

MILLER TURETSKY RULE & McLENNAN

MARK D. TURETSKY
JOHN A. RULE
KEITH B. McLENNAN*
JOSHUA H. CAMSON*
CHRISTOPHER D. HINDERLITER*

ATTORNEYS AT LAW
3770 RIDGE PIKE
COLLEGEVILLE, PENNSYLVANIA 19426
(610) 489-3300 Office
(610) 489-1157 Facsimile
www.millerturetsky.com

JAMES H. FREEMAN
Of Counsel

JILL K. ANDERSON, J.D.

*ALSO MEMBER OF NEW JERSEY BAR

February 4, 2022

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7020 2450 0001 6128 6365**

Michael E. Furey, Esquire
Furey & Baldassari, PC
1043 Park Avenue
Audubon Pa 19403

**RE: Lower Providence Township Zoning Hearing Board
Applicant: N. Dhanani, K. Patoliya, D. Shah
Application No. Z-21-28**

Dear Mr. Furey:

In accordance with your Zoning application filed on November 30, 2021 enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board. Please note that if you have any objections to the Order, you have thirty (30) days from its date to file an appeal with the Court of Common Pleas in Norristown.

Yours very truly,



Keith B. McLennan

KBM/
Enclosure

Pc: George Ozorowski, Esq. Chairman
Joseph Pucci Vice-Chairman
Kathie A. Eskie
Gail Hager
Tina Blain

Terrance Barnes
Christopher Gerdes
Randy Klein
Michael Mrozinski

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-21-28	: HEARING DATE:
	: December 23, 2021
	:
APPLICATION OF:	:
N. Dhanani	:
K. Patoliya	:
D. Shah	:
2849 Wellington Way	:
Hatfield, PA 19440	:
	:
PROPERTY:	:
2874 Ridge Pike	: Appeal of Zoning Officer Determination
Eagleville, PA 19403	: Request for Variance
Lower Providence Township	: Request for Special Exception
Parcel Nos. 43-00-11548-00-1	: Request for Interpretation of Zoning Ordinance
43-00-14335-00-4	:
43-00-14332-00-7	:

**OPINION, DECISION AND ORDER OF THE
LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD**

A public hearing on the above Application having been held on December 23, 2021, before the Zoning Hearing Board of Lower Providence Township (the “Zoning Hearing Board” or “Board”), in the Township Administration Building, 100 Parklane Drive, Eagleville, PA, (the “hearing”) pursuant to Notice as required by the Lower Providence Township Zoning Ordinance (the “Ordinance”) and the Pennsylvania Municipalities Planning Code (the “MPC”), concerning the above captioned premises (the “Property” or “Subject Property”), and having considered the Application and the testimony, exhibits, and argument presented, the Zoning Hearing Board hereby renders its decision on the Application.

STATEMENT OF THE CASE

1. Application before Zoning Hearing Board

On November 30, 2021, applicants N. Dhanani, K. Patoliya, and D. Shah (“Applicants”) equitable owners of 2874 Ridge Pike in Lower Providence Township, Pennsylvania filed an application (“Application”) relating to Applicant’s proposed use of the first floor of the building located on the Subject Property for a dental practice (“Proposed Use”). In the Application, Applicants request the following relief:

a. That the Board reverse the Zoning Officer determination dated November 24, 2021 and attached to the Application which found that the proposed dental professional office requires variance relief and conditional use approval. Applicants further request that the Board render an interpretation of the Ordinance that use of the first floor of the building located on the Subject Property as a dental office is permitted by right.

b. In the alternative, Applicants request the following relief:

(1) A variance from Section 143-259 of the Ordinance relating to Permitted Uses within the Ridge Pike Zoning District to allow the operation of a dental office on the subject property.

(2) A Conditional Use under Section 143-260 of the Ordinance to allow the operation of a dental office on the subject property as part of a mixed-use property within the Ridge Pike Zoning District.

(3) A Special Exception to change a nonconforming use under Section 143-150 of the Ordinance.

c. Applicants request that the Board make a determination that the currently available parking on the Subject Property complies with the Zoning Ordinance as it pertains to the

requirements for parking under Section 143-71 G. which requires seven spaces per doctor and/or technician, plus one per additional employee for a dental office.

2. Notice and Hearing

The Application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on December 23, 2021, where the Board accepted evidence in the matter.

3. Zoning Hearing Board Members Participating

Present at the hearing on December 23, 2021 were: George Ozorowski, Chair, Joseph Pucci, Vice Chair, Gail Hager, Member, Chris Gerdes, Alternate Member.

4. Appearances of Counsel

- a. Keith B. McLennan, Esquire, appeared as Solicitor for the Zoning Hearing Board.
- b. Applicants were represented by Mr. Michael E. Furey, Esq. of Furey and Baldassari, PC, 1043 Park Ave., Audubon, PA 19403.

5. Appearance of Other Party

- a. No other party appeared regarding the Application.

6. Also Present

- a. Mike Mrozinski, the Community Development Director for Lower Providence Township.

7. Witnesses

- a. Mr. Nilkanth Dhanani testified in support of the Application.
- b. Mr. Jay Shah testified in support of the Application.

8. Exhibits

- a. The Board submitted the following exhibits at the hearing:

B – 1 The Certificate of Posting;

B – 2 Letter Sent to Property Owners;

B – 3 The Certificate of Notification;

B – 4 Matrix of Addresses;

B – 5 Proof of Publication.

b. The Applicants submitted the following exhibits at the hearing:

A – 1 Application and Attached Exhibits;

A – 2 Exhibit Packet inclusive of A – 1.

FINDINGS OF FACT

1. The Applicants, Nilkanth Dhanani, Keyur Patoliya, and Dhaval Shah (“Applicants”) are the equitable owners of the lot located at 2874 Ridge Pike Eagleville, PA, 19403.

2. The Subject Property is comprised of a 26,290 square foot lot with tax parcel numbers 43-00-11548-00-1, 43-00-14335-00-4, and 43-00-14332-00-7, which has an existing office building.

3. The current owner of the property is the Estate of Rosemarie Lomire, David Fronheiser and Kathleen McGowan, co-executors, 8324 Pheasant Run, Fogelsville, PA 18051.

4. The front of the Subject Property is located in the Ridge Pike Business Zoning District.

5. The remainder of the Subject Property is in the R-2 Residential Zoning District.

6. The Subject Property is currently a non-conforming mixed-use property.

7. The first floor of the building was previously used to operate multiple offices.

8. The prior uses were more intense than the proposed dental office.

9. The neighborhood is predominately populated by commercial uses such as offices, restaurant and retail.

10. The Ordinance permits “professional offices” in the Ridge Pike Business District but does not state that a medical/dental office is a permitted use.

11. Applicants requested that the Zoning Officer render a determination as to whether “professional office” as used in the Ordinance includes a dental office.

12. The Zoning Officer rendered a decision on November 24, 2021, opining that the Ordinance did not permit dental offices in the Ridge Pike Business district by right.

13. The Subject Property has a parking lot containing twenty-two spaces.

14. The second floor is currently used as business office space.

15. The basement and the third floor are used for storage relating to the building occupants.

16. The proposed use is to use the first floor of the building as a dental office.

17. The second-floor is 2,888 square feet.

18. Under Section 143-71 G. of the Ordinance, that use requires 1 parking spot per 300 square feet of office space.

19. Section 143-71 G. requires a dental clinic have 7 parking spaces per dentist and 1 additional space per additional employee.

20. The proposed use would have one dentist and up to three dental assistants at any given time.

21. There are other dental offices in the Ridge Pike Business District.

22. The Property is currently serviced by public water and public sewer.

23. There was no adverse comment regarding the Application.

24. There are no outstanding state or federal violations cited on the Property.
25. The proposed use will not impact existing traffic patterns or volumes.
26. The proposed use will not emit smoke, dust, odor or other air pollutants, noise, vibration, light, electrical disturbances, water pollutants, or chemical pollutants.
27. The proposed use will not alter the essential character of the neighborhood or district in which it is located.
28. The proposed use will not impair the appropriate use or development of adjacent properties.
29. The proposed use will not be detrimental to the public welfare.

DISCUSSION

I. Appeal From Zoning Hearing Officer's November 24, 2021, Determination

a. *Relief Requested*

Applicants request that the Board overturn the November 24, 2021, Zoning Hearing Officer determination that a dental practice is not a permitted use in the Ridge Pike Business District.

b. *Ordinance in Question*

Section 143-259 of the Ordinance outlines the permitted uses in the Ridge Pike Business District. That Section does not include a medical/dental office as a permitted use but does provide for the permitted use of a "business or professional office; bank and financial institution." Ordinance §143-259 F.

c. *Legal Standard*

Under the Ordinance, the Zoning Hearing Board has "exclusive jurisdiction to hear and render final adjudications in accordance with the requirements of Article IX of the

Municipalities Planning Code.” Ordinance § 143-161. Under Section 909.1 (8) of the Municipalities Planning Code, the Board has “exclusive jurisdiction to hear and render final adjudications in the following matters: Appeals from the zoning officer’s determination under section 916.2.” Section 916.2 provides that a “landowner may submit plans and other materials describing his proposed use or development to the zoning officer for a preliminary opinion” relating to compliance with the Ordinance. The Board has the responsibility to render interpretations of the Ordinance relating to such an appeal and may accept testimony and evidence beyond that provided to the zoning hearing officer. *Bethlehem Manor Vill., LLC v. Zoning Hearing Bd. of City of Bethlehem*, 251 A.3d 448, 462 (Pa. Commw. Ct.), publication ordered (Apr. 9, 2021), appeal denied sub nom. *Bethlehem Manor Vill., LLC v. Zoning Hearing Bd.*, 260 A.3d 922 (Pa. 2021).

Issues of statutory interpretation are questions of law. *Allstate Life Ins. Co. v. Com.*, 617 Pa. 1, 7, 52 A.3d 1077, 1080 (2012). “[T]he objective of all interpretation and construction of statutes is to ascertain and effectuate the intention of the legislature.” *Bayada Nurses v. Dept. of Labor and Indus.*, 607 Pa. 527, 8 A.3d 866, 880 (2010). “When the words of a statute are clear and free from all ambiguity, they are presumed to be the best indication of legislative intent.” *Chanceford Aviation v. Chanceford Twp. Bd. of Supervisors*, 592 Pa. 100, 923 A.2d 1099, 1104 (2007) (citations omitted). “Under the doctrine of *expressio unius est exclusio alterius*, “the inclusion of a specific matter in a statute implies the exclusion of other matters.” *Thompson v. Thompson*, 656 Pa. 732, 223 A.3d 1272, 1277 (2020) (internal quotations omitted). When interpreting a statute, the board should not only consider what is written in the plain language of the statute, but also what is not included in that language. *Id.*

d. *Facts Applied to Law*

Applicants appeal from the Zoning Hearing Officer's opinion of November 24, 2021, determining that the Ridge Pike Business District does not include a dental office as a permitted use. Applicants argue that because the Ordinance permits the use of Medical Office or Clinic in several other zoning districts that also include "Office" or "Professional Business" uses, that the drafters of the Ordinance must have intended to include Medical Offices in the term "business or professional office" as it relates to the Ridge Pike Business District. Applicants argue that the Ordinance is therefore ambiguous, and that ambiguity should be settled in favor of the Applicant.

The premise that the Ordinance is ambiguous is flawed, and therefore, the logical conclusions drawn from that premise are inconsequential. The Ordinance specifically defines the term Medical Office or Clinic under Section 143-6.2. Therefore, the drafters of the Ordinance clearly differentiated this type of use. The relevant subsection of the Ordinance lacks any reference to a medical office or clinic. Had the drafters of the Ordinance intended to include a dental office within the permitted uses in the Ridge Pike Business District, the previously defined term would have been expressly so written. *See Thompson*, 223 A.3d at 1277. In fact, the drafters did so in districts where such a use is allowed. *See Ordinance* §143-77 A.(2)(i) relating to permitted uses in the Ridge Pike West District. Therefore, the zoning officer's opinion that a dental office is not a permitted use by right in the Ridge Pike Zoning District is affirmed.

The Board finds and concludes that the Applicants' requested relief from the Zoning Officer's opinion should be denied.

II. Application for a Use Variance

a. *Relief Requested*

Alternatively, Applicants seek a variance from Section 143-259 of the Ordinance to permit the establishment of a dental office where such an office is not a permitted use in the Ridge Pike Business District.

b. *Ordinance in Question*

Section 143-259 of the Ordinance outlines the permitted uses in the Ridge Pike Business District. That Section does not include a medical/dental office as a permitted use but does provide for the permitted use of a “business or professional office; bank and financial institution.” Ordinance §143-259 F.

c. *Legal Standard*

There are 2 types of variances, a “dimensional” variance and a “use” variance. Differing standards apply to use and dimensional variances. One who advances a dimensional variance seeks to adjust zoning regulations so that the property can be used in a manner consistent with the zoning regulations. *Hertzberg v. Zoning Bd. Of Pittsburgh*, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998). In contrast, a use variance seeks to use the property in a way that is inconsistent or outside of the zoning regulations. *Tidd v. Lower Saucon Township Zoning Hearing Board, Green Gable Investment Partners, LP and Lower Saucon Township*, 118 A. 3d 1 (Pa. Cmwlth. 2015). Regardless of whether the variance sought is a use or dimensional variance, the reasons for granting a variance must be substantial, serious, and compelling. *POA Company v. Findlay Township Zoning Hearing Board*, 551 Pa. 689, 713 A.2d 70 (1998); *Evans v. Zoning Hearing Board of the Borough of Spring City*, 732 A.2d 686 (Pa. Cmwlth. 1999); *Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh*, 711 A.2d 549 (Pa. Cmwlth. 1998). The Supreme Court in *Hertzberg* held that the Zoning Hearing Board must, at the beginning of its analysis of an appeal from the terms of the Zoning Ordinance, determine whether the requested

relief is for a use variance or a dimensional variance. Id. at 263-64, 721 A.2d at 50. In this case the Board is asked to grant a use variance.

To obtain a variance the Applicant must pass the following five (5) part variance test set forth in §143-168.A. of the Ordinance:

(1) There are unique 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) 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) Such unnecessary hardship has not been created by the applicant.

(4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

(5) 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.

C. Burden of proof. For variances, the burden of proof shall be on the applicant. For special exceptions, the applicant shall be entitled to the special exception unless others can prove that it would adversely affect the public health, safety, morals or welfare.

D. Standards of proof.

(2) Variance case. An applicant for a variance shall have the burden of establishing:

(a) All the requirements of § 910.2 of the Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, as amended, 53 P.S. § 10910.2;

(b) That literal enforcement of the provisions of this chapter will result in unnecessary hardship, as the term is defined by relevant statutory provisions and case law; and

(c) That the allowance of a variance will not be contrary to the public

interest.

See also: *Tri-County Landfill, Inc. v. Pine Township Zoning Hearing Board*, 88 A.3d 488, 520 (Pa. Cmwlth. 2014) appeal denied, 101 A.3d 788 (Pa. 2014) and appeal denied, 101 A.3d 788 (Pa. 2014); 53 P.S. § 10910.2.

The Pennsylvania Supreme Court “has previously held in the context of use variances that unnecessary hardship is established by evidence that: (1) the physical features of the property are such that it cannot be used for a permitted purpose; or (2) that the property can be conformed for a permitted use only at a prohibitive expense; or (3) that the property has no value for any purpose permitted by the zoning ordinance.” *Hertzberg v. Zoning Bd. of Pittsburgh*, 554 Pa. 249, 257 (Pa. 1998).

d. *Facts Applied to Law*

Applicants have failed to meet their burden relating to the request for a variance. The Applicants have failed to establish an unnecessary hardship relating to the property. There was no testimony establishing that “(1) the physical features of the property are such that it cannot be used for a permitted purpose; or (2) that the property can be conformed for a permitted use only at a prohibitive expense; or (3) that the property has no value for any purpose permitted by the zoning ordinance.” *See Hertzberg*, 554 Pa. at 257. In fact, the testimony provided indicated that the Subject Property is currently functioning as office space for an insurance company and has previously had other such businesses operating in the building. These uses would be permitted under the Ordinance, and therefore, Applicants are unable to claim that they are unable to use the property in conformity with the Ordinance.

Without a establishing an unnecessary hardship, Applicants have failed to meet their burden under the Ordinance. Therefore, the Board is constrained to deny the request variance.

The Board finds and concludes that the Applicants' requested relief should be denied.

III. Application for Conditional Use

Applicants request Conditional Use approval under Section 143-260 (A) of the Ordinance which permits "when authorized by the Board of Supervisors . . . [a] combination of one or more permitted and/or conditional uses subject to the standards set forth in § 143-113A through D of this Code." Section 143-80 of the Ordinance further states that "The Board of Supervisors may allow or deny conditional uses" The language of the Ordinance clearly states that a Conditional Use request is under the jurisdiction of the Board of Supervisors, and therefore the Zoning Hearing Board is without jurisdiction to hear the request.

The Board finds and concludes that the Applicants' requested relief should be dismissed.

IV. Request for Special Exception

a. *Relief Requested*

Applicants seek a special exception under Section 143-150 of the Ordinance which permits the Zoning Hearing Board to approve as a special exception the "resumption or change of non-conforming use." Applicant is seeking to change the current non-conforming use relating to the subject property being a mixed-use building, to include the new non-conforming use of a dental office.

b. *Ordinance in Question*

Section 143-259 of the Ordinance outlines the permitted uses in the Ridge Pike Business District. That Section does not include a medical/dental office as a permitted use but does provide for the permitted use of a "business or professional office; bank and financial institution." Ordinance §143-259 F.

c. *Legal Standard*

A special exception is a conditionally permitted use which the municipal legislative body has determined to be appropriate in the zoning district if specific standards set forth in the zoning ordinance are met. *Mehring v. Zoning Hearing Bd. of Manchester Twp.*, 762 A.2d 1137, 1139 (Pa. Commw. 2000); *In re Brickstone Realty Corp.*, 789 A.2d 333, 340 (Pa. Commw. 2001)(citing *Bray v. Zoning Bd. of Adjustment*, 410 A.2d 909, 911 (Pa. Commw. 1980)). A special exception is not an exception to a zoning ordinance, but rather it is an exception to a use, which is expressly permitted, absent a showing of a detrimental effect on the community. *Greaton Properties, Inc. v. Lower Merion Twp.*, 796 A.2d 1038, 1045 (Pa. Commw. 2002); *Freedom Healthcare Services, Inc. v. Zoning Hearing Bd. of City of New Castle*, 983 A.2d 1286, 1291 (Pa. Commw. 2009); *Morrell v. Zoning Hearing Bd. of Borough of Shrewsbury*, 17 A.3d 972, 975 (Pa. Commw. 2011). A nonconforming use is converted into a permitted use by Special Exception once it is zoned for that use in the township zoning ordinance. *Pennridge Development Enterprises, Inc. v. Volovnik*, 624 A.2d 674, 676 (Pa. Commw. 1993).

To establish entitlement to a special exception, the Applicants must initially prove that the proposed use complies with the specific, objective criteria set forth in the zoning ordinance. *Mehring v. Zoning Hearing Bd. of Manchester Twp.*, 762 A.2d 1137, 1139 (Pa. Commw. 2000). An applicant for a special exception has the burden of establishing by competent evidence and testimony both: “(a) that the applicant’s application falls within the provisions of the ordinance which accords to the applicant the right to seek a special exception; and (b) that the allowance of a special exception will not be contrary to the public interest.” Section 143-168(D)(1). When determining whether the granting of a special exception is contrary to the public interest, the Zoning Hearing Board will consider whether the application, if granted, will:

- (a) Substantially increase traffic congestion in the streets surrounding the subject site;

- (b) Increase the risk of fire or panic or otherwise endanger the public safety;
- (c) Overcrowd the land or create undue concentration of population;
- (d) Be suitable for the property in question so as to be consistent with the spirit and purpose of the provisions of this chapter;
- (e) Intrude upon the adequacy of natural light and air to adjoining properties;
- (f) Create extraordinary burdens on public, private or community water systems or upon ground waters or wells within the neighborhood;
- (g) Overburden the public sanitary sewer system within the Township occasion environmental problems with on-site sanitary sewer installations;
- (h) Place undue burdens upon the police, fire, ambulance or other emergency services provided throughout the neighborhood;
- (i) Cause adverse effects to the appropriate use of adjacent properties in the neighborhood where the property is located;
- (j) Cause risk or danger to the safety of persons or property by improper location or design of facilities for ingress and egress to and from the property in question; or
- (k) Otherwise adversely affect the public health, safety, morals or general public welfare of the community.

Ordinance §143-168(D).(3).

d. *Facts Applied to Law*

Applicants have met their burden to show that they are entitled to seek a special exception under Section 143-150 of the Ordinance. The Subject Property is currently non-conforming in that it is a mixed-use building. Due to the non-conforming nature of the current use, Applicants are permitted to seek a change of non-conforming use under Section 143-150. Therefore, Applicants must now show that “(b) that the allowance of a special exception will not be contrary to the public interest.” See Section 143-168(D)(1).

The special exception will not be contrary to the public interest. There will be no additional traffic congestion on the streets due to the proposed use. There is adequate parking at the subject property such that no additional street parking will be necessary. The use will not overcrowd the land as the building has already been constructed and it is the mere use of that building that is in question. Similarly, there will be no intrusion on the natural light and air of adjoining properties.

The proposed use will not adversely affect the public health, safety, morals or general public welfare of the community. Further, there are other dental and medical offices within the vicinity, so there will be no negative impact on the nature of the neighborhood. While there are residential properties in the district immediately behind the Subject Property, the front facing portion of the building is within a business district in which a dental office would not be unusual or detrimental. Furthermore, the Applicants testified that the prior uses of the building were more impactful on the community than the operation of a dental clinic. Therefore, the proposed use is not contrary to the public interest.

The Board finds and concludes that the Applicants' requested relief should be granted.

V. Request for Interpretation of Parking Requirements

a. *Relief Sought*

Applicants seek an interpretation of the Ordinance Section 143-71 G. relating to the provision for off street parking for a medical/dental office.

b. *Ordinance in Question*

Section 143-71 G. states that a medical/dental office requires "7 [parking spaces] per doctor and/or technician, plus 1 per additional employee."

c. *Facts Applied to Law*

Applicants testified that there will be at least ten parking spaces allocated for the proposed dental clinic. The testimony stated that there will be one dentist on duty at any given time. There will be up to three additional employees in the office at any given time.

CONCLUSIONS OF LAW

Appeal of the Zoning Hearing Officer's Determination of November 24, 2021

1. The Applicant has standing to appear before the Board regarding the requested relief.

2. The Zoning Hearing Officer's Determination is supported by the plain language of the Ordinance.

3. A dental office is not a permitted use in the Ridge Pike Business District under the Ordinance.

Use Variance

4. Applicants failed to meet their burden to show that denial of the requested relief will impose an unnecessary hardship on the Applicants.

5. Denial of the requested relief will not impose an unnecessary hardship on the Applicants.

6. The requested relief is not necessary to enable the Applicant reasonable use of the Property.

Application for Approval of Conditional Use

7. The Board is without jurisdiction to adjudicate Applicants' request for an approval of a conditional use.

Application for a Special Exception

8. Applicants' application falls within the provisions of the ordinance which accords to the Applicant the right to seek a special exception.

9. Allowance of a special exception will not be contrary to the public interest.

Request for Interpretation of the Off-Street Parking Requirements

10. A dental office with one dentist working at any given time and up to three additional employees requires at least ten (10) off street parking spots.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 4-0 vote is as follows:

1. The Application of N. Dhanani, K. Patoliya & D. Shah docket #Z-21-28 to overrule the Lower Providence Township Zoning Officer's November 24, 2021, determination that the proposed use of the Subject Property as a dental office is not a permitted use by right for the Ridge Pike Business/R-2 Residential District is: Denied and the Zoning Hearing Officer's decision is *AFFIRMED*.

2. The Application of N. Dhanani, K. Patoliya & D. Shah docket #Z-21-28 to grant a use variance from Section 143-259 of the Ordinance to permit the establishment of a dental office where such an office is not a permitted use in the Ridge Pike Business District is: *DENIED*.

3. The Application of N. Dhanani, K. Patoliya & D. Shah docket #Z-21-28 to grant a Special Exception under the Lower Providence Township Zoning Ordinance Section 143-150 to permit a change of non-conforming use on the Subject Property to allow the operation of a dental office on the first floor and professional office on the second floor is: *GRANTED*.

4. The Application of N. Dhanani, K. Patoliya & D. Shah docket #Z-21-28 to determine that that the allocation of ten (10) parking spaces on site for the proposed use as a dental office with one dentist working at any given time and up to three additional employees working at any given time is *GRANTED* provided said number of spaces complies with Article XII, Section 143-71 G. of the Ordinance regarding Off-Street Parking Standards generally. No opinion is rendered regarding whether the parking is otherwise in compliance with the general off-street parking

standards set forth in Articles VI, XII and XXXIII of the Ordinance regarding parking standards in the R-2 Residential and Ridge Pike Business Districts.

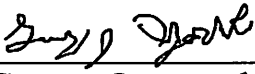
5. The request of Applicant to grant a Conditional Use from Articles VI (governing the R-2 District) and Article XII (governing parking) of the Lower Providence Township Zoning Ordinance for the proposed mixed use of the property in the Ridge Pike Business District as a dental office on the first floor and professional office on the second floor is: *DISMISSED* without prejudice.

Dated: February 1, 2022


ORDER

The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

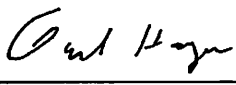


George Ozorowski



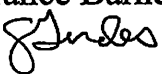
Joseph Pucci

Kathie Eskie



Gail Hager

Terrance Barnes, Alternate



Christopher Gerdes, Alternate

Randy Klein, Alternate

NOTICE TO APPLICANT

There is a thirty (30) day period after the date of a decision for an aggrieved person to file an appeal in the Court of Common Pleas of Montgomery County to contest an approval or denial by the Zoning Hearing board. If the Applicant has been granted Zoning Hearing Board approval, the Applicant may take action on said approval during the thirty (30) day appeal period; however, the Applicant will do so at his or her own risk. If the Applicant received Zoning Hearing Board approval, the Applicant must secure all applicable permits from Lower Providence Township within one (1) year of the date of the approval or the decision granting approval.