



**ZONING BOARD OF ADJUSTMENT**

**Date of Hearing:** February 5, 2026  
**Date of Decision:** April 2, 2026

**Zone Case:** 172 of 2025  
**Address:** 256 McKee Place  
**Lot and Block:** 28-F-308  
**Zoning Districts:** R-MU  
**Ward:** 4  
**Neighborhood:** Central Oakland

**Request:** Multi-unit residential building

**Application:** DCP-ZDR-2024-02267

Variance	Section 907.04	16 inclusionary zoning units required, 0 requested
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**Appearances:**

Applicant: Jonathan Kamin, Esquire

Opposed: Andrea Boykowycz, Dave Brenigan, Candice Gormley, Monica Mahaffey

**Findings of Fact:**

1. The Subject Property is located at 256 McKee Place in an R-MU (Residential, Mixed Use) District in Central Oakland. The owner of the property and the Applicant here is Walnut Capital-McKee, L.P.
2. The Subject Property is also within the IZ-O (Inclusionary Zoning Overlay) District, which encompasses portions of the Oakland neighborhoods.
3. The dimensions of the Subject Property are 371' by 188' (67,151).
4. The Applicant is currently constructing an 11-story mixed use building on the site, which is to include 159 dwelling units. Construction of the building is consistent with the Applicant's March 19, 2024 Zoning Development Review Application No. DCP-ZDR-2024-02267, as submitted to the Department of City Planning ("DCP").
5. The Applicant seeks a variance from the IZ-O requirement of providing 16 affordable units within the development on the Subject Property.

6. The Applicant did not present any evidence of any “unique physical circumstances or conditions” of the Subject Property that result in an “unnecessary hardship.”
7. The Applicant did not present any evidence that the Subject Property could not be developed in accordance with the Code’s requirements.
8. The Applicant represented that a variance would not affect the essential character of the neighborhood because not providing the required affordable units would not alter the impact of the building or change the number of units in it.
9. The Applicant asserted that the minimum variance that would afford relief would be not providing any affordable units.
10. The Applicant asserted the Applicant would suffer substantial economic harm if required to comply with the IZ-O requirements but did not explain how that hardship related to any unique physical circumstances or conditions of the Subject Property.
11. The Applicant generally asserted that the IZ-O provision that requires the provision of affordable units causes an unconstitutional taking.
12. Andrea Boykowycz, the Executive Director of Oakland Planning and Development Corporation (OPDC), appeared at the hearing and testified that OPDC supports the Applicant’s development as initially proposed. She stated that the Applicant undertook the development with full knowledge of the IZ-O requirements and did not at any time raise objections to compliance with those requirements.
13. Ms. Boykowycz described the need for affordable housing in Oakland, and noted that the development received significant grant funding from the Commonwealth of Pennsylvania and local tax abatement from Allegheny County that is conditioned on the provision of affordable housing.
14. Dave Brenigan, the Executive Director of Lawrenceville United, appeared at the hearing to oppose the request and provide information about public subsidies available to developers to offset costs imposed by IZ-O requirements.
15. Candice Gormley and Monica Mahaffey, residents of West Oakland, also appeared the hearing to oppose the Applicant’s request for a variance.
16. The Applicant, OPDC and Lawrenceville United provided post-hearing submissions as of February 23, 2026.

**Conclusions of Law:**

1. Pursuant to the IZ-O requirements in Code Section 907.04, for developments in the Inclusionary Zoning overlay area, which are to contain 20 or more units, 10% of those units must be designated as “affordable” to households earning 50% of the area median income (AMI).
2. The requirements of Section 907.04 were adopted and incorporated into the Zoning Code as of July 2019.

3. In March 2023, City Council adopted, and the Mayor signed, Council Bill No. 2022-0592, which expanded the Inclusionary Zoning overlay area to include portions of the Oakland neighborhoods, including the Subject Property.
4. The Applicant submitted its Zoning Development Review Application for the 11-story/159-unit building in March, 2024 and was aware of the IZ-O requirements.
5. For the 159-unit project on the Subject Property, within the Inclusionary Zoning overlay area, 16 units are to be designated as “affordable.”
6. The Applicant requests a variance from Section 907.04, the Code’s requirement to provide the 16 affordable housing units required for the new multi-unit residential development on the Subject Property.
7. The Board is authorized to consider requests for variances from a zoning ordinance’s requirements, under the conditions for approval that are set forth in Section 922.09.E. These conditions require the applicant to demonstrate the existence of unique physical circumstances or conditions that are peculiar to the particular property; that these conditions result in an unnecessary hardship that prevents development of the property in strict conformance with the Code’s requirements; that the variance is necessary to allow for reasonable use of the property; that the applicant did not create the asserted hardship; that the variance would not alter the essential character of the neighborhood; and that the variance requested is the minimum that would afford relief.
8. Zoning regulations are derived from a local government’s “police power” to promote the public health, safety and general welfare. See *Metal Green, Inc. v. City of Philadelphia*, 266 A.3d 495, 505, citing *National Land Investment Co. v. Easttown Twp. Bd. of Adj.*, 215 A.2d 597 (Pa. 1966) and *C & M Developers, Inc. v. Bedminster Twp. Zoning Hearing Bd.*, 820 A.2d 143, 150 (Pa. 2002). Through zoning regulation, a governing body can address the needs of its community, within its legislative judgment. *National Land Investment*, 215 A.2d at 610.
9. Zoning regulations are within the judgment of the governing body. *Metal Green*, 266 A.3d at 506. A zoning board “is not a legislative body, and it lacks authority to modify or amend the terms of a zoning ordinance.” *Greth Development Group, Inc. v. Zoning Hearing Bd. of Lower Heidelberg Twp.*, 918 A.2d 181, 187 (Pa. Commw. Ct. 2007), citing *Hill v. Zoning Hearing Bd. of Maxatawny Twp.*, 597 A.2d 1245, 1251 (Pa. Commw. Ct. 1991) (only the governing body has the power to enact laws to regulate land use pursuant to its police power).
10. An application for a variance is, in essence, a request to do something that a zoning ordinance prohibits. It is “an exception to the otherwise expressed will of the citizens regarding the use of property in certain neighborhoods of the community.” *Metal Green*, 266 A.3d at 511; see also *Marshall v. City of Philadelphia*, 97 A.3d 323, 239 (Pa. 2014).
11. As set forth in the Code’s variance standards, an asserted “unnecessary hardship” must be related to unique physical conditions of the property and cannot be based on “circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.” Section 922.09.E.1. Consistent with this rule, the Pennsylvania Supreme Court has held that, to support a

variance request, the asserted hardship cannot arise from the impact of the zoning regulations on the entire district. *Marshall*, 97 A.3d at 329, citing *Valley View Civic Ass'n v. Zoning Bd. of Adj.*, 462 A.2d 637, 640 (Pa. 1983).

12. The Applicant did not present any evidence to support any of the conditions for approval of a variance as set forth in Section 922.09.E. The Applicant seeks a variance from the IZ-O requirements, which applies to all properties in the overlay area, but did not assert anything unique about the Subject Property. Any asserted hardship arises from the application of the IZ-O requirements on that entire area.
13. The Applicant did not offer any evidence that the Subject Property could not be developed without a variance and, in fact, the property is currently being developed for the building, as approved. To the extent that the Applicant now asserts that the requirement creates a hardship, the Applicant created the hardship by undertaking construction when it was fully aware of the IZ-O requirements.
14. The Applicant did not seek a variance to allow a fewer number of affordable units but asserted that elimination of compliance with the IZ-O requirements would be the minimum variance that would afford relief.
15. The Board has no authority or jurisdiction to resolve the Applicant's claim that the IZ-O requirements constitute an unconstitutional taking and opines that is a matter better left to the sound discretion of the federal courts.
16. Consistent with the evidence and testimony presented, and the applicable legal standards governing variances, the Board concludes that it must deny the request.

**Decision: The Applicant's request for a variance from Section 907.04, to eliminate the requirement in Section 907.04 to provide 16 affordable units in the 159-unit building on the Subject Property, is hereby DENIED.**

RECUSED

**Alice B. Mitinger, Chair**

s/Lashawn Burton-Faulk  
**LaShawn Burton-Faulk**

s/ John J. Richardson  
**John J. Richardson**

Note: Decision issued with electronic signatures, with the Board members' review and approval.