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Healthy Minds Partners, LLC

IN RE: APPLICATION OF HEALTHY MINDS PARTNERS, LLC	BEFORE THE BOARD OF SUPERVISORS OR SMITHFIELD TOWNSHIP Totts Gap Hill Road TPN 16-9-1-22
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APPLICANT’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Healthy Minds Partners, LLC, by and through its attorneys, Kaplin Stewart Meloff Reiter & Stein, P.C., hereby submits the following proposed findings of fact, legal memorandum, and conclusions of law in support of its application for a conditional use for a residential drug, alcohol, and/or substance abuse treatment facility pursuant to Ordinance No. 238 and §27-309 Schedule of District Regulations of the Smithfield Township Zoning Ordinance, as adopted and in effect at the time of the August 22, 2023 Healthy Minds application (herein defined).¹

¹ Ordinance No. 238, adopted September 9, 2020, amended Section 27-309, Schedule of District Regulations, to permit a residential drug, alcohol and/or substance abuse treatment facility by conditional use in the R-1 District. Ordinance No. 247, adopted January 10, 2024, amended Section 27-309 to remove the conditional use allowance for a residential drug, alcohol and/or substance abuse treatment facility by conditional use in the R-1 District. Ordinance No. 247 was adopted more than 4 months after submission of the Application, and accordingly, is inapplicable.

I. FINDINGS OF FACT

A. Existing Conditions

1. The application concerns an irregularly-shaped approximately 31.70 (+/-) acre (gross) parcel of land with frontage on the western side of Totts Gap Hill Road in Smithfield Township (“**Township**”), further identified generally as Parcel No. 16-9-1-22 and Tract No. 2 at Monroe County Recorder of Deed Book 2418, Page 6885. (Exhibits A-1, A-4, and A-9) (“**Property**”).

2. Water Gap Acquisitions Partners, LLC is the legal owner of the Property as evidenced by a deed, recorded at Deed Book 2418, Page 6739 with the Monroe County Recorder of Deeds. (Exhibit A-2).

3. Healthy Minds Partners, LLC (“**Healthy Minds**” and/or “**Applicant**”) is the equitable owner of the Property, by virtue of a Lease Agreement dated July 12, 2023. (Exhibit A-2).

4. The Property fronts on Totts Gap Hill Road along the eastern property boundary. (N.T. 1/24/24, p. 99; Exhibits A-1 and A-10).

5. The Property is impacted by steep slopes along the northern and northwestern property boundaries and adjoins Cherry Creek along a portion of its western boundary. (N.T. 1/24/24, p. 99, Exhibit A-10).

6. Totts Gap Hill Road ends at a t-intersection with Cherry Valley Road at the northeastern corner of the Property. (N.T. 1/24/24, p. 99; Exhibit A-10).

7. There are residential properties adjoining the northwestern property boundary and to the east across Totts Gap Hill Road. (Exhibits A-4 and A-9).

8. The Property is presently improved with several holes of the Water Gap Golf Course (“**Golf Course**”), a private golf course club of limited activity. (N.T. 12/13/23 pp. 34-35; Exhibits A-1 and A-5).

9. The balance of the Golf Course is operated on an adjoining property which takes access via a driveway onto Cherry Valley Road. (Exhibit A-9).

10. The Property is presently accessed by golfers through the adjoining Golf Course property via cart paths only. An existing maintenance drive onto Totts Gap Hill Road provides access for maintenance vehicles only. (N.T. 1/24/24, pp. 99-100; Exhibit A-9).

11. The Golf Course and the adjoining Golf Course property are not the subject of this application. (N.T. 12/13/24, pp. 34).

12. The Property is located in the Township’s R-1 Low Density Residential District (“**R-1 District**”). (N.T. 1/24/24, p. 97; Exhibit A-9).

B. Zoning Ordinance

13. At the time of submission of the application (further defined herein), §27-309, Schedule of District Regulations, of the Smithfield Township Zoning Ordinance (“**Code**”) permitted, *inter alia*, a “residential drug, alcohol and/or substance abuse facility” by conditional use in the R-1 District. (Code §27-309, *since amended and partially repealed*).

14. Section 27-1002 of the Code defines “residential drug, alcohol and/or substance abuse facility” as:

Facilities in which a combination of temporary housing, medically supervised subacute care, personal supportive services and counseling for individuals of all ages seeking rehabilitation for drug, alcohol and substance abuse reasons. Such facilities may include services for individuals requiring temporary skilled nursing services but will also include services focusing on mental health therapy.

15. Section 27-511, Supplementary Regulations Applicable to Other Uses, subpart (3.6), addressing such uses, further provides:

Residential drug, alcohol and/or substance abuse treatment facility where permitted shall be subject to the following standards:

- A. The minimum lot area for the facility shall be 25 acres; and
- B. All drug, alcohol and/or substance abuse treatment and related activities shall be rendered on site and not off site; and
- C. The overall maximum number of persons in treatment at any one time shall be no more than 60 persons.

16. Section 27-706, Additional Conditional Use Requirements, further provides that an applicant for conditional use must establish:²

1. The nature of the on-site activities and operations, the types of materials stored, the frequency of distribution and restocking, the duration period of storage of materials, and the methods for disposal of any surplus or damaged materials. In addition, the applicant shall furnish evidence that the disposal of materials will be accomplished in a manner that complies with state and federal regulations.
2. The general scale of the operation, in terms of its market area, specific floor space requirements for each activity, the total number of employees on each shift, the number of shifts, the hours of operation, and overall site size.
3. Any environmental impacts that are likely to be generated (e.g., odor, noise, smoke, dust, litter, glare, vibration, electrical disturbance, radiation, wastewater, stormwater, solid waste — this list is merely illustrative and not exhaustive) shall have specific measures employed to mitigate or eliminate any such negative impacts. The applicant shall further furnish evidence that the impacts generated by the proposed use fall within acceptable levels as regulated by applicable laws and ordinances.
4. The applicant shall present credible evidence that the number of off-street parking spaces provided for tractor

² As noted by Applicant's Planning expert, the majority of these provisions relate to industrial uses. To the extent the balance are applicable, Applicant satisfied these criteria. (N.T. 3/13/24, pp. 161-163).

trailer trucks will be adequate to accommodate the expected demand generated by the proposed use and its related activities.

5. A traffic study, prepared by a professional traffic engineer, shall be required as per the existing Zoning Ordinance, Chapter 27, § 27-404, Subsection 2.

17. There are no other objective criteria in the Code relevant to a conditional use for a residential drug, alcohol and/or substance abuse facility.³

C. Procedural History

18. On August 22, 2023, Healthy Minds submitted a conditional use application to operate a 60-bed residential drug, alcohol and/or substance abuse facility at the Property (“**Application**”); which was deemed complete by LVL Engineering Group, the Township Engineer (“**LVL**”), via review letter dated August 28, 2023 (Exhibits A-1 and A-7).

19. LVL subsequently issued a substantive review, dated October 10, 2023, which determined that the Application satisfied all objective criteria to establish entitlement to a conditional use, specifically finding: (i) the use as proposed is permitted by conditional use in the R-1 District; (ii) the improvements as proposed satisfy all bulk and dimensional criteria of the Code; (iii) the proposed parking satisfies Code requirements; (iv) the use as proposed satisfies the specific objective criteria of the Code (i.e. minimum lot size, maximum number of patients, and all treatment occurring on-site); (v) the Application and accompanying plans included all required information to confirm that the proposal meets the landscaping and lighting requirements of the Code; (vi) the Application and accompanying plans show the requisite information related to water, sewer, and stormwater management practices; and (vii) the traffic assessment submitted

³ Sections 27-704 [submission requirements] and 27-705.A and .B [plan requirements] related to technical requirements of the submission and accompanying plans and were confirmed compliant by the Township Engineer. (Exhibits A-7 and A-11). Section 27-705.C are factors the Board is asked to “consider” in the granting of a conditional use, not quantifiable specific criteria an applicant must establish.

with the Application was acceptable and a further traffic impact study is not required under the Code. (Exhibit A-11).

20. Following a November 2023 public meeting on the Application, the Smithfield Township Planning Commission recommended approval of the conditional use, subject to the imposition of two suggested conditions: (i) background checks for all staff for both criminal and sexual misconduct offenses, with monitoring by the Township; and (ii) after a designated reasonable curfew, all doors exiting the facility are to have a monitor, alarm, or camera system notifying a central station that someone has exited the building. (N.T. 12/13/23, p. 10).

21. Hearings on the application were held before the Board of Supervisors on December 13, 2023, January 24, 2024, March 13, 2024, and April 10, 2024 (collectively, “**Hearings**”).

22. At the outset of the Hearings, the Board of Supervisors (“**Board**”) granted party status to adjacent property owners Diana Scheid, Charles Cohan, and Kristine Karol. Ms. Karol was represented throughout the Hearings by Jason Ulrich, Esquire and Alexander Ward, Esquire of Gross McGinley, LLP. (N.T. 12/13/24, pp. 12-19).

23. No other individuals sought party status.

D. **Proposed Operations**

24. Healthy Minds proposes to develop the Property with a 60-bed residential, voluntary-admit drug and alcohol rehabilitation facility (“**Proposed Facility**”). (N.T. 12/13/23, p. 37).

25. Healthy Minds is a single-purpose entity created by Dan Harvey (“**Harvey**”) to own and operate the Proposed Facility at the Property. (N.T. 12/13/23, pp. 30-31).

26. Harvey has owned and/or operated treatment facilities throughout the United States, including most recently a facility in Georgia that was ranked in the Top 10 in the U.S. during his ownership. (N.T. 12/13/23, p. 27).

27. In the past decade, Harvey has assisted in the treatment and recovery of over 4,000 patients and has never experienced a fatality at his facilities. (N.T. 12/13/23, pp. 27, 50-52).

28. Neither Harvey nor the Healthy Minds entity are or were ever involved with any other drug or alcohol rehabilitation facility in the Township. (N.T. 12/13/23, pp. 30-31, 79-80, 83).

29. Harvey confirmed the Proposed Facility will require specialized licensing through both the Pa. Department of Health Services (“**DHA**”) and the Pa. Department of Drug and Alcohol Projects (“**DDAP**”), which both have extensive regulations governing the operation of drug and alcohol rehabilitation treatment facilities. (N.T. 12/13/23, p. 31).

30. The Proposed Facility will be subject to yearly scheduled inspections, as well as unannounced inspections, under DHA and DDAP licensing. (N.T. 12/13/23, pp. 32-33).

31. DHA and DDAP licensing will also require installation of security cameras and smoke alarms, a pre-approved treatment program, and properly licensed personnel, including mental health counselors, psychiatrists, nurses, and the like. (N.T. 12/13/23, pp. 31-32).

32. Harvey further testified that the rural setting and access to nature can be an important component of successful recovery programs, which is what drew him to this site. (N.T. 12/13/23, pp. 32-33).

33. The Proposed Facility will be a private, freestanding, inpatient rehabilitation facility accepting patients 18-years or older on a voluntary (i.e. not court-ordered) basis. (N.T. 12/13/23, pp. 34-36, 46).

34. Patients and staff are subject to criminal background checks and anyone convicted of a violent felony or Megan's Law offense would not be accepted or employed at the Proposed Facility (N.T. 12/13/23, pp. 36, 45).

35. The program is an entirely in-patient program, restricting patients from leaving the property for work or school and prohibiting patients from having a vehicle. Patients are required to participate in a full day (7-8 hours) of therapy and classroom work each day, in addition to meals (all provided on-site). (N.T. 12/13/23, pp. 36-38).

36. All medications, whether prescribed in connection with alcohol and drug addiction therapies or for a separate diagnosis, are kept in a secured location (per state licensing requirements) and are administered by a medical professional. (N.T. 12/13/23, pp. 38-40).

37. The Proposed Facility will be gated at the entry driveway and there will be provision for overnight security, including silent alarms and cameras at exit doors to alert security if someone has opened a door after curfew. (N.T. 12/13/23, p. 46).

38. The Proposed Facility will employ an estimated 70-80 employees over several shifts throughout the week, each week. The facility is staffed 24 hours a day. (N.T. 12/13/23, pp. 43-44).

39. The policies and procedures for the Proposed Facility include discharge protocol for patients who have completed the program and for patients who are either electing to leave before completing the program or who are being dismissed for failure to abide by the rules. In all cases, a patient's family or primary contact is initially contacted to collect the discharged patient and, if that individual is unwilling or unable to do so, facility staff will drive the patient to a safe location within 60 miles of the Property. Patients are not permitted to leave the premises unless in the care of a family member or facility staff. (N.T. 12/13/23, pp. 41-43).

E. Proposed Improvements

40. Analysis confirmed that the location of the existing maintenance driveway on the Property provides the best sight distances along Totts Gap Hill Road, and accordingly, will be modified to provide access directly to the Proposed Facility and will serve only the Proposed Facility. (N.T. 1/24/24, pp. 99-100; Exhibit A-9).

41. If the existing Golf Course is retained on the Property, golfers will continue to access the Property via the cart paths from the adjoining parcel only (i.e. Golf Course vehicle traffic will continue to utilize the exiting Golf Course property and parking and will not access the Totts Gap Hill Road driveway serving the Proposed Facility). (N.T. 1/24/24, pp. 122-124, Exhibit A-9).⁴

42. The Board accepted Charles Niclaus (“**Niclaus**”), of Barry Isett & Associates, as an expert in Civil Engineering. (N.T. 1/24/24, p. 95; Exhibit A-6).

43. Niclaus testified that he is the project manager for the project and, in that capacity, oversaw the preparation of all plans and reports, participated in the presentation before the Planning Commission, and communicated with the Township Engineer related to the Proposed Facility. (N.T. 1/24/24, pp. 95-96).

44. Niclaus testified that the Proposed Facility will be served by on-lot water and sewer. (N.T. 1/24/24, pp. 102-104; Exhibit A-9).

45. Niclaus testified the plans for the Proposed Facility satisfy – and in most cases far exceed – the applicable bulk and dimensional requirements of the R-1 District for a use served by on-lot water and sewer. Specifically, Niclaus provided:

- a. The lot width at the street is 2000 feet, where only 150 feet is required;

⁴ Additionally, see proposed condition #11.e, herein. Applicant will agree that the Golf Course will not operate from the Property if the Proposed Facility is approved and operating.

- b. The lot depth is 900 feet at the point of the lot where the building is proposed, where a minimum of 200 feet is required;
- c. A front yard setback of 196 feet is provided, where a minimum of 35 feet is required;
- d. A side yard setback of 240 feet is provided, where a minimum of 30 feet is required;
- e. A rear yard setback of 540 feet is provided, where a minimum of 25 feet is required;
- f. Impervious coverage of 5.1% is proposed, where a maximum of 25% is permitted;
- g. Building coverage of 0.76% is proposed, where a maximum of 20% is permitted;
- h. The overall building height will be less than the 35 feet maximum permitted. (N.T. 1/24/24, pp. 102-104; Exhibits A-9, and A-10).

46. Niclaus testified that the Property satisfies the minimum 25 acre-requirement for a conditional use for a residential drug and alcohol treatment facility in that the 31.7-acre (gross) parcel measures out to a minimum of 28.7 acres (net) when rights-of-way, permanent drainage easements, and floodplains are netted out of the developable area. (N.T. 1/24/24, pp. 104-106; Exhibit A-9).⁵

47. Niclaus testified that the architectural plans provided for his use in preparation of the Application submission confirm a 60-bed in-patient facility. (N.T. 1/24/24, pp. 106-108; Exhibits A-9 and A-10).

48. Niclaus testified that the Proposed Improvements are designed to meet Code requirements for on-site parking and loading and, should it be determined in the future that

⁵ Niclaus further confirmed that the Code is not clear on what constitutes a “permanent drainage easement” and accordingly, to arrive at the 28.7 acre (net) calculation, Niclaus took a conservative approach and netted out Cherry Creek, as well as existing floodplains and wetlands on the Property, should any of those features be determined to be a “permanent drainage easement”. (N.T. 1/24/24, pp. 105-106).

additional parking is required or advisable, there is more than sufficient area to add additional parking without requiring zoning relief for any bulk or dimensional requirements of the Code. (N.T. 1/24/24, pp. 108-109; Exhibit A-9).

49. Niclaus testified that the traffic assessment submitted with the Application confirms the maximum anticipated number of trips generated at the site under even the most conservative analysis is 264, which does not meet the 500-trip threshold that would require a traffic study. (N.T. 1/24/24, pp. 110-112).⁶

50. Although the additional considerations of §27-705.1.B are not the obligation of the Applicant to establish, Niclaus nevertheless confirmed that the materials submitted with the Application confirm that the Proposed Improvements will be constructed in accordance with all applicable landscape and lighting requirements of Township ordinances. (N.T. 1/24/24, pp. 112-113; Exhibit A-9).

51. Niclaus further testified that, in his professional opinion, as further depicted on the viewshed renderings prepared for the Proposed Facility, given the size of the Property and the size and siting of the Proposed Facility and its site amenities, the Property is well suited for the proposed use and the use will not have a detrimental impact on adjacent properties. (N.T. 1/24/24, pp. 114-115, 119-120; Exhibit A-12).

52. Finally, Niclaus testified that the Township Engineer reviewed the Application materials and issued a review letter confirming the materials meet the bulk and dimensional

⁶ As further noted in later testimony, even if the existing Golf Course is retained on the Property, golfers will continue to access the Property via the cart paths from the adjoining parcel only (i.e. Golf Course vehicle traffic will continue to utilize the existing Golf Course property and parking and will not access the Totts Gap Hill Road driveway serving the Proposed Facility). (N.T. 1/24/24, pp. 122-124, Exhibit A-10). As such, the opposition testimony opining that golf course traffic must be counted at the new driveway for the Property is substantively incorrect and should be disregarded.

criteria, objective criteria for conditional use, and the initial design requirements for landscaping, traffic, and lighting under the Code. (Exhibit A-11).

53. The Board accepted Charlie Schmehl (“**Schmehl**”), of Urban Research and Development Corporation, as an expert in Community Planning and Zoning. (N.T. 3/13/24, pp. 148-151; Exhibit A-13).

54. Schmehl testified that he reviewed all of the plans and supporting materials in connection with the Proposed Facility and the Application and, in his professional opinion, the Property is suitable for the use. (N.T 3/13/24, pp. 151-152).

55. Schmehl testified that, in his professional opinion, the design of the Proposed Facility is appropriate and will not impact surrounding properties because: 60-beds on 30+ acres is a low intensity use; large setbacks from adjacent residential properties are proposed; substantial areas of landscaping will remain and will be further supplemented with new landscaping; the building and impervious coverages are well below ordinance requirements; the design of the building is consistent with a rural clubhouse or country inn and will not give the outward appearance of an institutional facility; the viewshed analysis confirms views from the roadway and surrounding properties will be primarily of landscaping; on-site treatment and voluntary admittance will reduce overall traffic impacts and improve the quality of care that can be provided, thus reducing impact on surrounding properties; and the lighting as designed far exceeds Township standards and achieves zero footcandles well before the property boundaries. (N.T. 3/13/24, pp. 151-156, 158-159).

56. Significantly, Schmehl testified that, based on the design of the Proposed Facility and the conditions Healthy Minds is willing to impose on the operations, the Proposed Facility

will be *less* impactful than the typical residential drug and alcohol rehabilitation center that is generally being built today. (N.T. 3/13/24, pp. 164).

57. Opponents, in contrast, offered only unsubstantiated generalizations about safety and impact to the community, with one going so far as confirming that “Anything built there is going to change the character of the neighborhood. Anything. I don’t care if they’re making lollipops. It’s going to change the nature of the neighborhood.” (N.T. 4/10/24, pp. 250).

II. DISCUSSION

A. Legal Standard

The Pennsylvania Municipalities Planning Code (“MPC”) provides that a zoning ordinance may contain provisions for conditional uses to be allowed or denied by the governing body pursuant to public notice and hearing and recommendations by the planning agency and pursuant to express standards and criteria set forth in the zoning ordinances. *In re Thompson*, 896 A.2d 659, 670 (Pa. Cmwlth. 2006); 53 P.S. §10603(c)(2).

"A [conditional use] is not an exception to the zoning ordinance, but rather a use to which the applicant is entitled provided the specific standards enumerated in the ordinance for the [conditional use] are met by the applicant." *In re AMA/Am. Mktg. Ass'n, Inc.*, 142 A.3d 923, 934 (Pa. Cmwlth. 2016). The existence of a conditional use provision in a zoning ordinance indicates a legislative determination that the use is consistent with the municipality's zoning plan and is a use which is presumptively consistent with the public health, safety and welfare. *In re Cutler Group, Inc.*, 880 A.2d 39 (Pa. Cmwlth. 2005).

An applicant seeking a conditional use bears the burden of proving only that its request complies with the specific, objective requirements contained in the zoning ordinance. *Levin v. Bd. of Supervisors of Benner Twp.*, 669 A.2d 1063 (Pa. Cmwlth. 1995), *affirmed*, 547 Pa. 161, 689 A.2d 224 (1997); *41 Valley Associates v. Board of Supervisors of London Grove Township*, 882

A.2d 5 (Pa.Cmwlth. 2005). Detailed design of the proposed development and compliance with detailed requirements of the zoning ordinance and subdivision and land development ordinance, while required for ultimate land development approval, are not required for conditional use approval and are beyond the limited scope of the conditional use proceeding. *In re Thompson*, A.2d at 672.

If the board is persuaded that the application complies with the objective criteria of the zoning ordinance, a presumption arises that “the proposed use is consistent with the general welfare of the community.” *H.E. Rohrer, Inc. v. Zoning Hearing Board of Jackson Township*, 808 A.2d 1014, 1018 (Pa. Cmwlth. 2002). Thus, an applicant for conditional use is entitled to that use as a matter of right unless it is determined that the use does not satisfy the specific, objective criteria in the zoning ordinance for that use. *Brookview Solar I, LLC v. Mount Joy Twp. Bd. of Supervisors*, 305 A.3d 1222 (Pa. Cmwlth. 2023); 53 P.S. § 10107(a).

Once the applicant meets its burden of establishing compliance with the objective criteria of the ordinance for the proposed use, it has made out its *prima facie* case and the application must be granted unless the objectors present sufficient evidence that the proposed use will pose a detrimental threat to the public health, safety, and welfare beyond what would normally be anticipated from a use of its type. *Bailey v. Upper Southampton Twp.*, 690 A.2d 1324 (Pa. Cmwlth. 1997). Specifically, once an applicant for a conditional use shows compliance with the specific criteria of the zoning ordinance, the burden shifts to the objectors, if any, to prove that there is a high probability that the proposed use will generate adverse impacts not normally generated by the type of use in question and that those atypical impacts pose a substantial threat to the health and safety of the community. *Heck v. Zoning Hearing Board for Harvey’s Lake Borough*, 397 A.2d 15 (Pa. Cmwlth. 1979). Opponents of a conditional use may not meet their burden by *speculating*

as to possible negative effects. *Manor Healthcare Corp. v. Lower Moreland Township Zoning Hearing Board*, 590 A.2d 65 (Pa. Cmwlth. 1991). “Mere speculation” of possible harm is not sufficient, and the objectors’ burden may not be satisfied with personal opinion or bald assertions. *H.E. Rohrer, Inc.*, 808 A.2d at 1018. Rather, after an applicant for conditional use establishes that the proposed use complies with the objective requirements for the conditional use it may only be denied if objectors demonstrate, through competent and substantial evidence, that the impact of the proposed use on the public welfare is greater than that which would be expected from such a use in “normal” circumstances. *Ruddy v. Lower Southampton Township Zoning Hearing Board*, 683 A.2d 887 (Pa. 1996); *Dotterer v. Zoning Hearing Board of Upper Pottsgrove Township*, 588 A.2d 1023 (Pa. Cmwlth. 1991); *H.E. Rohrer, Inc.*, 808 A.2d at 1018.

Where, as here, the ordinance specifically permits the Proposed Facility by conditional use, and the Applicant has established it meets all applicable objective criteria of the Code, Healthy Minds is entitled to the conditional use, absent a showing of extreme, abnormal impact by objectors; which objectors entirely failed to establish.

B. Healthy Minds is Entitled to a Conditional Use for the Proposed Residential Treatment Facility

Township Ordinance No. 238, adopted September 9, 2020, was the operative ordinance in place at the time of the Healthy Minds Application and permitted a “residential drug, alcohol, and/or substance abuse treatment facility” by conditional use in the R-1 District provided it met three (3) specifically delineated objective criteria: (i) the lot at issue must be at least 25 acres; (ii) all drug, alcohol and/or substance abuse treatment and related activities shall be rendered on site and not off site; and (iii) the overall maximum number of persons in treatment at any one time shall be no more than 60 persons. (Ordinance 238; §27-511).

Healthy Minds expert witness, Niclaus, confirmed that the Property is located in the R-1 District and, even under the most conservative calculation, is at least 28.7 acres (net). (N.T. 1/24/24, pp. 97, 104-106; Exhibit A-9). Additionally, Healthy Minds' witness – and facility owner/operator – Harvey confirmed that all treatment will occur on-site and a maximum of 60 patients will be treated at any one time. (N.T. 12/13/23, pp. 36-38). The Township Engineer further confirmed in his October 10, 2023 review letter that the Application and supporting materials as submitted confirm that all objective criteria of the Code related to the conditional use are satisfied. (Exhibit A-11).

Additionally – and although arguably not required to do so under the legal standard for a conditional use – Niclaus nevertheless confirmed, and the Township Engineer in his review letter agreed, that the Application and supporting materials establish that: (i) the Proposed Facility far exceeds all bulk and dimensional criteria required for a development in the R-1 District that will utilize on-lot sewer and water; (ii) the proposed parking and loading meet Code requirements and both could be expanded, if needed, without requiring zoning relief; (iii) only the Proposed Facility will utilize the proposed driveway onto Totts Gap Hill Road (any golf traffic will continue to use the existing driveway and parking at the separate Golf Course property); (iv) the traffic assessment appropriately captures all anticipated traffic from the Proposed Facility and is well-below the 500 trip threshold that would require a traffic impact study; and (v) the proposed landscaping and lighting meets ordinance requirements. (N.T. 1/24/24, pp. 102-113; Exhibit A-9; Exhibit A-11).

Healthy Minds unquestionably met its burden, thus shifting the burden to objectors to establish – through competent and substantial evidence – that there is a high probability of adverse impact not normally contemplated by the type of use in question. *See Heck, supra.; Ruddy, supra.;*

Levin, supra. Objectors' witnesses offered no evidence or testimony to support such a finding and wholly failed to meet their heavy burden.

Based on the foregoing, Healthy Minds satisfied all applicable objective criteria of the Code and is entitled to a conditional use to permit the proposed Healthy Minds residential drug, alcohol, and/or substance abuse treatment facility on the Property.

C. Objectors Failed to Meet Their Substantial Burden to Show a High Probability of an Adverse Impact.

An objector's burden of demonstrating that a proposed use does not comply with the general health, safety, and welfare criteria imposed upon a conditional use is not satisfied by a mere showing that a proposed use will have effects that are no different or no greater than those which normally attend the permitted use. *Moyer's Landfill, Inc. v. Zoning Hearing Board of Lower Providence Township*, 450 A.2d 273 (Pa. Cmwlth. 1982). Rather, a conditional use may only be denied if opponents demonstrate that the impact of the proposed use on the public welfare is greater than that which might be expected from such a use in normal circumstances. *In re Cutler Group*, 880 A.2d 39 (Pa. Cmwlth. 2005); *Ruddy, supra.*; *New Bethlehem Borough Council v. McVay*, 467 A.2d 395 (Pa. Cmwlth. 1983).

Moreover, those who object to an application for a conditional use cannot meet their burden of showing that the proposed use would violate the health, safety, and welfare of the community by merely speculating as to possible harm; rather, objectors must show a high degree of probability that the proposed use will cause a substantial threat to the health and safety of the community. *Manor Healthcare Corp. v. Lower Moreland Township Zoning Hearing Board*, 590 A.2d 65 (Pa. Cmwlth. 1991).

Therefore, in order to defeat Healthy Minds' conditional use application, objectors must demonstrate through non-speculative, objective evidence that the Proposed Facility would have a

greater detrimental impact on the public health, safety, and welfare than would any other 60-bed in-patient residential drug, alcohol, and/or substance abuse treatment facility located on an R-1 property.

Healthy Minds unquestionably met its burden of establishing that the proposed use complies with the objective criteria of the zoning ordinance, thus shifting the burden to objectors to establish – through competent and substantial evidence – that there is a high probability of an adverse impact not normally contemplated by the type of use in question. See *Heck, supra.*; *Ruddy, supra.*; *Mann, supra.*; *Dotterer, supra.* Objectors’ witnesses failed to offer any relevant evidence or testimony to support such a finding and wholly failed to meet their heavy burden.

The objectors’ comments here merely reflect speculative fears that are not grounded in any objective facts. Notably, the majority of community comments – even from individuals recognized as parties to the matter – centered around concerns of smoking on the property, existing traffic on the surrounding roadways (and the current, general disrepair of those roads), light impacts detracting from existing dark skies, existing flooding/stormwater issues in the area, that a use of this sort does not belong in the R-1 District because it will disrupt the rural nature of the community, and that Healthy Minds’ patients – whom they describe as “transient people” – will make them “uncomfortable”. (See generally, N.T. 4/10/24, pp. 234-256, 257-273, 274-281). Significantly none of these concerns were provided as comparison to the potential impact of another use of the same type and, unquestionably, the vast majority were wholly unrelated to the actual proposal at issue in any tangible way.

None of the objectors provided competent and substantial evidence about the actual use proposed or how the proposed use has a high probability of adversely impacting the area in a manner not contemplated by any other similar use of the Property. Objectors’ sole expert witness

Thomas Shepstone (“**Shepstone**”) – identified as a planning expert with decades of experience – failed to even address the relevant standard (i.e. that the use as specifically proposed here will somehow constitute a greater impact than would normally be generated by this type of use). In fact, Shepstone conceded in his testimony that the concerns he was raising are “an ongoing risk with any facility”. (N.T. 4/10/24, p. 203). When asked if there was anything in the Healthy Minds proposal that would indicate to him that the proposed treatment facility would have a greater or more negative impact on the community than any other treatment facility, he answered “No, I don’t believe so.” (N.T. 4/10/24, p. 216). Shepstone instead focused on what were later acknowledged to be concerns that were technical in nature and, even if found ultimately to be justified, could be addressed through conditions. (N.T. 4/10/24, p. 204).⁷

Objectors wholly failed to offer any relevant evidence that would justify a denial of a conditional use for the Proposed Facility. Healthy Minds, in contrast, established through extensive testimony that great care will be taken in both the operation and the siting of the Proposed Facility to provide safe and effective care for its patients with no negative impact on surrounding properties and the community. Additionally, Healthy Minds expert witnesses Niclaus and Schmehl, both opined regarding the appropriateness of the Proposed Facility under the Code. Niclaus confirmed his professional opinion that the Proposed Facility is sized and located within the Property with careful consideration of the surrounding viewsheds and adjoining properties, as well as the safe

⁷ Additionally, the primary factors which Shepstone argued had not been satisfied, dealt exclusively with traffic impacts (and his incorrect assumption that existing Golf Course users will be able to access the Golf Course from the Proposed Facility) and a purported incongruity with the Comprehensive Plan (which the Board acknowledged was not a relevant standard when considering a conditional use). (N.T. 4/10/24, pp. 226-227). The remainder of Shepstone’s testimony related to impact on property values (based on a generalized, unsubstantiated study which did not account for various types of facilities and which the Board properly noted would have been factored into a decision to permit a conditional use in the R-1 District) and an argument that because other facilities exist in the area, this one should be precluded. (N.T. 4/10/24, pp. 197-200 and 222-225). Applicant notes all of the facilities identified by Shepstone are of an entirely different character than the Healthy Minds’ Proposed Facility and are within surrounding municipalities and would not satisfy Smithfield Township’s obligation to allow for all legal uses within its borders. (Objector Exhibit 4).

and efficient entrance/exit from Totts Gap Hill Road; and, as such, it is well suited to the Property and the surrounding community. (N.T. 1/24/24, pp. 114-115, 119-120; Exhibit A-12). Schmehl, in turn, confirmed that in his professional opinion as a community planner, the Property is well-suited for the Proposed Facility and the facility will not impact surrounding properties, and indeed – given the siting of the facility, the operations as testified to, and the conditions proposed by Applicant – this Proposed Facility will actually have less impact on the surrounding community than a typical alcohol and drug rehabilitation center being built today. (N.T. 3/13/24, pp. 164).

D. Standards For Imposing Conditions Upon Approval of a Conditional Use

The MPC provides that governing bodies may impose “reasonable conditions” upon the grant of a conditional use. *See, 53 P.S. § 10603(c)(2), 53 P.S. § 10913.2(a)*. Indeed, the Township Code specifically recognizes this obligation at §27-705.C(2), which requires the Board of Supervisors to consider “whether an approval could be conditioned in such a manner as to eliminate or substantially reduce” detrimental impacts. §27-705.C(2); *see also* Ryan on Zoning §5.2.7 (explaining that a municipal governing body is obligated to impose a condition, if it can, to mitigate a perceived impact rather than deny the conditional use).

Reasonable conditions are those that advance a valid zoning interest, are supported by the record, and relate to the specific zoning ordinance at issue. *In re Maibach, LLC*, 26 A.3d 1213 (Pa. Cmwlth. 2011), *citing HHI Trucking & Supply, Inc. v. Borough Council of the Borough of Oakmont*, 990 A.2d 152 (Pa. Cmwlth. 2010). In order to be valid, conditions must relate to a zoning ordinance standard or be authorized by the MPC. *HHI Trucking, supra*. Conditions that are inconsistent with the MPC or lack support in the zoning ordinance are invalid. *Id.* Discriminatory conditions or ones that deprive an applicant of benefits conferred by the law are invalid. *Id.* Where an applicant has satisfied the initial requirements of a conditional

use application, the burden is on the board of supervisors to justify the conditions imposed. *LTS Development, Inc.*, 2003 WL 23864650 (Pa. Com. Pl. 2003), *aff'd* 862 A.2d 686 (Pa. Cmwlth. 2004). In the absence of proper evidence of an atypical detrimental impact, a board should not impose a condition that is more restrictive or imposes obligations upon an applicant that are greater than those imposed by the applicable ordinance requirements. *See, e.g., Mann v. Lower Makefield Township*, 634 A.2d 768 (Pa. Cmwlth. 1993) (emphasis added).

The Applicant's plans for the Proposed Facility meet the objective requirements of the Code. The proposed facility is a residential, voluntary-admit drug and alcohol rehabilitation facility with a sixty (60) bed capacity. (N.T. 12/13/23, p. 6: 23-24). All prospective patients are screened before acceptance to the Healthy Minds program. A criminal background check is performed on every patient and staff member before they are permitted to visit the Healthy Minds rehabilitation center. (N.T. 12/13/23, p. 35-36). The Applicant will not admit residents into the program if they have a violent felony or Megan's Law conviction. (N.T. 12/13/23, p. 35: 19-25; p. 36). Healthy Minds is required to obtain licensures through the Pennsylvania Department of Health Services and the Pennsylvania Department of Drug and Alcohol Programs. (N.T. 2/1/22, p. 69-70, 93, 97; N.T. 3/1/22, p. 72-76; N.T. 4/5/22, p. 73-76, 134, 152). The Applicant will be subject to scheduled inspections once a year and additionally unannounced inspections at least once a year by the Commonwealth. (N.T. 12/13/23, p. 32: 7-13). The Applicant will install gates to enter, and place surveillance cameras around the facility and its access points. There will be overnight security to monitor the facility. Additionally, there will be alarms set on the access doors and lighting to notify if doors are opened after curfew. (N.T. 12/13/24, p. 46: 6-16). The proposed use is extensively regulated by the Commonwealth of Pennsylvania and requires trained staff to

operate the facility and provide safe and effective treatment to its patients. (N.T. 3/13/24, p. 163: 12-20).

As none of the impacts from the operation of this Proposed Facility would be more severe than any other drug and alcohol rehabilitation facility, the Board's ability to impose conditions upon an approval is restricted and any such conditions must be carefully tailored to relate to a specific zoning standard, without imposing an obligation on Applicant that would deprive Healthy Minds of its rights at law to operate a facility at this Property.

During the course of the Hearings, Healthy Minds representatives confirmed that the Applicant would agree: (i) that all patients must be at least 18-years of age; (ii) criminal background checks will be performed on all employees and patients and anyone with a violent felony or Megan's Law conviction will be excluded; and (iii) after a designated reasonable curfew, all doors exiting the facility are to have a monitor, alarm, or camera system notifying a central station that someone has exited the building outside of curfew hours. Additionally, Healthy Minds representatives further confirmed their willingness to work with the Board during land development on additional screening of the Proposed Facility from the surrounding properties, the final location of the proposed building on the Property, designated outdoor smoking areas properly distanced from surrounding properties, and the on-going operation of the golf course on the Property.⁸

⁸ Recognizing that the conditions proffered by Objector Karol during the course of the Hearings were abjectly unreasonable and not tied directly to the mitigation of impact of this Application as compared to similar facilities, Healthy Minds representatives repeatedly requested an opportunity to review any additional conditions that Objector Karol may consider reasonable, in an effort to respond to stated concerns. No such proposed conditions were provided for review and discussion.

As Healthy Minds has met all applicable objective criteria of the Code relative to the Proposed Facility and has further offered reasonable conditions appropriately tailored to its operation, Healthy Minds is entitled to a conditional use approval.

III. PROPOSED CONCLUSIONS OF LAW

1. The Property is located in the R-1 Low Density Residential District.
2. At the time of application, the Code permitted a residential drug, alcohol, and/or substance abuse treatment facility in the R-1 District by conditional use pursuant to §27-309, Schedule of District Regulations, of the Smithfield Township Zoning Ordinance.
3. Section 27-511, Supplementary Regulations Applicable to Other Uses, subpart (3.6) of the Code, addressing such uses, provides that residential drug, alcohol and/or substance abuse treatment facilities shall be subject to the following objective standards: (i) the minimum lot area for the facility shall be 25 acres; (ii) all drug, alcohol and/or substance abuse treatment and related activities shall be rendered on site and not off site; and (iii) the overall maximum number of persons in treatment at any one time shall be no more than 60 persons.
4. The Property is 31.70 acres (gross) and 28.7 acres (net).
5. All treatment and related activities will occur on the Property.
6. The maximum number of persons in treatment at any one time at the Property shall be no more than 60 persons.
7. The Proposed Facility will be served by on-lot water and sewer.
8. The Proposed Facility meets – and in most cases far exceeds – the applicable bulk and dimensional requirements of the R-1 District for a use served by on-lot water and sewer.
9. The Township Engineer confirmed the application was complete and further confirmed that the Application satisfies all applicable ordinance requirements in connection with the proposed conditional use.

10. No evidence was presented which would demonstrate that the Proposed Facility would have a greater detrimental impact on public health, safety, and welfare than would be typical of a residential drug, alcohol, and/or substance abuse treatment facility of the size and dimensions permitted by the Smithfield Township Zoning Ordinance in the R-1 District.

11. The Applicant offered several conditions and has further agreed to others requested by the Township Board of Supervisors which will offset any perceived impact of the drug and alcohol rehabilitation treatment facility. Specifically:

a. The Proposed Facility will be operated in substantial conformity with the evidence and testimony provided during the Hearings.

b. All patients must be at least 18-years of age.

c. Criminal background checks will be performed on all employees and patients and anyone with a violent felony or Megan's Law conviction will be excluded from employment or treatment at the Proposed Facility.

d. After a designated reasonable curfew, all doors exiting the facility will have a monitor, alarm, or camera system notifying a central station that someone has exited the building.

e. If the Proposed Facility is approved and operating, the existing Golf Course will cease operations on the Property.⁹

f. Healthy Minds representatives will work with the Township Engineer and Board of Supervisors during land development to determine if a more mutually agreeable location on the Property can be identified for the Proposed Facility.

⁹ As the intent of this condition is to limit the activity on the Property to the Proposed Facility to eliminate any potential conflict between the Proposed Facility and Golf Course operations, this condition does not preclude the existing Golf Course from operating on other properties it currently utilizes.

g. Healthy Minds representatives will work with the Township Engineer and Board of Board of Supervisors during land development to determine if additional landscaping or segregated screening of the Proposed Facility from the surrounding properties is advisable.

h. Healthy Minds representatives will work with the Township Engineer and Board of Board of Supervisors during land development to designate outdoor smoking areas properly distanced from surrounding properties.

12. The proposed use will not negatively impact the character of the neighborhood or its immediate surroundings.

13. The Applicant has met its burden and is entitled to the grant of a conditional use to permit the Proposed Facility at the Property.

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By:



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