intervenor's Brief the same day. On March 3, 2026, the Court held argument, followed by a Supplemental Brief by the Supervisors and a Reply Brief by Ms. Yoder.

II. DISCUSSION

The Court was not asked to receive additional evidence in this matter, as the Record before the ZHB is comprehensive. Where, as here, the court does not receive additional evidence in a land use appeal, its scope of review is limited to determining whether the zoning hearing board committed an error of law or an abuse of discretion in granting a variance. *Larsen v. Zoning Bd. of Adjustment of Pittsburgh*, 672 A.2d 286 (Pa. 1996). Abuse of discretion will be found with respect to zoning board's grant of variance only where the board's findings are not supported by "substantial evidence," which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh*, 721 A.2d 43, 46 (Pa. 1998).

In view of the applicable standard, the Court focuses on whether the ZHB committed an error of law or abused its discretion, considering the substantial Record before the ZHB. The Court is further mindful that the ZHB is afforded considerable deference. As the Pennsylvania Supreme Court has recognized, zoning hearing boards "are better positioned than reviewing courts to assess local conditions." *Kneebone v. Zoning Hearing Bd. of the Twp. of Plainfield*, 276 A.3d 705, 721 (Pa. 2022).

A. Supervisors' Alleged Errors on Appeal

In their Notice of Appeal to the Court of Common Pleas, the Supervisors set forth a list of seven discrete alleged errors by the ZHB.¹⁰ Those complaints are fairly organized into four

¹⁰ The alleged errors set forth in the Supervisors' Notice of Appeal are as follows:

- a. The ZHB erred in concluding the Turkey Variance is dimensional in nature as the variance request does not seek to adjust dimensional regulations such as setbacks to use a property in a manner consistent with zoning regulations but rather seeks to use the Property in a manner prohibited by the use regulations of the Zoning Ordinance.
- b. Regardless of the nature of the variance request, the ZHB erred when it failed to consider whether the requirements set forth in Section 802(D) were met. While a dimensional variance provides a more

categories: (1) the ZHB should not have granted a dimensional variance; (2) Ms. Yoder cannot show a hardship; (3) the evidence is insufficient to support the decision; and the (4) ZHB abused its discretion or acted arbitrarily and capriciously. Perhaps cognizant of the sometimes-overlapping alleged errors, the Supervisors narrowed the issues in their Brief in Support of Land Use Appeal (“Supervisors’ Brief”) by reducing or reframing the complaints to four:

- (1) The ZHB abused its discretion or committed an error of law in concluding the Turkey Variance was dimensional in nature.
- (2) The ZHB abused its discretion or committed an error of law in failing to consider whether the Zoning Ordinance

relaxed standard for establishing unnecessary hardship as opposed to use variance, it does not remove them; and applicant must still present evidence as to each of the conditions listed in the zoning ordinance, including unnecessary hardship.

- c. The ZHB erred when it failed to conclude that Ms. Yoder could not satisfy the requirement set forth in Section 802(D)(1); 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 condition, and not circumstances or conditions generally created by the provisions of this Zoning Ordinance. No evidence of a unique physical circumstance or condition was presented at the hearing, and the decision of the ZHB does not set forth such unique physical circumstance or condition to justify the grant of the Turkey Variance.
- d. The ZHB erred when it failed to conclude that Ms. Yoder could not satisfy the requirement set forth in Section 802(D)(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 this Zoning Ordinance. Ms. Yoder provided no testimony establishing that the Property cannot be developed in conformity with the Zoning Ordinance. Applicant has only kept one turkey on the Property for the last two years and there is no evidence establishing the turkey must remain on the Property. The Applicant created the hardship by allowing a turkey on the Property.
- e. The ZHB erred when it failed to conclude that Applicant could not satisfy the requirement set forth in Section 802(D)(3); that such unnecessary hardship has not been created by the applicant. Ms. Yoder is responsible for the violation of the Turkey Ordinance by keeping the turkey on the Property.
- f. The ZHB erred in concluding that the grant of the Turkey Variance will not alter the essential character of the neighborhood, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, when substantial testimony about noise, odors, and waste issues were presented at the hearing.
- g. The ZHB, in granting the Application, abused its discretion and acted in an arbitrary and capricious manner.

inflicted unnecessary hardship such that a variance was necessary to enable reasonable use of the Property.

- (3) The ZHB abused its discretion or committed an error of law in failing to find Ms. Yoder failed to meet her burden to prove that a hardship was not self-created.
- (4) The ZHB abused its discretion or committed an error of law in failing to find Ms. Yoder failed to meet its burden of proving that the variance will not alter the essential character of the neighborhood, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

The Court focuses on these core issues identified in the Supervisors' most recent submission(s).

B. Intervenor's Support of the Decision

In response, Ms. Yoder suggests there are three issues central to the appeal:

- (1) The ZHB correctly determined that Intervenor had raised poultry on her property, continuously, since 1993, before the Zoning Ordinance at issue was enacted, making her poultry flock a pre-existing nonconforming use.
- (2) The ZHB correctly determined that Intervenor's requested variance was dimensional.
- (3) The Record contains substantial evidence in support of the ZHB's grant of Intervenor's variance.

Additionally, Ms. Yoder, as part of her support of the ZHB's Decision suggests that the inclusion of a single turkey by itself¹¹ should be considered a *de minimis* accommodation, as well as *de minimis* in a temporal sense. She notes that Lenny has likely already reached middle age for

¹¹ Lenny is a lone turkey amongst three ducks and nine chickens. The Court notes Ms. Yoder's request is for one turkey and not a raft of turkeys.

a bird of his kind and that he may not be trotting about in another two years.¹² Ms. Yoder committed to the Township that she would not seek to get another turkey should she be permitted to keep Lenny. She reiterated this pledge to the Court at the time of argument.

C. Sufficiency of the Record to Establish a Variance

For the ZHB to grant a variance, it must comport with the requirements of 53 P.S. § 10910.2 (“Zoning Hearing Board’s Functions; Variances”). The ZHB may grant a variance provided all of the following findings are made *where relevant* (emphasis added) 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.
- (3) That such unnecessary hardship has not been created by the appellant.
- (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.

¹² The average life span of a turkey may be five years. The Court noted as part of discussions at time of argument that, should appellate litigation in this case go even further than the Court of Common Pleas, there is a very real possibility this litigation might become moot before a higher court might rule. Bluntly, Lenny would need to exceed his maximum life expectancy, and the very busy appellate courts would need to move more quickly than typical to tip the chances in favor of resolution while the turkey still gobbles.

- (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.

The ZHB broadly discussed facts relevant to these prongs when granting the Turkey Variance. In its factual findings, however, the ZHB more broadly stated that Ms. Yoder set forth credible testimony and evidence establishing that the Turkey Variance is dimensional in nature, and that she “met her burden with respect to the Property for the Turkey Variance.” The ZHB did not, as part of the conclusions of law section, specifically discuss the five prongs of Section 10910.2 *seriatim*. This is not to suggest that the ZHB’s Decision is inadequate—absent hyper specific findings as to each prong, the Court looks to the ZHB’s well-supported findings to determine if each prong is supported.

1. Unique Physical Circumstances or Conditions

The Supervisors argue that Ms. Yoder’s application for a variance cannot be considered dimensional in nature because such variances are appropriate only when a property owner seeks an adjustment of zoning regulations to utilize a property in a manner consistent with applicable regulations. The suggestion is that Ms. Yoder’s application should be considered as a use variance. The Supervisors cite that “[a] dimensional variance involves a request to adjust zoning regulations to use the property in a manner consistent with regulations, whereas a use variance involves a request to use property in a manner that is wholly outside zoning regulations.” *Tidd v. Lower Saucon Twp. Zoning Hearing Bd.*, 118 A.3d 1, 8 (Pa. Commw. Ct. 2015).

In essence, the Supervisors suggest that, because the 2025 Amendment specifically prohibits turkeys on an R-1 District lot that is less than two acres, Ms. Yoder’s variance necessarily contemplates relief that is outside existing zoning regulations. In so arguing, the Supervisors split a very fine hair, particularly considering the section of the Zoning Ordinance upon which they

purport to rely (Section 554) is titled “Accessory Keeping of Chickens, Ducks, and Turkeys.” Subsection A of that section specifically states that “the keeping of chickens, ducks, and turkeys shall be permitted in all zoning districts as an accessory use for single family detached dwellings subject to the (certain) criteria.” Zoning Ordinance Section 554(A)(5) then sets forth acreage requirements for the keeping of birds (as previously discussed).

This Court disagrees that Ms. Yoder’s request is wholly outside the zoning regulations when it can narrowly be focused on the difference between Section 554(A)(5)(b) and 554(A)(5)(c). Residents of the R-1 District (such as Ms. Yoder) are permitted to have live poultry on their properties under the 2025 Amendment. In respect to Ms. Yoder specifically, the size of the Property restricts the number and type of birds permitted in accordance with those subsections. Although her request may not perfectly fit the mold of a typical dimensional variance, it is more akin to a dimensional issue than a use one. This Court finds no error of law or abuse of discretion by the ZHB in granting a dimensional variance.

2. Variance Necessary to Enable Reasonable Use

The second requirement addresses whether the Property can be used in strict conformity with the Zoning Ordinance and whether a variance is necessary to enable its reasonable use. The ZHB found that Ms. Yoder has no practical ability to increase the size of the Property to satisfy the acreage requirements of Section 554(A)(5)(c). The Property is a fixed one-acre lot located at the edge of the R-1 District, bounded by neighboring properties and an active railroad corridor. Unlike a landowner who may be able to acquire adjoining acreage or otherwise expand a parcel to comply with amended zoning requirements, Ms. Yoder has no realistic means of enlarging the Property. The Court is satisfied that these physical limitations are peculiar to the Property and directly bear upon the acreage-based restrictions imposed by Section 554(A)(5), such that the

hardship arises from the Property itself rather than from any personal circumstances of the landowner.

The Supervisors point to *Kneebone*, arguing that the Property cannot meet the second requirement for a variance. 276 A.3d 705. In *Kneebone*, the municipality's zoning hearing board granted a variance for a deck to a property owner based upon the lot in question not meeting setback requirements to add a deck to the backyard because of the undersized dimensions of the lot. The owner previously had both a deck and pool that intruded on the setback requirements, but those structures had been removed at some point prior to application in question. In short, the zoning hearing board in *Kneebone* incorrectly granted a variance allowing for the deck construction.

Kneebone has questionable applicability here. *Kneebone* is a per curiam order with a specific notation that it serves as such because the individual justices were unable to come to a consensus on the merits of the question as to which they granted allowance of appeal (thus affirming the Commonwealth Court by operation of law). Aside from this curiosity, there are other reasons the case does not necessarily seem to immediately apply. It appears the core issues concerned both the board's failure to predicate the variance on the MPC's statutory prerequisites and the sufficiency of the evidence supporting a finding of unnecessary hardship—including, specifically, whether the hardship was self-created (falling under the third prong).

Common to both cases (*Kneebone* and the present matter before the Court) is that they both have lots in residential districts that are adjacent to farmland, and that the variances applied for were previously nonconforming uses. The biggest difference is that the previous nonconforming uses in *Kneebone* had been removed at some point and, at a future time, *Kneebone* was seeking to replace those since removed structures (a pool and deck). Ms. Yoder's previous nonconforming

use—maintaining live poultry (more specifically, Lenny the turkey)—was a continuous, uninterrupted use that had not ended prior to her seeking the variance.

3. Hardship Not Created by Ms. Yoder

Another key distinction between this case and *Kneebone* concerns the third requirement. *Kneebone* removed his nonconforming uses—when he came back to the zoning hearing board, he sought a variance for a deck of his choice against a zoning regulation requiring a setback he could not meet. As found by the ZHB here, Ms. Yoder had been raising poultry birds on her property for 32 years (seven years prior to the Zoning Ordinance’s adoption in 2000) without interruption.

Ms. Yoder had kept a turkey on the Property for approximately two years before the adoption of the 2025 Amendment. More broadly, she had continuously kept poultry on the Property since 1993, at a time when such use was permitted under the applicable zoning regulations. Any hardship therefore arose from subsequent changes to the Township’s zoning scheme, not from Ms. Yoder’s actions. Put simply, the poultry preceded the zoning restriction. It is difficult to characterize a hardship as self-created when the use was lawful when it began and continued without interruption. Had Ms. Yoder discontinued the use and later sought to resume it, the circumstances would be more analogous to *Kneebone*.

On the subject of nonconforming use, the Court recognizes that the Supervisors do not concede Ms. Yoder was permitted to keep the birds in the manner she did in 1993 when she first moved to the Township. The Supervisors argue that Ms. Yoder keeps the birds as pets—drawing a distinction that the 1972 Zoning Ordinance (in effect in 1993) only permitted agricultural poultry use in the R-1 District and not poultry as pets. The Court is not persuaded by this distinction. The 1972 Zoning Ordinance defined “agriculture” as “the cultivation of the soil and the raising and

harvesting of the products of the soil, including but not limited to nursery, horticulture, forestry and animal husbandry.” Animal husbandry is not specifically defined in the 1972 Ordinance.

The Supervisors’ argument appears to assume that poultry can only be considered part of an agricultural use if the birds are being raised for slaughter, breeding, or commercial sale. The Court is not convinced that the 1972 Ordinance contemplated such a restrictive view of agriculture. The ordinance expressly referenced “animal husbandry,” a term generally understood to encompass the care, management, and raising of animals. Historically, the keeping of poultry has served many purposes beyond meat production, including egg production, breeding, exhibition, pest control, protection of other livestock, and personal husbandry. Accordingly, the mere fact that Ms. Yoder regards her birds as pets and does not raise them for food or profit does not necessarily exclude their presence from the agricultural uses contemplated by the 1972 Ordinance.¹³

Ms. Yoder points out that the 1972 Ordinance was entirely silent on regulating pets. The suggestion is that should her birds be considered only as pets, and not as agricultural birds for purposes of the old ordinance, they would still be a pre-existing nonconforming continuous accessory use of the property. She argues that accepting the Supervisors’ position—that the birds are pets rather than agricultural animals—would not defeat her claim but instead strengthen the argument that the birds constitute a pre-existing accessory use of the Property. The Court notes this argument but finds it to be somewhat superfluous as accepting either alternative still results in the same analysis.

¹³ Although not controlling, the Court finds it persuasive that the Penn State Extension (a Pennsylvania public resource for farmers, agribusiness, and others for education and innovation in the advancement of agriculture) considers “Petting Zoos” to be an agriculture activity protected by the Pennsylvania Agritourism Activity Protection Act 27 of 2021. Ms. Yoder has not been operating a petting zoo, but her birds have been treated in a manner not unlike that of what is seen with farm adjacent petting zoos—animals traditionally seen as sources of food kept for social enjoyment of people rather than as mere livestock chattel.

The Township asks the Court to conclude that the ZHB erred in determining that Ms. Yoder's keeping of poultry was permissible under the 1972 Ordinance, largely because she testified that she regards the birds as pets and does not raise them for food. The ZHB, as the local tribunal charged with interpreting and applying the Township's zoning regulations, is better positioned than this Court to understand the meaning of the Township's prior references to agriculture and animal husbandry. In light of the foregoing, the Court sees no reason to disturb the ZHB's interpretation of those terms as used in the 1972 Ordinance.

4. Essential Character of the Neighborhood

The Supervisors contend the ZHB erred in determining the Turkey Variance would "not alter the essential character of the neighborhood, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare." The Supervisors argue that Record does not support that determination. Specifically, the Supervisors point to select testimony by Ms. Haas-Rohricht that the presence of the rooster and the turkey made things intolerable for her—including not being able to keep windows open overnight as the rooster would begin crowing at 4:30 a.m. Ms. Haas-Rohricht's testimony, the Supervisors argue, demonstrates a detrimental change to the essential character of the neighborhood. This seems to overlook additional context—particularly, Ms. Yoder's testimony that she resided next to Ms. Haas-Rohricht for more than seven years before the alleged disruptive interactions with the rooster and turkey. Indeed, Ms. Haas-Rohricht testified that, at the time of the hearing: (1) she had not heard a rooster or a turkey for some time; (2) things have been quite peaceful; and (3) she was enjoying living in her house again (despite the ongoing presence of the turkey). [N.T. at 82].

The ZHB was not constrained to consider Ms. Haas-Rohricht's testimony in a vacuum—indeed other evidence in the Record exists as to this particular factor. Ms. Yoder, for instance, testified and provided audio recordings from the Property. What can be gleaned from the entirety of the Record is that problems arose not when the turkey first came to Ms. Yoder's Property two years earlier, but when one of her new chicks matured into a young rooster in 2025. Removing the rooster seemingly abated the noise issues and returned the neighborhood to essentially the same character it had prior to the rise of the rooster.

As the Supervisors contend, had the ZHB granted both a variance for the rooster and one for the turkey, such relief would have been detrimental to the public welfare. However, the ZHB did not grant both variances—it only granted the Turkey Variance, which is supported by the Record. Adding a rooster to the existing mix of backyard birds was a catalyst for noise at the Property. Removing the rooster returned the neighborhood to a state where neighbors were not losing sleep and outdoor enjoyment to the rooster-turkey racket. When asked by the ZHB, Ms. Haas-Rohricht offered if either of the birds should be permitted to remain, it should be the turkey. [*Id.* at 100]. That echoed the restriction on relief requested by the Township's solicitor—and the very relief granted. [*Id.* at 96].

Of further note, the mere presence of live poultry on properties is not out of character for the R-1 District, especially in light of the 2025 Amendment that sets out parameters for the keeping of ducks, chickens, and turkeys. This may be even more applicable where the R-1 District borders with a true agriculture district (such as Ms. Yoder's Property). Finally, the nature of the relief granted by the ZHB cannot be construed to be permanently impairing development in the area since the relief is essentially temporary as it only permits Lenny to remain at the Property—once Lenny is gone, the Turkey Variance expires.

5. Minimum Variance Necessary

The fifth factor in granting a variance is that the relief given is the minimum variance that will afford relief and represent the least modification possible of the regulation in issue. The Supervisors' Brief does not raise this issue. It is clear, however, that the ZHB tailored the relief with such restrictions that it does not open the door to Ms. Yoder adding any new birds on the Property. She is restricted to Lenny being the one and only turkey to receive special dispensation for the Property. This Court cannot think of a way the ZHB could have more narrowly tailored relief in this instance.

D. Reasonable Conditions on a Variance

Although this topic has already been addressed in part, the Court also notes that 53 P.S. § 10910.2(b) authorizes the ZHB, as part of granting a variance, the power to “attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the zoning ordinance.” *Id.* In the matter at hand, the ZHB did put additional conditions upon its granting of a variance—namely that the Turkey Variance only applies to Lenny and will not be renewed for any future turkeys at the Property, and that she will not increase her current total bird count (including ducks and chickens) while Lenny lives. The Court believes that the restrictions are measured and reasonable.

It is evident that the ZHB sought to craft a limited variance in this matter to address the immediate issue at hand. That is further shown by the ZHB not granting a rooster variance as part of its Decision. The Record supports that it was the combination of the rooster and turkey that resulted in the interminable din of bird discord. Ms. Yoder admitted as much in her testimony; her neighbor lamented the combination of the two birds and detailed how much better things were once the rooster had been removed from the Property. It turns out that the rooster had been

relocated from the Property and nothing had been done with the turkey; Lenny was still there, but now he was unnoticed by Ms. Yoder's most immediate neighbors. At the hearing, the Township's solicitor requested that, should the ZHB grant any relief, it permit only the turkey to remain—not the rooster. [N.T. at 96]. The ZHB listened to the Supervisor's request and accommodated it—no rooster variance, only a Turkey Variance.

E. Non-Conforming Uses of Land

The Zoning Ordinance itself gives some guidance in how it should be interpreted when a use of the land is nonconforming or becomes nonconforming; Sections 601 and 603 being most applicable to the matter at hand. Section 601 (Statement of Intent) plainly states that: "Within the zoning districts established by this Ordinance or subsequent amendments thereto, there exists or will exist certain non-conformities which, if lawful before this Ordinance was passed or amended, may be continued, subject to certain limitations, although such non-conformities would be prohibited, regulated, or restricted under the terms of this Ordinance or subsequent amendments thereto." Section 603 (Non-Conforming Uses of Land) reads as follows: "Lawful uses of land, which at the effective date of this Ordinance or as a result of subsequent amendments thereto become non-conforming and where such use involves no individual structure or building with a replacement cost exceeding \$1,000.00, may be continued by the present or any subsequent owner so long as it remains otherwise lawful, subject to the following provisions..."¹⁴

More simply stated, neither the Zoning Ordinance nor amendments to it should be construed to prevent the continuation of non-conforming uses preexisting the ordinance or any

¹⁴ The provisions referenced involve: not extending the area the non-conforming use occupies on a lot to more than 50% of the property; a nonconforming use being discontinued for 12 consecutive months means any future use must be within conformity; what happens if a nonconforming use becomes conforming and later goes back to nonconforming; and clarifying no additional structures or buildings not conforming to the ordinance can be erected in connection with the nonconforming use.

amendment (so long as those uses are not unlawful). Those preexisting uses may be subject to some limitations. *See* Section 603 A-D. In light of the ZHB’s discussion that live poultry on the Property has been an ongoing nonconforming accessory use, Ms. Yoder should enjoy any protections that may be afforded by Sections 601 and 603—chiefly that her keeping of poultry on the Property, in accordance with her historical usage of the Property, is not per se prohibited by the Zoning Ordinance or the 2025 Amendment.

Ms. Yoder identifies *Mutimer Co. v. Wagner* for the proposition that a historical nonconforming use need not be identical to the current use, so long as the current use is “substantially the same.” 103 A.2d 417, 420 (Pa. 1954). The Supreme Court held that “[t]he fact that offices, stores and garages are all permitted in an F Commercial district under the Cheltenham Zoning Ordinance would not require the Board to approve the conversion of the building in question into a store or garage, but we are of the opinion that the use of the building as an office is substantially the same use as now exists. In other words, the present use and proposed use fall within the same sub-division of permitted uses in an F Commercial Zone.” *Id.* at 420-421.

Granted, *Mutimer Co.* involved the use of a building in a commercial district. That said, some parallel can be drawn to the 2025 Amendment addressing chickens, ducks, and turkeys as part of the same accessory use. *Mutimer Co.* certainly is not controlling,¹⁵ but there is some persuasion in looking to the Zoning Ordinance to consider what uses are substantially similar. There is a strong suggestion that chickens, ducks, and turkeys are substantially similar for an accessory use. This is another reason why the Court does not believe the ZHB’s decision was reached as an error of law or abuse of discretion.

¹⁵ *Mutimer Co.*’s core precedent concerns a board’s discretion over nonconforming use classifications under a specific ordinance provision, which is not what the Court is asked to decide.

F. Additional Thoughts on Pets and Turkeys

Generally, Pennsylvania courts consider animals a form of chattel. They are, however, afforded considerably more attention than nearly any other particular form of chattel or personalty through diverse statutes. Section 5533 of the Pennsylvania Crimes Code, for instance, makes it a criminal offense to intentionally, knowingly or recklessly illtreat, overload, beat, abandon, or abuse an animal (whether that animal be wild or domestic, a stray or a pet). 18 Pa. C.S.A. § 5533. In September 2025, the Pennsylvania House of Representatives, in a 121-82 bipartisan vote, passed House Bill 97 which would require the courts to extend special consideration to pets when personal property is divided in divorce proceedings.¹⁶ Animals may be considered property, but they are living property afforded public protections and services. Nearly every municipality in the state has a provision for animal control services, which might be a full-time employee but often is an agency such as a humane society or animal rescue organization. Certainly animals are not treated the same as a person would be, but they also are not treated as mere objects.

The Court's discussion of animals in Pennsylvania law and the unusual place turkeys occupy in our history and traditions¹⁷ is intended only to emphasize that the Court has considered

¹⁶ The bill includes language stating: "The Commonwealth recognizes that companion animals are living beings that offer their owners companionship, security, and assistance. Companion animals occupy a special category of personal property which does not include intimate personal property." The definition of a companion animal includes "an animal that is a domesticated, living being commonly referred to as a pet." There is also a provision that "an animal that is used for business or agricultural purposes, but has not been incorporated into the family household as a pet, may be considered a companion animal, as determined by the court." House Bill 97 was sent to the Senate and referred to the Judiciary Committee, awaiting further action.

¹⁷ Turkeys have an interesting role in American history and governance. There is an often-recounted tale that the turkey nearly became the national bird, instead of the bald eagle. Reputable sources debunk this as an exaggeration stemming from noted Pennsylvanian Benjamin Franklin's criticism of the bald eagle's presence on the Great Seal. Franklin wrote, in a letter to his daughter that the bald eagle is a "bird of bad moral character" who "does not get his living honestly" as he "is too lazy to fish for himself." Franklin wrote that the turkey, on the other hand, is "a much more respectable bird, and withal a true original Native of America... He is besides, though a little vain and silly, a Bird of Courage."

The sparing of turkey lives has become an American tradition with the President issuing a "pardon" for one or more of the birds each Thanksgiving. John F. Kennedy is regarded to be the first president to informally spare a Thanksgiving turkey's life. In 1963, he sent a turkey gifted by the National Turkey Federation back to the farm it came

this matter carefully and in accordance with the law. At the same time, compassion need not be absent from a properly reasoned legal decision. The Record reflects that the ZHB sought to balance both principles by reaching a legally supported result while remaining mindful of the practical realities presented by the parties.

The ZHB decision is based upon the considerably thorough record developed before it. The Court does not find the ZHB abused its discretion in reaching its decision in this matter, and the Court does not find that the ZHB erred as a matter of law. In granting the variance, the ZHB crafted reasonable conditions designed to afford relief while deviating as little as possible from the 2025 Amendment's poultry regulations. It is apparent the ZHB wanted to find a legally supported pathway to address neighbors' concerns, protect Ms. Yoder's interest in keeping birds, and avoid sending Lenny to an unknown fate. The Court finds that the Record reasonably and adequately supports the findings and determinations of the ZHB.

CONCLUSION

For the reasons set forth above, the Supervisors' land use appeal is **DENIED** and the ZHB decision **AFFIRMED**, in accordance with this Court's June 30, 2026, Order.

BY THE COURT:

J. Benjamin Nevius, J.

from with the instruction, "[w]e'll just let this one grow." During the Nixon administration, the President began sending the turkey to a petting farm near Washington D.C. after a photo-op with the bird. The tradition of formally pardoning a turkey began with George H.W. Bush declaring on November 14, 1989, that year's bird had "been granted a presidential pardon." The tradition has continued every year since, including Gobble and Waddle (two turkeys both weighing in excess of 50 lb.) receiving their pardons on November 25, 2025. They retired to be cared for at the Prestage Department of Poultry Science at North Carolina State University.