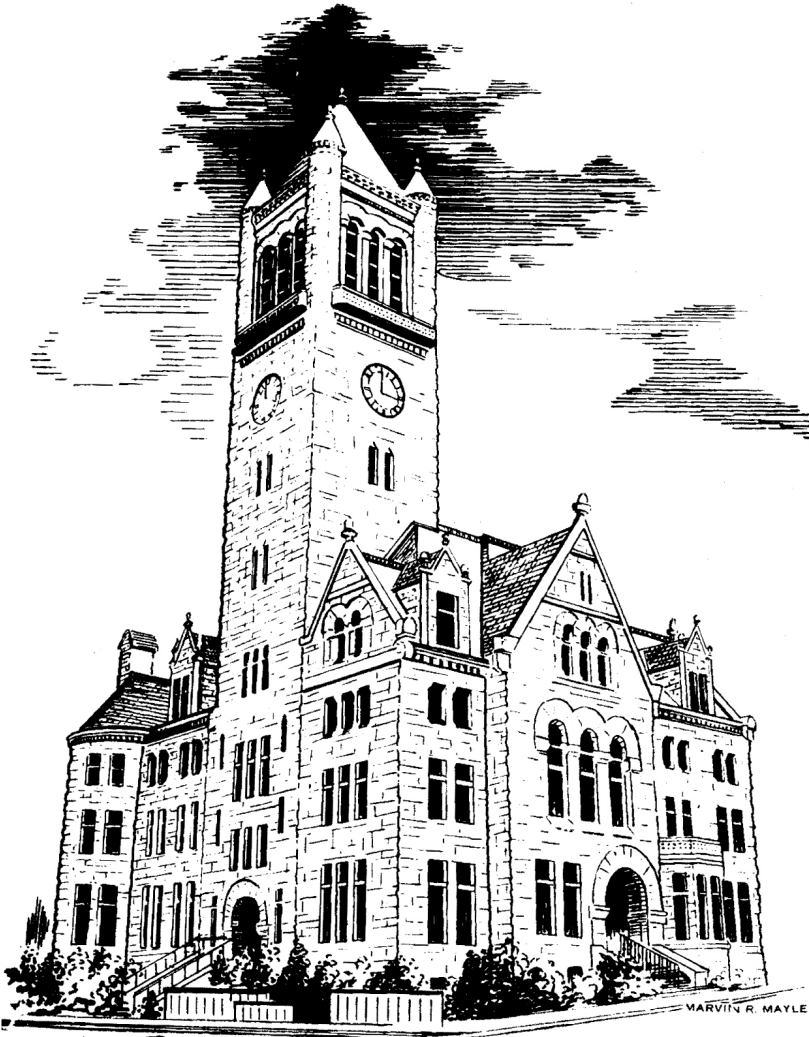


# FAYETTE LEGAL JOURNAL

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## FAYETTE LEGAL JOURNAL

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## ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

### Third Publication

**VIRGINIA MAE FOWLER, A/K/A VIRGINIA M. FOWLER**, late of Smithfield, Fayette County, PA (3)

*Administratrix:* Delorse Fowler  
c/o 9 Court Street  
Uniontown, PA 15401  
*Attorney:* Vincent J. Roskovensky, II

**GERTRUDE JACKSON**, late of Uniontown, Fayette County, PA (3)

*Administratrix:* April J. Jackson  
107 Jefferson Street  
Uniontown, PA 15401  
c/o Radcliffe & DeHaas  
2 West Main Street, Suite 70  
Uniontown, PA 15401  
*Attorney:* Ernest P. DeHaas, III

**BARBARA A. PALYA, A/K/A BARBARA PALYA**, late of Uniontown, Fayette County, PA

*Executor:* Andrew W. Palya, III (3)  
c/o John & John  
96 East Main Street  
Uniontown, PA 15401  
*Attorney:* Anne N. John

**JAMES SANGSTON, A/K/A JAMES R. SANGSTON**, late of South Union Township, Fayette County, PA (3)

*Personal Representative:* Caren Sue Kulchock  
c/o Higinbotham Law Office  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James E. Higinbotham, Jr.

**CHESTER H. WARD**, late of South Connellsville, Fayette County, PA (3)  
*Representative:* Gregory C. Ward  
c/o 17 North Diamond Street  
Mt. Pleasant, PA 15666  
*Attorney:* Marvin D. Snyder

**DONALD RAY WILHELM, SR.**, late of Bullsken Township, Fayette County, PA (3)  
*Administrator:* Donald R. Wilhelm, Jr.  
9 Ellis Hill Road  
Towanda, PA 18848  
c/o 815A Memorial Boulevard  
Connellsville, PA 15425  
*Attorney:* Margaret Zylka House

### Second Publication

**DANNY ADAMSON, A/K/A DANNY R. ADAMSON**, late of Masontown, Fayette County, PA (2)

*Co-Executors:* Judith M. Ewing and Gregory Adamson  
c/o 556 Morgantown Road  
Uniontown, PA 15401  
*Attorney:* John A. Kopas, III

**RUTH LAVERNE FRAZEE**, late of Henry Clay Township, Fayette County, PA (2)

*Executor:* Jonathan Adams  
c/o Hajduk & Associates  
77 South Gallatin Avenue  
PO Box 1206  
Uniontown, PA 15401  
*Attorney:* Mary Lenora Hajduk

**YVONNE J. PACKRONI, A/K/A YVONNE JOYCE PACKRONI**, late of South Union Township, Fayette County, PA (2)

*Executor:* Ronald G. Packroni  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

**RUDOLPH VELOSKY A/K/A RUDOLPH J. VELOSKY, SR.**, late of Redstone Township, Fayette County, PA (2)

*Executor:* David J. Velosky, Sr.  
c/o 556 Morgantown Road  
Uniontown, PA 15401  
*Attorney:* John A. Kopas, III

**MILDRED L. WALTERS**, late of Menallen Township, Fayette County, PA (2)

*Executrix:* Terrie Ann Wynn  
c/o George Port & George  
92 East Main Street  
Uniontown, PA 15401  
*Attorney:* Wayne H. Port

## First Publication

**GWENDOLYN FARMER, a/k/a GWENDOLYN J. FARMER**, late of Uniontown, Fayette County, PA (1)

*Co-Personal Representatives:* Anita Farmer and Karen Farmer White  
c/o Ruschell & Associates, LLC  
PO Box 577  
308 Eaton Avenue  
Midway, PA 15060  
*Attorney:* Natalie M. Ruschell

**RICHARD G. HUDOCK**, late of South Union Township, Fayette County, PA (1)

*Personal Representatives:* Patricia A. Myers and Audrey Palya  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* Gary J. Frankhouser

**JESSE L. MOSER**, late of Masontown, Fayette County, PA (1)

*Executor:* Wayne D. Moser  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

## LEGAL NOTICES

IN THE COURT OF COMMON PLEAS  
OF FAYETTE COUNTY, PENNSYLVANIA  
CIVIL DIVISION  
NO. 1106 of 2017 CD  
NOTICE OF ACTION IN MORTGAGE  
FORECLOSURE

**Bank of America, N.A., c/o Reverse Mortgage Solutions, Inc.,**  
**Plaintiff,**  
**vs.**

**Cheryl A. Dagy, Known Heir of Steve C. Hartsek, John J. Hartsek, Known Heir of Steve C. Hartsek, Robert S. Hartsek, Known Heir of Steve C. Hartsek,**  
**Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest from or Under Steve C. Hartsek and Victoria D. Hartsek, Known Heir of Steve C. Hartsek,**  
**Defendants.**

TO: Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest from or Under Steve C. Hartsek, Defendant(s), whose last known address is 112 Wayside Drive, Uniontown, PA 15401.

### COMPLAINT IN MORTGAGE FORECLOSURE

You are hereby notified that Plaintiff, Bank of America, N.A., c/o Reverse Mortgage Solutions, Inc., has filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of Fayette County, Pennsylvania, docketed to NO. 1106 of 2017 CD, wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 112 Wayside Drive, Uniontown, PA 15401, whereupon your property would be sold by the Sheriff of Fayette County.

### NOTICE

**YOU HAVE BEEN SUED IN COURT.** If you wish to defend against the claims set forth in the notice above, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the

claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH THE INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE. Fayette County Lawyer Referral Service, PA Bar Assn., 100 South St., P.O. Box 186, Harrisburg, PA 17108, 800.692.7375.

Mark J. Udren, Lorraine Gazzara Doyle, Sherri J. Braunstein, Elizabeth L. Wassall, John Eric Kishbaugh, Nicole B. Labletta, David Neeren & Morris Scott,  
Attys. For Plaintiff, Udren Law Offices, P.C.,  
111 Woodcrest Rd., Ste. 200,  
Cherry Hill, NJ 08003,  
856.669.5400.

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## NOTICE

### **CERTIFICATE OF ORGANIZATION Limited Liability Corporation**

Notice is hereby given that a Certificate of Organization was filed with the Department of State of the Commonwealth of Pennsylvania on the 19th day of June, 2017, for a limited liability company formed under the Limited Liability Company Law of 1994. The name of the company is J.W. ENTERPRISE, LTD.

William J. Wiker, Esq.  
Suite 205  
231 South Main Street  
Greensburg, Pennsylvania 15601  
(724)837-6712

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**JUDICIAL OPINION**

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

POLARIS RENEWAL SERVICES, INC., :  
Appellant, :  
 :  
 :  
vs. :  
 :  
 :  
FAYETTE COUNTY ZONING HEARING :  
BOARD, : No. 2394 of 2016, G.D.  
Appellee, : JUDGE JOSEPH M. GEORGE, JR.

**OPINION & ORDER**

George, J.

June 28, 2017

This matter comes before the Court on Polaris Renewal Service’s (hereinafter referred to as “Polaris”) appeal from a decision of the Fayette County Zoning Hearing Board (hereinafter referred to as the “Zoning Board”), which denied Polaris’s petition for a special exception for a Medical Facility/Methadone Treatment Facility situated in North Union Township, Fayette County, Pennsylvania. Fay-Penn Economic Development Council, DCG Enterprises, and Specialty Conduit, all nearby businesses, have intervened. The property in question is located in an “M-1” Light Industrial Zoning District. In such a district, an “Office, Medical/Methadone Treatment Facility” is permitted by special exception. Ordinance, § 1000-203.

After two public hearings on the matter, the Zoning Board denied Polaris’s special exception petition by its decision rendered November 4, 2016. {1} The Zoning Board denied the petition for special exception on the grounds that the proposed use would adversely impact the health, safety, and welfare of the surrounding area, specifically due to traffic. This Court took no additional testimony. For the following reasons, we affirm the decision of the Zoning Hearing Board.

**BACKGROUND**

Previously, a methadone treatment facility had its own Special Exception category within the Fayette County Zoning Ordinance; however, the Office of the Commissioners of Fayette County eliminated that section in 2011. In the process, “Office, Medical” was amended to include “Methadone Treatment Facility.” Z.A. 10-2 (2011). Leasehold option-holder Polaris, which provides medical assistance treatment, primarily using Methadone, to recovering substance abusers, filed a Petition with the Zoning Board requesting that the Board grant a Special Exception for a medical office that would provide substance abuse and methadone treatment services to the public. This is referred to

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{1} Resolution 16-41.

as the “proposed use.” The subject property consists of 0.58 acres. The proposed use would utilize 3,600 square feet within an office building at 2262 University Drive in North Union Township on the east side of State Route 119. (H.T. I. 34) The subject property is zoned “M-1” Light Industrial Zoning District and permits by Special Exception an “Office, Medical/Methadone Treatment Facility.” (Zoning Ordinance, § 1000-203)

The Zoning Board held hearings on September 14, 2016 and September 28, 2016. {2} During the first hearing, Louis Waller and Stephen Shaner testified on behalf of Polaris. Mr. Waller told the Board that Polaris has an option to lease the first floor of the main building located on the subject property. (H.T. I. 13)

Mr. Shaner testified that he expects between 250-300 patients to receive treatment at the proposed medical facility. (H.T. I. 72) Further, he told the Zoning Board that there are two rush hours daily: one lasts from 5:30a.m. to 7:00a.m., while the other lasts from 10:30a.m. to 11:30a.m. (H.T. I. 81) During each rush hour, Mr. Shaner expects roughly 50% of that day’s patients to receive treatment at the clinic. (H.T. I. 81) The treatment facility would not set up individual appointments at specific times within these rush hours. (H.T. I. 81) Mr. Shaner anticipates between 40-60% of the patients will drive themselves to the clinic each day. (H.T. I. 72-73) Therefore, between 100 and 180 patients would visit the proposed medical facility on any given day: with approximately 50 to 90 patients arriving per rush hour.

Ronald Cole objected to the proposed use on behalf of Fay-Penn Economic Development Council, a nearby business. (H.T. II. 5) Mr. Cole is the construction property coordinator for Fay-Penn. (H.T. II. 5-6) In that capacity, Mr. Cole handles construction, supervises engineers, reviews the engineers’ plans, and inspects construction properties. (H.T. II. 6) He is familiar with the subject property because he inspected it several years ago when Fay-Penn considered buying it. He testified that the subject building is 8,096 square feet. (H.T. II. 12) In addition, he testified to parking requirements at the subject property.

Daniel Gearing objected on behalf of DCG Enterprises and Specialty Conduit. These two businesses occupy the Calvert building, which is a building near the subject property. (H.T. II. 33) Mr. Gearing is the senior managing member of DCG Enterprises and the owner of Specialty Conduit. (H.T. II. 33) After establishing that he is familiar with the entrance to the subject property, which involves State Route 119, he testified as to the issue of traffic and related concerns. (H.T. II. 34) From his testimony come the following pertinent facts:

The subject property adjoins State Route 119, which is a four lane highway, and vehicles traveling to the subject property turn at an intersection on Route 119 which is regulated by a traffic light. (H.T. II. 34; Exhibit 6) The speed limit approaching the subject property northbound turnoff drops from 55 miles per hour to 45 miles per hour. (H.T. II. 35) There is no designated right turn lane

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{2} The transcripts for these hearings are cited as “H.T. I” for September 14, 2016, and “H.T. II” for September 28, 2016.

for the purpose of turning off of Route 119 North and proceeding to the subject property. (H.T. II. 35; Exhibit 6) After turning off of Route 119, it is approximately one car length before a vehicle must turn immediately left onto a 50 foot right-of-way that proceeds to the subject property. (H.T. II. 36; Exhibit 6) Many tractor trailers from nearby businesses proceed in and out of this intersection hauling heavy equipment. (H.T. II. 41) Best Line, another nearby company, utilizes a 40 foot right-of-way that proceeds alongside of the proposed use building, perpendicular to Route 119. (Exhibit 2) Additionally, Best Line and DCG tractor trailers alone often prevent vehicles from making the turn onto the 50-foot right-of-way, due to their longer size than a regular-sized vehicle, until the tractor trailer exits the intersection.

#### STANDARD OF REVIEW

This Court cannot affirm or reject a decision of the Zoning Hearing Board without a thorough review of the law and the evidence in a particular case. Where the trial court, as here, takes no additional evidence, the scope of review is limited to whether the board committed an abuse of discretion or an error of law. *Pennalan Corp. v. Fayette County Zoning Hearing Board*, 139 Pa. Cmwlth. 554, 555 (1991) (citing *West Goshen Township v. Crater*, 114 Pa. Cmwlth. 245 (1988)). Where no new evidence is presented, this Court is bound by the factual findings of the Zoning Hearing Board, but only if those factual findings are supported by substantial evidence. §1005-A of the MPC, 53 P.S. §11005-A. *Manor Healthcare Corp. v. Lower Moreland Tp.*, 590 A.2d 65 (Cmwlth.1991). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* “Where the record demonstrates the existence of substantial evidence, the court is bound by the board’s findings, which result from resolutions of credibility and conflicting testimony rather than a capricious disregard of evidence.” *Vanguard Cellular System, Inc. v. Zoning Hearing Bd. of Smithfield Twp.*, 130 Pa. Cmwlth. 371, 568 A.2d 703 (1989).

#### DISCUSSION

“Where the governing body, in the zoning ordinance, has stated special exceptions to be granted or denied by the board pursuant to express standards and criteria, the board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the board may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of the act and the zoning ordinance.” MPC § 10912.1. “A special exception is not an exception to a zoning ordinance but rather a use which is expressly permitted absent a showing of a detrimental effect on the community.” *Freedom Healthcare Services, Inc. v. Zoning Hearing Bd. of City of New Castle*, 983 A.2d 1286, 1291 (citing *Manor Healthcare Corp. v. Lower Moreland Township Zoning Hearing Board*, 590 A.2d 65 (1991)).

The criteria for a use by special exception have been enumerated in Section 1000-800 of the Fayette County Zoning Ordinance. It provides the following:

All applications for a use by special exception shall demonstrate compliance with the applicable express standards and criteria of this Article and the applicable minimum lot area, maximum lot coverage, maximum building height,



setback requirements and bufferyard requirements of the zoning district in which the use is proposed. (Zoning Ordinance § 1000-800)

In addition to meeting the requirements of § 1000-800, Polaris must meet the requirements of § 1000-303 and Table 6 of the Zoning Ordinance. Since the Zoning Board determined that the proposed Medical Facility/Methadone Treatment Facility will adversely impact the health, safety, and welfare of the surrounding area, specifically due to traffic, this Court need not determine whether Polaris met these requirements.

When the applicant meets his burden (here, the criteria mentioned in § 1000-800, § 1000-303, and Table 6 of the Zoning Ordinance), the burden then shifts to the objectors of the proposed use to present evidence that the proposed use will have a detrimental effect on the health and safety of the community. *Freedom Healthcare*, 983 at 1291. “The evidence presented by objectors must show a high probability that the use will generate adverse impacts not normally generated by this type of use, and that these impacts will pose a substantial threat to the health and safety of the community.” *Freedom Healthcare*, 983 at 1291 (citing *Manor Healthcare*, supra.). {3}

Here, even if this Court were to find that Polaris met its initial burden, we find that the objectors showed a high probability that the use will generate an adverse impact that poses a substantial threat to the health, safety, and welfare of the community. Objectors are held to a high standard in determining if traffic is a relevant consideration for a Zoning Board to deny a petition for a special exception. See *Manor Healthcare Corporation v. Lower Moreland Township Zoning Hearing Board*, 590 A.2d 65 (1991); see also *In re Appeal of Martin*, 529 A.2d 582 (1987); and see *Kern v. Zoning Hearing Board*, 449 A.2d 781 (1982). Further, the contribution of more traffic “primarily caused by other sources” to an already dangerous intersection does not alone suffice as evidence to deny a petition. *In re Cutler Group*, 880 A.2d 39, 43 (2005) (citing *Manor Healthcare*, supra.). The Commonwealth Court held in *Pennalan Corp. v. Fayette County Zoning Hearing Bd.* that while considerations of a mere traffic increase alone “cannot be used to deny a special exception, the present case deals with very specific problems . . . that ha[ve] a high likelihood of affecting the health, safety and welfare of the community.” 592 A.2d 117 n.1. (1991). The present case likewise deals with very specific problems. There is clear and substantial evidence in the record that the entrance driveway to the subject property is a traffic bottleneck that has a high probability of creating severe congestion. It is true that traffic from other sources causes an already dangerous traffic condition; however, if the special exception were granted, the evidence shows that other sources will not be the primary source of the dangerous intersection. The high volume of patients

{3} In *Freedom Healthcare*, the ordinance in effect placed the burden on the applicant to show that the proposed use would not have a detrimental effect. There is no such provision, however, in the Fayette County Zoning Ordinance. Thus, there is no re-shifting of the burden back to Polaris once the objectors meet their burden under the Fayette County Zoning Ordinance. See *Pennsy Supply, Inc. v. Zoning Hearing Bd. of Dorrance Tp.*, 987 A.2d 1243, 1251. The Zoning Board in Resolution 16-41 found that the Petitioner did not meet its burden of proof and the proposed use will adversely impact the health, safety, and welfare of the surrounding area, specifically due to traffic. While this Court finds that the wording of any purported burden-shifting by the Zoning Board may have been improper, it is of no consequence since this Court is convinced that the objectors produced substantial evidence that the proposed use would have the aforementioned adverse impact.

traveling to the subject property during the proposed use's "rush hours" will, at times, be required to stop in the right lane traveling northbound while vehicles are blocking the 50 foot right-of-way used to access the subject property; this is true even when the light is green. (Exhibit 6).

If, as Polaris says, the proposed use will see 250-300 patients and 40-60% of these patients will receive treatment each day, then the proposed use will see between 100-180 patients each day. The proposed use would add a minimum of 50 vehicles and a maximum of 90 vehicles entering at the intersection during each rush hour. There is no turn lane that allows vehicles looking to turn right off of Route 119 a safe place to wait while the congestion builds up. Finally, it is only one car length after making the right turn off of Route 119 northbound where an immediate left turn is required to gain access to the subject property. This is no mere increase in traffic; rather, it would create a situation that is detrimental to the health, safety, and welfare of the individuals who travel along these roadways.

The objectors must also show that the "impact would be greater than would normally be expected from that type of use." *Abbey v. Zoning Hearing Board of East Stroudsburg*, 559 A.2d 107 (1989). Other permitted uses in M-1 Zoning Districts that create similar traffic, as Polaris correctly argues, are amusement facilities, automotive sales, banks, beauty/barber shops, business services, car washes, commercial schools, contractor's yards, day-care centers, distribution centers, driving ranges, hospitals, pharmacies, post offices, and power plants. {4} Without addressing each of these uses individually, this Court finds there is substantial evidence in the record that the normal use of most, if not all, of these uses would not create nearly the impact that the proposed use would, especially during the two rush hour periods.

The Court, being bound by the board's findings which result from resolutions of credibility, finds that the record demonstrates the existence of substantial evidence to support objectors' position that the proposed use would adversely impact the health, safety and welfare of the surrounding area. Accordingly, after thorough review of the record below, we find that the Zoning Board did not commit an abuse of discretion or error of law in denying Polaris's petition for special exception.

WHEREFORE, we will enter the following Order:

**ORDER**

And now, this 28th day of June, 2017, upon consideration of the Appellant's appeal from the Fayette County Zoning Hearing Board, and after review of the record and applicable briefs, it is hereby ORDERED and DECREED that the decision of the Fayette County Zoning Hearing Board denying Appellant's request for a special exception is AFFIRMED and the appeal is DISMISSED.

BY THE COURT:  
JOSEPH M. GEORGE, JR., JUDGE

ATTEST:  
PROTHONOTARY

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{4}For other permitted uses within M-1 Zoning Districts, see Table 1 of the Fayette County Zoning Ordinance.

**SAVE THE DATE****FEDERAL COURTS 101**

Wednesday, September 20, 2017

Save the date to join your fellow Fayette County Bar colleagues at “Federal Courts 101”, presented by a distinguished panel of Judges from the Western District of Pennsylvania, including: Chief Judge Joy Flowers Conti; Judge Mark R. Hornak, Judge Cathy Bissoon, Magistrate Judge Cynthia Reed Eddy, and Chief Bankruptcy Judge Jeffery A. Deller.

Moderated by Fayette’s own Anne N. John, Esquire and Samuel J. Davis, Esquire, this event will introduce you to federal court procedures, and a reception following the CLE will provide you with an opportunity to introduce yourselves and chat with the Judges.

Please mark your calendars to join us on Wednesday, September 20, 2017 at 3:30 at Nemaquin Woodlands Resort for this unique and informative session. Attendees will receive one complimentary Substantive CLE credit.

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