

BEFORE THE BOARD OF SUPERVISORS OF SMITHFIELD TOWNSHIP, MONROE
COUNTY, PENNSYLVANIA

IN RE: APPLICATION OF HEALTHY :
MINDS PARTNERS, LLC :

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**OBJECTOR'S BRIEF IN OPPOSITION TO APPLICANT'S PROPOSED GRANT OF
CONDITIONAL USE AND PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

OBJECTOR, Kristine Karol, by and through her counsel, Gross McGinley, LLP, submit the within Brief in Opposition to Applicant's Proposed Grant of Conditional Use and Proposed Findings of Facts and Conclusions of Law.

I. FACTUAL AND PROCEDURAL BACKGROUND

On or about August 23, 2023, Healthy Minds Partners, LLC (the "Applicant") submitted an Application to the Board of Supervisors for a Public Hearing requesting a Conditional Use for the usage of a "Residential drug, alcohol, and/or substance abuse treatment facility permitted in the R-1 District by Conditional Use per Ch 27-309." located on Totts Gap Road, west side, at the intersection with Cherry Valley Road (the "Subject Property").

Hearings were held on the Applicant's Application before the Board of Supervisors on January 24, 2024, March 13, 2024, March 27, 2024 and April 10, 2024. At the January 24, 2024 hearing, Objector, Kristine Karol ("Objector") was granted party status. It was agreed at the April 10, 2024 hearing that the parties, Applicant and Objector (collectively the "Parties") would submit Briefs and Proposed Findings of Facts and Conclusions of Law by May 7, 2024. Objector faithfully submits the following for consideration by the Board of Supervisors of the Township of Smithfield.

II. QUESTION PRESENTED

Should the Board of Supervisors of Smithfield Township Grant the Conditional Use for the Subject Property?

Suggested Answer: In the Negative.

III. ARGUMENT

Pursuant to Chapter 27, Section 704 of the Smithfield Township Zoning Ordinance (the “Zoning Ordinance”), the authority for the determination of a conditional use rests with the Board of Supervisors. See 27-704, Smithfield Township Zoning Ordinance. It is well established that, “[a] conditional use is nothing more than a special exception which falls within the jurisdiction of the municipal legislative body rather than the zoning hearing board.” Williams Holding Group, LLC v. Bd. of Supervisors of West Hanover Twp., 101 A.3d 1202, 1212 (Pa. Cmwlth. 2014) [quoting In re Thompson, 896 A.2d 659, 670 (Pa. Cmwlth. 2006)]. A conditional use, like a special exception, is not an exception to a municipality's zoning ordinance, but rather a use to which an applicant is entitled as a matter of right unless the municipal legislative body determines “that the use does not satisfy the specific, objective criteria in the zoning ordinance for that conditional use.” In re Drumore Crossings, L.P., 984 A.2d 589, 595 (Pa. Cmwlth. 2009). It is the applicant's burden to establish that the proposed use satisfies the specific criteria in the particular zoning ordinance. See Williams, 101 A.3d at 1212. “An applicant who satisfies this prima facie burden is entitled to approval, unless objectors in the proceeding offer credible and sufficient evidence that the proposed use would have a detrimental impact on public health, safety, and welfare.” Id.

In making a determination as to the appropriateness of a Conditional Use, the Board of Supervisors is governed by Chapter 27, Section 705(C) of the Zoning Ordinance, which states as follows:

C. The Board of Supervisors, in acting upon the site development plan and conditional use permit application, shall take into consideration not only the criteria contained above, but also the following:

- (1) Whether the proposed use will have a detrimental or positive impact on adjacent properties. A new use should not produce a significant negative impact on the property values of adjacent properties nor should it create potential nuisance impacts related to noise, odors, vibrations or glare.
- (2) If the proposed use is one judged to present detrimental impacts, whether an approval could be conditioned in such a manner as to eliminate or substantially reduce those impacts.

(3) Whether the use will have a positive or negative effect on the environment, job creation, the economy, housing availability, open space preservation or any other factors which reasonably relate to the health, safety and general welfare of present or future residents of the Smithfield Township.

(4) Whether the granting of an approval will cause an economic burden on community facilities or services including, but not limited to, highways, sewage treatment facilities, water supplies and firefighting capabilities. The applicant shall be responsible for providing such improvements or additional services as may be required to adequately serve the proposed use and any approval shall be so conditioned. The Township shall be authorized, subject to the limitations of the Pennsylvania Municipalities Planning Code, to request fees in support of such services where they cannot be directly provided by the applicant.

(5) Whether the site plan indicates the property will be developed and improved in a way which is consistent with that character this Chapter and the Township's Comprehensive Plan are intended to produce or protect, including appropriate landscaping and attention to aesthetics and natural feature preservation.

Additional requirements to be considered by the Board of Supervisors are listed under Chapter 27, Section 706 as follows:

In presenting an application for conditional use approval, the applicant shall (in addition to the other requirements of the Zoning Ordinance, i.e., Chapter 27, §§ 27-704 and 27-705) also establish:

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 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.

Applicant will undoubtedly argue that they have met their burden for the proposed Conditional Use via testimony and exhibits submitted. However, and for the sake of brevity, Objector argues that Applicant did not meet their burden to meet the definition of Conditional Use, and in the alternative, that such evidence and testimony presented by the Objector is sufficient to show a detrimental effect on the health safety and welfare of the neighborhood. Objector offers these arguments sequentially.

A. Lack of Health Safety and Welfare Protections by the Applicant

Overall, and based upon the testimony of the witnesses, Applicant has failed to meet its burden to show that the health, safety and welfare of the community will be adequately protected by the Applicant's proposed facility. Specifically, Applicant has failed to provide any documentation as to the proposed security located on the Subject Property. Applicant, and Applicant's witnesses, have only provided vague, general assertions that they will have cameras and other security devices. However, when questioned about these items, it is apparent that the Applicant's focus is not the health, safety and welfare of the residents of Smithfield Township, but profitability.

Applicant has provided, and admits, that it has no ideas as to the location and function of the existing golf course and its interaction with the proposed facility on the Subject Property. Furthermore, Applicant admits that its site location on the Subject Property is solely for the purpose of maximizing the usage of the golf course. This is in direct contravention of Chapter 27, Section 705(C)(1),(2) and (3) which require that an applicant minimize these risks. Supervisor Lovenheim correctly and astutely points out that moving the facility to a more centralized location on the Subject Property would alleviate and address large portions of the health, safety and

welfare issues raised by the Objector. Instead, Applicant offers platitudes about how Applicant has no direct control over the golf course. However, Applicant negotiated a lease with the golf course and could have addressed this concern previously but chose not to do so.

Moreover, as testified by Objector's expert, Thomas Shepstone ("Shepstone"), the health safety and welfare of the community is already benefited from existing health treatment facilities as addressed within the Smithfield Township Comprehensive Plan. Specifically, Shepstone testified that there are already adequate health and treatment facilities to meet Smithfield Township needs, and that this facility would constitute surplusage and thus only benefit non-residents of the Township.

Furthermore, when questioned about lighting, Applicant's response is that modern lighting can be "aimed down". While true to an extent, such proposed lighting plan could be significantly improved by moving the facility to a different location on the Subject Property. This dovetails with Applicant's blasé testimony that a split rail fence will help to maintain security, despite the Applicant's own expert admitting that such fence is mostly decorative, and not substantive. It is also apparent that allowing smoking would supersede the local residents concerns, as it would be beneficial for the treatment of the patients.

Objector testified that conditions such as independent motion sensors on all outdoor lighting which at the minimum required illumination, establishing a permanent fund to reimburse police and fire for the increased calls due to the facility and conducting an environmental study would alleviate residential concerns in the area. Additionally, due to the environmentally sensitive location of the facility it was requested that environmentally sustainable practices be used on the site, such as graywater recycling, hempcrete insulation and non-toxic insect and weed control. Objector also testified that creating a 24 hour hotline for problematic patients would alleviate certain concerns.

Finally, Applicant did not provide sufficient plans showing their departure and entry procedures. While the Objector has sympathy for members of the public seeking treatment, these people will be in a vulnerable state when entering and exiting the facility. A more specific plan should have been submitted by the Applicant to show these procedures and ensure the health safety and welfare of the residents of Smithfield Township.

B. Failure of Traffic Study and Golf Course Integration

Applicant has failed to meet its burden regarding the required traffic study under Chapter 27 Section 706.5. As testified by Objector's expert, Shepstone, Applicant's Traffic Study, as required by Chapter 27 Section 706.5 is deficient in that it fails to properly account for the usage of the golf course. Instead, it addressed the proposed usage of the facility located on the Subject Property and did not incorporate the existing usage for the golf course.

C. Negative Impact on Property Values

In accordance with Chapter 27, Section 705(C), Applicant has asserted that there will be no negative impact on the adjoining property owner's property values. However, Applicant has not provided any documentary evidentiary support for the proposition. Quite to the contrary, the only evidence on this issue was offered by the Objector. Specifically, Objector offered a study entitled, "The Effect of Substance Abuse Treatment Centers on Property Values", published in 2014 showing that Treatment centers reduced property values in adjoining properties by between Eight Percent (8%) and Seventeen Percent (17%).

Based on the above, and as the only documentary evidence entered was provided by the Objector, and as such, Applicant has failed to meet their burden for a Conditional Use.

Based on the above stated reasoning, it is clear that Applicant has not met its burden in permitting a Conditional Use within Smithfield Township. Even if the Board of Supervisors were so inclined to agree that Applicant did meet their burden, then Objector has provided sufficient facts and evidence to show that the proposed usage of Applicant is a determine to the health, safety and welfare of the community.

IV. PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

For the foregoing reasons, Plaintiff respectfully requests the Board of Supervisors of Smithfield Township make the following Findings of Facts and Conclusions of Law:

1. The Applicant has failed to meet its burden of proof under Chapter 27, Section 704;
2. The Applicant has failed to meet its burden of proof under Chapter 27, Section 705(C);
3. The Applicant has failed to meet its burden of proof under Chapter 27, Section 706;
4. The Objector has provided sufficient facts and evidence to show that the Applicant's proposed Application should be denied for failure to adequately address the health, safety and welfare concerns of the residents of Smithfield Township.
5. The Application for the Conditional Use by the Applicant is denied

Respectfully Submitted,

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