

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MAISON LODGING, LLC f/k/a :  
MAISON HOTELS, LLC, :  
Appellant :  
v. : No. 24-CV-1042  
KIDDER TOWNSHIP ZONING :  
HEARING BOARD, :  
Appellee :

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PROTHONOTARY

Andrew J. Kennedy, Esquire Counsel for Appellant  
Cynthia S. Yurchak, Esquire Counsel for Appellee

MEMORANDUM OPINION

Serfass, J. - September 8, 2025

Appellant, Maison Lodging LLC, (hereinafter "Appellant") has appealed from this Court's Decision and Order dated June 18, 2025, denying the underlying Land Use Appeal and affirming the Kidder Township Zoning Hearing Board's Decision dated April 30, 2024, concerning property situated at 2642 State Route 534, Albrightsville, Carbon County, Pennsylvania. We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a), respectfully recommending that out Order of June 18, 2025, be affirmed for the reasons set forth hereinafter.

### FACTUAL AND PROCEDURAL BACKGROUND

On July 3, 2019, Appellant purchased property situated at 2642 State Route 534, Albrightsville, Pennsylvania, which was previously known as the Hickory Run Trailer Park. Appellant purchased said property with the intention of turning it into a glamorous camping, or "glamping", resort. Prior to Appellant purchasing the property, it had been utilized as a trailer park since it was built sometime in the 1960's. On June 15, 2017, prior to Appellant's purchase, the property was rezoned to R-2, making the trailer park a nonconforming use.

With the goal of a glamping resort in mind, Appellant removed many of the original living quarters trailers on the property due to their age and general state of disrepair, and replaced them with new luxury trailers. In addition to replacing the living quarters trailers, Appellant installed an office trailer, a gym trailer, a sauna trailer, and a gazebo on the property. On February 1, 2024, Kidder Township Zoning Officer Andrew Ray issued a Notice of Violation stating three specific zoning ordinance violations. The first being a violation of Ordinance section 180-184(a) for failing to acquire a permit for the construction of the gazebo. The second and third violations were both violations of Ordinance Section 180-23A(4) for using prohibited storage units. Those prohibited storage units were the trailers for the office, gym,

and sauna. The Notice further provided that to correct the violations, Appellant would have to (i) "Remove the Prohibited Units (3)" and (ii) "Apply for applicable permits for the Gazebo or remove".

On February 6, 2024, Appellant's counsel, Andrew J. Kennedy, Esquire, sent Kidder Township Zoning Hearing Board Chairman William Behret and Zoning Officer Ray a letter stating Appellant's intent to appeal the Board's finding and requesting clarification as to whether the Township required Appellant to remove the three trailers in question. On February 8, 2024, Zoning Officer Ray provided a supplemental letter to Appellant, which stated that it was his opinion that the trailers must be removed.

On February 20, 2024, Appellant's counsel submitted Appellant's Appeal from Determination of Zoning Hearing Officer. The Zoning Hearing Board heard the appeal on April 22, 2024, and issued a written decision dated April 30, 2024, which denied Appellant's appeal based, *inter alia*, on the ground that the Kidder Township Zoning Ordinance barred the three trailers and gazebo. On May 23, 2024, Appellant filed a timely Notice of Land Use Appeal with this Court. A Writ of Certiorari was issued to the Kidder Township Zoning Hearing Board on that same date. The parties also entered into a Stipulation that allowed the four units in question to remain on the property pending the outcome of the appeal and

this Court issued an Order approving that stipulation. Arguments on the Land Use Appeal were scheduled for August 1, 2024.

While waiting for oral argument on the Appeal, Appellant filed a "Motion to Schedule Evidentiary Hearing and Modify Briefing Schedule" on June 27, 2024. Therein, Appellant requested that this Court issue an Order scheduling an evidentiary hearing and to continue the dates for filing briefs until after said hearing. In support of its request, Appellant averred that due to technical difficulties at the Zoning Board Hearing on April 22, 2024, it was unable to fully and fairly present evidence. Appellant additionally averred that, in response to the Writ of Certiorari issued by this Court, the Zoning Hearing Board did not provide Appellant with a copy of the zoning hearing transcript or the zoning ordinances, but only a statement of where the transcript could be obtained. Appellant claimed that under these circumstances, it would be unable to meet the existing briefing schedule. On August 21, 2024, this Court issued an Order which denied Appellant's motion on the grounds that the Zoning Hearing Board was not required to provide Appellant with a copy of the zoning hearing transcript, only that it was required to certify to the Court the entire record on appeal, which it had done.

On June 18, 2025, following the oral argument of counsel concerning the Land Use Appeal, this Court issued an Order which

denied the Appeal and affirmed the Decision of the Zoning Hearing Board, finding that the Board had committed no errors of law and had based its Decision on substantial evidence.

On July 7, 2025, Appellant filed a Notice of Appeal of this Court's June 18, 2025 Order with the Commonwealth Court of Pennsylvania. On that same date, this Court issued an Order, pursuant to Pennsylvania Rule of Appellate Procedure No. 1925(b), which directed Appellant to file a concise statement of the errors complained of on appeal. In compliance with our Order, Appellant filed its "Concise Statement of the Matters Complained of on Appeal" on July 21, 2025.

#### ISSUES

Upon review of Appellant's 1925(b) statement, this Court will address the following issues:

- (1) Whether this Court erred in denying Appellant's Motion for an Evidentiary Hearing in its Order dated August 21, 2024; and
- (2) Whether this Court erred in its June 18, 2025 Order affirming the Decision of the Kidder Township Zoning Hearing Board.

## DISCUSSION

### **Issue One:**

When Appellant filed its Motion for an Evidentiary Hearing, it did so seeking to re-open the zoning hearing record for the purpose of taking additional testimony. Appellant contends it was denied the opportunity to be fully heard at the zoning hearing due to technical difficulties concerning the Zoom and cell phone audio. Whether additional evidence is to be permitted is within the discretion of the trial court. Larock v. Board of Supervisors of Sugarloaf Township, 961 A.2d 916 (Pa. Cmwlth. 2008). Additionally, a court of common pleas must hear additional evidence in a zoning case "only where the party seeking the hearing demonstrates that the record is incomplete because that party was denied the opportunity to be heard fully, or because relevant testimony was offered and excluded." Danwell Corporation v. Zoning Hearing Board of Plymouth Township, 540 A.2d 588, 590 (Pa. Cmwlth. 1988). Here, Appellant's counsel, Attorney Kennedy, claims he was "prejudiced in responding to cross examination of [Appellant's] main witness, Douglass Colkitt" because he "found it virtually impossible to hear statements by or questions posed to Dr. Colkitt."

A review of the zoning hearing transcript shows that there were eight (8) instances where "off the record discussions" were held due to "technical issues" with the Zoom call through which

Attorney Kennedy appeared. After Dr. Colkitt concluded his testimony, Attorney Kennedy stated "I think that if that's what my client testified to, then that's fine. I honestly could not hear him." (N.T. Pg.77, lns. 4-5). A review of the transcript also reveals that at no point did Appellant's counsel request a continuance of the proceedings because of the technical issues or any difficulty hearing the testifying witnesses. Neither did Attorney Kennedy object to the manner in which the hearing was conducted nor to the closing of the record by the Zoning Hearing Board. In fact, upon review of the instances where off the record discussions were held due to technical difficulties, it is clear that Attorney Kennedy took the opportunity to ask clarifying questions of witnesses he had difficulty hearing over Zoom. At no point did Attorney Kennedy indicate that his ability to participate in the hearing was hindered and he did not request an opportunity to supplement the record for any reason. When asked by the Zoning Hearing Board solicitor if he was done with his case, Attorney Kennedy responded, "I am." (N.T. Pg. 82, lns. 5-7). Therefore, Appellant has not demonstrated that the zoning hearing record is incomplete in any way, that it was denied the opportunity to be fully heard, or that it offered relevant testimony which was excluded.



## Issue Two:

Appellant next contends that this Court erred when it affirmed the Zoning Hearing Board's April 30, 2024 Decision. In support of this claim, Appellant avers the following: (1) That the Zoning Hearing Board violated Appellant's rights under Article 1 Section 1 of the Pennsylvania Constitution by prohibiting it from using the subject trailers in its trailer park; (2) That the Zoning Hearing Board violated Appellant's due process rights; (3) That the Zoning Hearing Board erred as a matter of law and abused its discretion in holding that the Township's ordinances requiring a permit to expand nonconforming uses were triggered; and (4) That the Zoning Hearing Board's Decision was not based on substantial evidence. Each of Appellant's arguments will be discussed in turn hereinafter.

### (1) Constitutional Argument

Regarding the violation of the Pennsylvania Constitution, Appellant argues that the Zoning Hearing Board has effectively banned the use of trailers in Appellant's nonconforming trailer park. Appellant's argument assumes that the three subject trailers and the gazebo are mere continuations of the existing nonconforming use of the property. It is true that "... discontinuance of a lawful pre-existing nonconforming use is per se confiscatory and violative of the Pennsylvania Constitution, Pa. Const. art. 1 §



1." See PA Northwestern Distributors, Inc. v. The Zoning Hearing Board of the Township of Moon and the Township of Moon, 584 A.2d 1372, 1375 (Pa. 1991). However, the property owner bears the burden of proving the existence and extent of a nonconforming use. Smalley v. Zoning Hearing Board of Middletown Township, 834 A.2d 535, 538 (Pa. 2003). "In order to establish a prior nonconforming use, the landowner is required to provide objective evidence that the subject land was devoted to such use at the time the zoning ordinance was enacted." R.K. Kibblehouse Quarries v. Marlborough Township Zoning Hearing Board, 630 A.2d 937, 941 (Pa. Cmwlth. 1993), *alloc. denied*, 655 A.2d 996 (Pa. 1994). By Dr. Colkitt's own testimony, he installed twenty-five to thirty new trailers, which replaced dilapidated trailers previously on the property. (N.T. Pg 45, ln 10; Pg 46, lns. 12-25; Pg 47, lns. 1-7). Those new trailers were not the subject of any alleged zoning violation, the reason being that they were temporary living quarters that replaced similarly used temporary living quarters making them a continuation of a lawful nonconforming use. The subject trailers however, are brand new and did not replace any other structure on the property. (N. T. Pg. 64, lns. 2-16).

The Kidder Township Zoning Ordinance provides that a nonconforming structure is one "which does not comply with the applicable district limitations on structure size and location on

lot, where such structure lawfully existed prior to the enactment of this chapter as amended..." Kidder Twp. Zoning Ord. §180-134(B). The Ordinance also provides that a nonconforming use is "A use, whether of land or structure, which does not comply with the applicable use provisions in this chapter or amendments hereto, where such use was lawfully in existence prior to the enactment of this chapter, as amended." Id. at §180-134(E). Dr. Colkitt's testimony makes it clear that prior to the adoption of the zoning ordinances, which made the trailer park a nonconforming use, there were no other similar structures on the property, and that no portion of the property was devoted to the uses of the subject trailers and gazebo prior to their installation. (N. T. Pg. 64, lns. 2-16). The Zoning Hearing Board "has the inherent authority to impose reasonable conditions, safeguards or restrictions as a prerequisite to granting an expansion of non-conforming use even if such expansion is as of right." Everson v. Zoning Hearing Board of Adjustment of the City of Allentown, 395 Pa. 168, 171, 149 A.2d 63, 66 (1959). Clearly, the Zoning Hearing Board is authorized by their police powers to place reasonable restrictions on the expansion of nonconforming uses, such as requiring a permit. Therefore, since there has not been a blanket prohibition on the continuation of the nonconforming use of the property, Appellant's Constitutional rights were not violated.

(2) Due Process Argument

Appellant begins its due process argument by claiming that the Notice of Violation did not charge Appellant with failing to file for a permit, so it did not present evidence or argument on that issue. However, the first page of the Notice of Violation sent to Appellant states, under the header "Specific Violation", that "You are receiving this Enforcement notice because you failed to secure a permit as required...". It is clear that Appellant was being charged with failing to secure a permit.

Appellant continues its due process argument by claiming that, at the April 30, 2024 zoning hearing, the same attorney served simultaneously as counsel for the Zoning Hearing Board and as the hearing officer. Initially, we note that this issue was not raised in Appellant's Land Use Appeal and, therefore, it has not been preserved for appellate review. However, we will address Appellant's claim in the event that the Honorable Commonwealth Court finds that the issue has been properly preserved.

In support of its argument, Appellant relies on the Pennsylvania Supreme Court's decision in Horn v. Township of Hilltown. There, the same solicitor represented both the zoning hearing board and the township, which was opposed to an application for a zoning variance, at a public zoning hearing. Horn v. Township of Hilltown, 337 A.2d 858 (Pa. 1975). Our Supreme Court held that

such a practice is a denial of due process, even in the absence of actual harm to the property owner. Id. However, Attorney Cynthia S. Yurchak, who served as the Kidder Township Zoning Hearing Board solicitor at the April 30, 2024 zoning hearing, does not also serve as Kidder Township's solicitor. Moreover, Attorney Yurchak was not serving as the hearing officer at that zoning hearing. Section 10906 of the Pennsylvania Municipalities Planning Code (hereinafter, "MPC") provides that "the board may appoint a hearing officer from its **own membership** to conduct any hearing on its behalf..." 53 P.S. §10906 (emphasis added). As the Zoning Hearing Board's solicitor, Attorney Yurchak is not a member of the Board. While Section 10908(2) of the MPC provides that "[t]he hearings shall be conducted by the board or the board may appoint any member or an independent attorney as a hearing officer," 53 P.S. §10908(2), at all relevant times Attorney Yurchak served as legal counsel for the Zoning Hearing Board and was neither appointed nor acted as a hearing officer. Therefore, Appellant's argument on this point fails.

Appellant finally contends that its due process rights were violated when the Zoning Hearing Board, "...removed a copy of the transcript and ordinances from the Certified Copy of the Record that it served on Appellants" in violation of Pennsylvania Rule of Civil Procedure 440(a)(1). In support of this argument, Appellant

references Riccio v. Newtown Twp. Zoning Hearing Board. There, the zoning hearing board misplaced a number of the appellant's exhibits, which included a copy of the deed and several letters from neighbors, and the appellant argued that this made the record before the trial court incomplete. Riccio v. Newtown Twp. Zoning Hearing Bd., 308 A.3d 928, 937 (Pa. Cmwlth. 2024). The trial court found that the missing exhibits had no bearing on the case because the deed was already a part of the zoning hearing board's record and the opinions of neighbors expressed at the hearing were consistent with the missing letters. Id. The Commonwealth Court agreed with the trial court and stated that, "To demonstrate prejudice resulting from the lost evidence necessary to rise to the level of a due process violation, an appellant must demonstrate actual harm or prejudice resulting from the loss of the evidence." Id.

In the instant matter, there is no missing evidence as in Riccio. The Zoning Hearing Board certified to this Court the entire record on appeal as required by 53 P.S. §11003-A(b). That section of the MPC mandates that within twenty (20) days after receipt of a writ of certiorari issued by the Prothonotary, the board whose decision or action has been appealed "...shall certify to the court its entire record in the matter in which the land use appeal has been taken, or a true and complete copy thereof, including any

transcript of testimony in existence and available to the ... board at the time it received the writ of certiorari." While the Zoning Hearing Board is required to certify to the court the entire record on appeal, including the transcript of the zoning hearing, there is no concomitant requirement that the Board provide a copy of the transcript to Appellant. Further, Appellant has not demonstrated any actual harm it sustained by not being furnished with copies of the transcript or ordinances. Therefore, there is no due process violation.

(3) Incorrect Application of Zoning Ordinances Argument

Appellant next argues that the Zoning Hearing Board erred as a matter of law and abused its discretion in holding that the ordinance requiring a permit to expand nonconforming uses was triggered. Appellant contends that the ordinance is only triggered if there is an increase of the nonconforming use of thirty-three percent or more of the total area. Kidder Twp. Zoning Ord. §180-139(C). Appellant's position is that the subject trailers and gazebo represent a continuation of the lawful nonconforming use of the property, which led it to conclude that the ordinance concerning expansion of a nonconforming use did not apply. However, for the same reasons discussed in the Constitutional Argument section of this Opinion, Appellant's argument fails.

A nonconforming structure is one "which does not comply with the applicable district limitations on structure, size and location on lot, where such structure lawfully existed prior to the enactment of this chapter as amended..." Id. at §180-134(B). A nonconforming use is "A use, whether of land or structure, which does not comply with the applicable use provisions in this chapter or amendments hereto, where such use was lawfully in existence prior to the enactment of this chapter, as amended." Id. at §180-134(E). The burden of proving the existence and extent of a nonconforming use falls on the property owner. Smalley v. Zoning Hearing Bd. of Middletown Twp., 834 A.2d 535, 538 (Pa. 2003). To establish a prior nonconforming use, the property owner must "provide objective evidence that the subject land was devoted to such use at the time the zoning ordinance was enacted." R.K. Kibblehouse Quarries v. Marlborough Township Zoning Hearing Bd., 630 A.2d 937, 941 (Pa. Cmwlth. 1993), *alloc. denied*, 655 A.2d 996 (Pa. 1994). Moreover, the property owner must provide "...conclusive proof by way of objective evidence of the precise extent, nature, time of creation, and continuation of the alleged nonconforming use." Barnabei v. Chadds Ford Twp. Zoning Hearing Board, 118 A.3d 17, 23 (Pa.Cmwlth. 2015).

Dr. Colkitt testified that prior to the adoption of zoning ordinances, there were no other similar structures on the property



and that no part of the property was devoted to either a gym, office, sauna, or gazebo when its use as a trailer park became nonconforming. (N. T. Pg. 64, lns. 2-16). This testimony shows that the property was never used in the same manner Appellant is now attempting to use it. It is clear that the structures and their uses are new, as to opposed to nonconforming uses. Therefore, Appellant's argument is without merit.

(4) Decision not Based on Substantial Evidence Argument

Appellant concluded its concise statement by arguing that the Zoning Hearing Board's Decision was not supported by substantial evidence. "Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Board (Skirpan), 572 A.2d 838 (Pa. Cmwlth. 1990). Appellant contends that it presented evidence that the property had been used as a trailer park since the 1960s, and that Dr. Colkitt testified that the three subject trailers and gazebo were being used for purposes consistent with a trailer park.

Regarding the evidence presented that established the property's use prior to the adoption of any zoning ordinance, Appellant only introduced a sales brochure from TACM Commercial Reality which indicated that the property had been used as a trailer park since 1965. (N.T. Pg. 28, lns. 1-9). Further, Dr.

Colkitt's testimony did not establish that the three subject trailers and gazebo were being used for purposes consistent with a trailer park. As discussed in the proceeding section of this Opinion, Dr. Colkitt testified that there were no other similar structures as the subject trailers and gazebo on the property and that no portion of the property ever had a gym, office, sauna, or gazebo when its use as a trailer park became nonconforming. (N.T.1 Pg. 64, lns. 2-16). The evidence before the Zoning Hearing Board demonstrates that the property was a nonconforming trailer park that was never used in the manner Appellant is now attempting to use it.

Appellant also contends that since the Zoning Hearing Board issued contradicting conclusions of law, its decision was results-driven and not based on substantial evidence. Specifically, Appellant argues that the Zoning Hearing Board issued four conclusions (Numbers 5, 9, 10, 12 and 15) that the subject trailers were extensions of nonconforming use and one conclusion (Number 16) that they were "not nonconforming uses."

Conclusion of Law Number 5 states that, "While the trailer park existed in some form prior to the enactment of zoning, **any new uses** (such as the "office" trailer, "sauna" trailer, "gym" trailer and gazebo[]) **are new uses which require zoning approval**". (Z.H.B. Decision, Pg. 5, para. 5) (emphasis added). This Conclusion

specifically classifies the subject trailers and gazebo as "new uses" and not extensions of a nonconforming use as Appellant claims. Conclusion of Law Number 9 states that, "Pursuant to Section 180-139A of the Ordinance, all extensions of non-conforming uses shall be considered 'Special Exceptions' subject to specific procedures and review criteria contained in Section 180-176D and 180-144 of the Ordinance." (Id., para. 9). Conclusion of Law Number 10 states that, "A Special Exception for an expansion of a non-conforming use must first be subject of an application for said use with a hearing before the Zoning Hearing Board." (Id., para 10). Conclusions 9 and 10 do not classify the subject structures as extensions or as new uses. They merely outline the Kidder Township Zoning Ordinance regarding expansions. Conclusion of Law Number 12 states that, "Applicant's argument that it is not subject to the Zoning Ordinance of Kidder Township is flawed in that **any expansions or additions** to a non-conforming use must receive proper township approval." (Id. at Pg. 6, para. 12) (emphasis added). This Conclusion also does not classify or characterize the subject structures. It provides that both extensions and new uses must receive township approval. Conclusion of Law Number 15 states that, "Pursuant to Section 180-3 of the Ordinance, any legally existing use of a building, structure, lot or parcel of land, as of the effective date of this Ordinance, may

be continued, however **new uses require compliance** with the Ordinance." (Id., para. 15) (emphasis added). Again, this Conclusion specifically classifies the subject structures as "new uses", not extensions. Finally, Conclusion of Law Number 16 states that, "The uses of the "sauna" trailer, "office" trailer, "gym" trailer and gazebo are not non-conforming uses." (Id., para. 16). This Conclusion does not contradict any other Conclusion of Law reached by the Zoning Hearing Board as nowhere in any other Conclusion did the Board classify the subject structures as anything other than "new uses". While Appellant maintains that the above discussed Conclusions of Law are contradictory, that is clearly not the case and Appellant's arguments in this regard are meritless.

#### CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant appeal be denied and that our Order of June 18, 2025, be affirmed accordingly.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'S.R. Serfass', written over a horizontal line.

Steven R. Serfass, J.