

# FAYETTE LEGAL JOURNAL

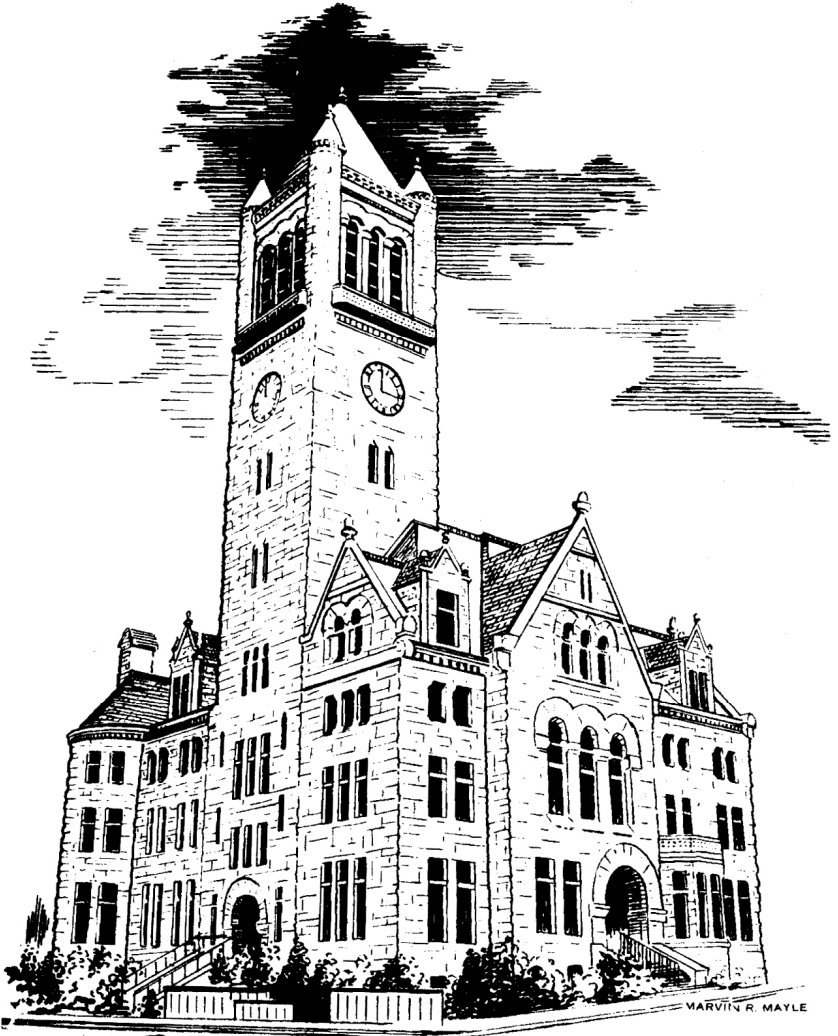
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## FAYETTE LEGAL JOURNAL

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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

**EDNA J. MATHIAS, a/k/a JOYCE MATHIAS**, late of Chalk Hill, Fayette County, PA <sup>(3)</sup>

*Executrix:* Holly J. Lear  
c/o 2944 National Pike Road  
P.O. Box 245  
Chalk Hill, PA 15421  
*Attorney:* Charles C. Gentile

**MARGARET LOUISE RINGER, a/k/a MARGARET L. RINGER**, late of Uniontown, Fayette County, PA <sup>(3)</sup>

*Personal Representative:*  
Jeanne Louise Zavatchen  
c/o Watson Mundorff, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Timothy J. Witt

**HELENE WOZNIAK**, late of Washington Township, Fayette County, PA <sup>(3)</sup>

*Executor:* Richard Wozniak  
7191 Hawksbeard Drive  
Westerville, Ohio 43082

### Second Publication

**PHYLLIS J. BAKEWELL**, late of Belle Vernon, Fayette County, PA <sup>(2)</sup>

*Executrix:* Debra B. Blair, f/k/a  
Debra Bakewell  
c/o Radcliffe Law, LLC  
648 Morgantown Road, Suite B  
Uniontown, PA 15401  
*Attorney:* William M. Martin

**HAROLD J. BETTERS**, late of Connellsville, Fayette County, PA <sup>(2)</sup>

*Personal Representative:*  
Cheryl Betters Kelly  
c/o Watson Mundorff, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Timothy J. Witt

**DAVID WAYNE EASTER, a/k/a DAVID W. EASTER**, late of North Union, Fayette County, PA <sup>(2)</sup>

*Administratrix:* Judi R. Easter  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

### First Publication

**LINDA DIANE COOPER**, late of Franklin Township, Fayette County, PA <sup>(1)</sup>

*Personal Representative:* Elaine G. Weyer  
c/o 208 South Arch Street, Suite 2  
Connellsville, PA 15425  
*Attorney:* Richard A. Husband

**SHIRLEY L. FABRY, a/k/a SHIRLEY LUCILLE FABRY**, late of Fairchance, Fayette County, PA <sup>(1)</sup>

*Executrix:* Erin L. Schumacher  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

**CYNTHIA R. NICHOLSON**, late of Chalk Hill, Fayette County, PA <sup>(1)</sup>

*Administrator:* Gregory P. Nicholson  
c/o 84 East Main Street  
Uniontown, PA 15401  
*Attorney:* Vincent M. Tiberi

**RONALD R. ROZELL**, late of Connellsville, Fayette County, PA <sup>(1)</sup>

*Personal Representative:*  
Rhonda A. Brooks  
c/o Watson Mundorff, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Timothy J. Witt

**MAGDALENE A. STEPANIK**, late of North Union Township, Fayette County, PA (1)

*Executrix:* Marene Kolosky  
P.O. Box 283  
Oliver, PA 15472  
c/o 4 North Beeson Boulevard  
Uniontown, PA 15401  
*Attorney:* Sheryl Heid

**WILLIAM A. TEPER, a/k/a WILLIAM A. TEPER, SR.**, late of Luzerne Township, Fayette County, PA (1)

*Executor:* William A. Teper, Jr.  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

## LEGAL NOTICES

### Decedent's Trust Administration Notice

The following decedent died with no probate estate. At the time of death, the decedent maintained a Revocable Living Trust, in which administration proceedings commenced. The named Trustee requests that all person(s) having claims against the decedent make known the same in writing to the Trustee or their attorney, and all persons indebted to the decedent make payments to said Trustee without delay:

Tiberi, Eda N. Revocable Trust, deceased October 9th, 2020, of Rancho Palos Verdes, Los Angeles County, California. John V. Tiberi, Jr., Co-Trustee, and PNC Bank N.A., Co-Trustee c/ o Paul J. Palko, The Tower at PNC Plaza, 300 Fifth Avenue, 31st Floor, Mail Stop PT-PTWR-31-1, Pittsburgh, PA 15222.

(2 of 3)

**To: Brittany Lewis**

**In Re: P.L., minor child,  
born August 17, 2015**

**In Re: Z.S., minor child,  
born November 16, 2019**

A petition for involuntary termination of parental rights has been filed asking the court to put an end to all rights you have to your children, P.L., born August 17, 2015, and Z.S., born November 16, 2019. The court has set a hearing to consider ending your rights to your children.

The hearing will be held in the Greene County Courthouse, 10 E. High Street, Waynesburg, PA 15370 on February 17, 2021, at 9:30 a.m. in the assigned courtroom before the Judge.

You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the court without you being present.

You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help. Southwestern Pennsylvania Legal Aid, 63 S. Washington Street, Waynesburg, PA 15370; (724) 627-3127 or Lawyer Referral Service, 10 E. High Street, Waynesburg, PA; (724) 852-5237.

This notice given by Greene County Children and Youth Services, 150 Fort Jackson County Building, 19 South Washington Street, Waynesburg, PA 15370.

### NOTICE

IN THE COURT OF COMMON PLEAS  
OF FAYETTE COUNTY, PENNSYLVANIA  
No. 2004 of 2020, G. D.

**Nicole Furnier, Plaintiff,**

**vs.**

**Yvonne Johnson, her heirs, successors and/or  
assigns, generally, Defendant.**

TAKE NOTICE that Plaintiff filed a Complaint in an Action to Quiet Title in the Court of Common Pleas of Fayette County, Pennsylvania, averring that she is the owner in

fee and in possession of, all right, title and interest, in and to:

All that certain tract of land situate in Uniontown City, Fayette County, Pennsylvania, more particularly bounded and described as follows: Situated 34 Varndell Street, Lot 48, and bearing Fayette County Tax Assessment Map Number 38-13-0609.

The service of this Complaint by publication is made pursuant to an Order of Court dated January 7, 2021 and filed at the above number and term.

You are hereby notified to plead to the complaint in this case, of which the above is a brief summary, within twenty (20) days from this date. If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the Court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you without further notice for the 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 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 OR NO FEE.**

PENNSYLVANIA BAR ASSOCIATION  
100 SOUTH STREET  
P. O. BOX 186  
HARRISBURG, PA 17108  
PHONE: 1-800-692-7375

WATSON MUNDORFF, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425-6218  
Phone: (724) 626-8882

## LEGAL NOTICE

IN THE COURT OF COMMON PLEAS OF  
FAYETTE COUNTY, PENNSYLVANIA  
NO. 2187 OF 2020, G.D.

ROBERT B. FIELDS,  
PLAINTIFF,

vs.

CHARLES N. HARSMAN and BETTY J.  
HARSHMAN, his wife, their heirs and assigns,  
and CHARLES N. HARSHMAN, JR.

DEFENDANTS.

## NOTICE TO DEFEND

TO: CHARLES N. HARSHMAN and BETTY J. HARSHMAN his wife, their heirs and assigns, and CHARLES N. HARSHMAN, JR., generally:

You have been named as Defendants in an action to Quiet Title filed by the above Plaintiff against you wherein the Plaintiff alleges that they have acquired all of the interest in and to the surface, coal, oil and gas, mining, drilling and appurtenant rights of the following parcel of property unless otherwise of record in previous deeds:

ALL that certain lot of land situate and lying in the Village of East Liberty, Dunbar Township, Fayette County, Pennsylvania, bounded and described as follows, to-wit:

BEGINNING at a stake on the Eastern side of Maple Street, corner of property new or formerly of Margaret Healey; thence in a Southerly direction along Maple Street, forty-five (45) feet to a stake, corner of property of George Lovergood; thence in an Easterly direction at right angles to Maple Street, one hundred fifty-nine (159) feet to an alley; thence in a Northerly direction along said alley, forty-five (45) feet to a point, corner of property now or formerly of Margaret Healey; thence along the said property now or formerly of Margaret Healey; thence along the said property now or formerly of Margaret Healey in a Westerly direction, one hundred and fifty-nine (159) feet to a stake, the place of beginning..

FAYETTE COUNTY TAX  
ASSESSMENT MAP NO. 09-03-0050.

SUBJECT to all Rights of Ways, Exceptions, Reservations and prior conveyances as excepted and reserved or conveyed in this or prior conveyances of record, and excepting all prior conveyances of real estate as the same are recorded, Description obtained from Deed Book Volume 1014, Page 309, recorded in the Recorder of Deeds Office of Fayette County, Pennsylvania.

You are hereby notified to plead to the complaint in this case, of which the above is a brief summary, within twenty (20) days from this date. If you wish to defend, you must enter a written appearance personally or by an attorney and file your defenses or objections in writing with the Court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiffs. 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 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 OR NO FEE.

Pennsylvania Lawyer Referral Service  
 Pennsylvania Bar Association  
 100 South Street  
 PO Box 186  
 Harrisburg, PA 17108  
 Phone 1-800-692-7375

## SHERIFF'S SALE

Date of Sale: March 18, 2021

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, March 18, 2021, at 2:00 p.m. in Courtroom Number One at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (2 of 3)

James Custer  
 Sheriff Of Fayette County

No. 624 of 2017 GD  
 No. 183 of 2020 ED

RAS Citron, LLC - Attorneys for Plaintiff  
 Robert Flacco, Esquire ID No. 325024  
 133 Gaither Drive, Suite F  
 Mt. Laurel, NJ 08054  
 855-225-6906  
 rflacco@rasnj.com

**Wilmington Savings Fund Society, FSB, D/B/  
 A Christiana Trust, Not Individually but as  
 Trustee for Pretium Mortgage Acquisition  
 Trust,**  
**Plaintiff,**  
**Vs.**  
**Ann Miller,**  
**Defendant**

No. 1468 of 2015 GD  
 No. 199 of 2020 ED

**U.S. BANK NATIONAL ASSOCIATION, AS  
 TRUSTEE FOR RESIDENTIAL ASSET  
 MORTGAGE PRODUCTS, INC.,  
 MORTGAGE ASSET-BACKED PASS-  
 THROUGH CERTIFICATES, SERIES 2005-  
 EFC7**

**Plaintiff**  
**v.**  
**NANCY ROSE**  
**Defendant(s)**

ALL THAT RIGHT, TITLE, INTEREST  
 AND CLAIMS OF ANN MILLER OF, IN AND  
 TO THE FOLLOWING DESCRIBED  
 PROPERTY:

ALL THAT CERTAIN LOT OR PARCEL  
 OF LAND SITUATE IN SALTICK  
 TOWNSHIP, COUNTY OF FAYETTE AND  
 COMMONWEALTH OF PENNSYLVANIA,  
 BEING MORE FULLY DESCRIBED AT DBV  
 2975 PAGE 1409

BEING KNOWN AS 2279 INDIAN  
 HEAD ROAD, CHAMPION, PA 15622  
 TAX MAP NO. 31-19-0068

DWALDMANLAW, P.C.,  
 ATTORNEY FOR PLAINTIFF  
 BY: JENNIE C. SHNAYDER, ESQUIRE -  
 ID #315213  
 4900 CARLISLE PIKE, #182  
 MECHANICSBURG, PA 17050  
 TELEPHONE: (844) 899-4162  
 FACSIMILE: (844) 882-4703

ALL THOSE CERTAIN LOTS OR  
 PIECES OF GROUND SITUATE IN THE  
 TOWNSHIP OF LOWER TYRONE,  
 FAYETTE COUNTY, PENNSYLVANIA:

BEING KNOWN AS: 1002 BANNING  
 ROAD A/K/A 1048 BANNING ROAD  
 CONNELLSVILLE, PA 15425

BEING PARCEL NUMBER: 18-01-0010  
 IMPROVEMENTS: RESIDENTIAL  
 PROPERTY

No. 617 of 2020 GD  
 No. 202 of 2020 ED

**AMERICAN CAPITAL GROUP, LLC**  
**vs.**  
**Charles L. Murphy, Sr.**

All that certain two (2) pieces, parcels or  
 lots of land situate in the City of Connellsville,  
 County of Fayette and Commonwealth of  
 Pennsylvania

TAX PARCEL# 05-11-0045 and 05-11-  
 0046

PROPERTY ADDRESS: 250 E. Fairview  
 Avenue, Connellsville, PA 15425

KML LAW GROUP, P.C.  
Suite 5000  
701 Market Street  
Philadelphia, PA 19106-1532  
(215) 627-1322

No. 1520 of 2018 GD  
No. 197 of 2020 ED

**U.S. BANK NATIONAL ASSOCIATION, AS  
INDENTURE TRUSTEE, FOR THE CIM  
TRUST 2016-2, MORTGAGE-BACKED  
NOTES, SERIES 2016-2  
3217 S. Decker Lake Drive  
Salt Lake City, UT 84119  
Plaintiff**

**vs.**

**DENISE A. WARNICK  
SHIRLEY A. WARNICK  
Mortgagor(s) and Record Owner(s)  
164 Casey Drive  
New Salem, PA 15468  
Defendant(s)**

ALL THAT CERTAIN LOT OF LAND  
SITUATE IN GERMAN TOWNSHIP,  
COUNTY OF FAYETTE AND  
COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 164 CASEY  
DRIVE, NEW SALEM, PA 15468  
TAX PARCEL #15-05-0013  
IMPROVEMENTS: A RESIDENTIAL  
DWELLING

SOLD AS THE PROPERTY OF: DENISE  
A. WARNICK AND SHIRLEY A. WARNICK  
ATTORNEY: KML LAW GROUP, P.C.

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\*\*\* END SHERIFF SALES\*\*\*

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## Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and  
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

**Monday, February 1, 2021, at 9:30 A.M.**

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2620-0174	JOYCE A. DOPPELHEUER	Daniel Doppelheuer, Administrator
2619-0832	JENNIE P. GRADOS	Jennifer L. Russo and Kathy M. Hawker, Co-Executors
2620-0174	JUSTINA SANTORO	Ronald J. Santoro, Executor

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

**Tuesday, February 16, 2021, at 9:30 A.M.**

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JEFFREY L. REDMAN  
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division (2 of 2)



JUDICIAL OPINION

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

DUSTIN EVANS and :
TERRY LEE VASSAR, :
Plaintiffs, :
v. :
FAYETTE COUNTY ZONING :
HEARING BOARD, : No. 966 of 2019, G.D.
Defendant. : Honorable Steve P. Leskinen

OPINION & ORDER

Leskinen, J.

January 8, 2021

This matter comes before the Court on the appeal of Plaintiffs listed above (hereinafter "Evans/Vassar," with Evans being the landowner and Vassar being the proposed developer) from the decision of the Fayette County Zoning Hearing Board (ZHB or Board). The decision of the ZHB denied Evans/Vassar's special exception request by way of Resolution 18-51, dated April 10, 2019. The appeal was filed by Evans/Vassar on May 7, 2019. No one intervened, although Brownsville Borough's Solicitor did attend the ZHB hearing on January 30 and submitted a written argument opposing the Petition by letter dated February 27, 2019. Oral argument before the Court without the presentation of any new evidence was held on January 2, 2020. Subsequent to argument, however, Plaintiffs submitted a copy of a parking lease for three additional spaces, together with a Memorandum in support filed February 3, 2020. There does not appear to be any further response filed by the ZHB.

BACKGROUND

Evans/Vassar originally filed the petition for Special Exception with the ZHB on December 17, 2018. The Petition sets forth that the property (02-02-0100-01) is zoned R-2, and the Petitioner wishes to use this property as: "a Treatment Center for Addiction Halfway House." "Halfway House" is a use that is defined in the Ordinance as: "A residence for those who have completed treatment at a rehabilitation facility but are not yet ready to return to independent living in the community and where residents participate in structured programs designated to ease successful reintegration into society." Fayette County Zoning Ordinance, Resolution #06-9-28-7, effective November 1, 2006 (hereinafter "Ordinance"), Section 1000-108.

"Halfway Home, Adult"-not "Halfway House"-is specifically listed as a "Special Exception" use only in R-2 (High Density Residential District) and AH (Airport Hazard Overlay) zones. It is not a "Permitted" use in any zone. Ordinance§ 1000-203, Table 1a. {1}

{1} The Ordinance is the victim of sloppy draftsmanship throughout-terminology that is specifically defined should be used just as defined, and not in some similar variation. Moreover, listing it as a special exception in an Airport Hazard Overlay zone makes no sense under any set of circumstances. Why should residents of a Halfway House be singled out for exposure to airport hazards?

Article VIII, Section 1000-806 of the ordinance imposes three specific conditions on the grant of a Special Exception for a Halfway Home, Adult. In addition to the specific conditions noted, subsection D provides:

The Zoning Hearing Board may attach additional conditions pursuant to this section, in order to protect the public's health, safety and welfare. These conditions may include but are not limited to increased setbacks.

The ZHB conducted hearings regarding Evans/Vassar's Petition on January 30, 2019, and February 27, 2019. At the February hearing, the ZHB voted to deny the Special Exception on the record, and notice of the adverse decision-by letter was delivered to the Plaintiff on March 7, 2019, per the green card in the ZHB file. Subsequently, the ZHB issued Resolution 18-51, dated April 10, 2019, which formally denied Evans/Vassar's request. The Resolution contains factual inaccuracies. In Paragraph 2 it states that Evans/Vassar is seeking a "Use Variance to operate a Halfway House on property zoned A-1 Agricultural-Rural" There is no "Use Variance" defined in the Ordinance, Evans/Vassar did not seek a "Use Variance," and the property at issue in this case is zoned R-2. Those factual inaccuracies do not infect the outcome, however, but appear to be just scrivener's errors.

The ZHB went on to find that Evans/Vassar had not met the Petitioner's burden of proof because it did not comply with the parking requirements, and because the use would "adversely impact the health, safety and welfare of the residents of the adjoining and surrounding area." The Resolution stated that the use would "change or alter the general use and make-up of the neighborhood." {2}

Specifics noted included the assertion that the facility would not comply with §1000-303 parking requirements because all "off-street parking spaces" would not be on the lot of the principal structure, that neighbors had safety and security concerns because "Brownsville does not have a 24-hour police station." "The area in which the facility proposed is known for high drug activity." "There are children that live near this proposed facility." "There was also concern that the participants might invite and/or attract other criminals to the area and facility, and that there was not a substantial plan for security and safety by the Petitioner." "Essentially, the opposition argued that this was the wrong location for such a facility."

On this appeal, Evans/Vassar challenges the denial of the special exception, asserts that they met all the standards required by that Ordinance, and claims that "adequate parking would be maintained both on the premises as well as right across the street."

In addition, although not phrased as clearly as possible, Evans/Vassar asserted that the objectors did not present sufficient evidence to establish a high probability that the proposed use would result in the cited adverse effects to the public's health, safety and welfare.

---

{2} It is at least arguable that the Ordinance is inconsistent or illogical in specifying "Halfway Home, Adult" as a Special Exception use in a high-density zone, such as R-2, and then denying the use because the area is densely populated and the potential dangers of the facility cannot be adequately addressed. However, no challenge to the Ordinance was raised, and no curative amendment was offered.

Finally, Evans/Vassar argued that there was a "deemed decision" because "the written decision of the Board was filed more than forty five (sic) days following the last hearing of the Board." This argument is mistaken. The final hearing was held on February 27, 2019, at which time the ZHB voted against the application. Notice of that decision was delivered to Evans/Vassar on March 7, 2019. The Resolution itself was filed on April 10, 2019, well within the forty-five days required to avoid a "deemed decision."

### STANDARD OF REVIEW

A court reviewing the decision of a Zoning Hearing Board is bound by a narrow standard of review. It is well settled law in Pennsylvania that when a trial court takes no additional evidence the standard of review is limited to determining whether the board "committed an abuse of discretion or an error of law." *Lombardozzi v. Millcreek Township Zoning Hearing Board*, 829 A.2d 779, 781 (Pa. Cmwlth. 2003). An abuse of discretion can be established if the ZHB's factual findings are not supported by substantial evidence. *Valley View Civic Association v. Zoning Board of Adjustment*, 462 A.2d 637, 639 (Pa. 1983). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.*

### REQUIREMENTS FOR DENIAL OF SPECIAL EXCEPTION

The Courts have routinely recognized that: "[a] special exception is in fact not an exception to the zoning ordinance, rather it is a use expressly permitted by the ordinance provided specifically enumerated standards are met." Citing *Appeal of Dippolito*, 833 A.2d 336, 342 (Pa. Cmwlth. 2003); *In re: Appeal of Brickstone Realty Corporation*, 789 A.2d 333, 340 (Pa. Cmwlth. 2001). A use that qualifies for a special exception is already presumed to satisfy local concerns for the general health, safety, morals and general welfare of the community. *In re: Appeal of Brickstone Realty Corp.*, at 340. Once the applicant for a special exception shows compliance with the specific requirements of the zoning ordinance, a presumption arises that the proposed use is consistent with the health, safety, and general welfare of the community. *Id.* The burden then shifts to the objectors to the application to prove that the proposed use will have a detrimental effect on the health, safety, and general welfare of the community. *Id.* The objectors cannot meet their burden by merely speculating as to possible harm, but instead must show a high degree of probability that it will substantially affect the health and safety of the community. *Manor Healthcare Corp. v. Lower Moreland Township Zoning Hearing Board*, 590 A.2d 65, 71 (Pa. Cmwlth. 1991).

### RESOLUTION

The ZHB resolution denied the Special Exception for two basic reasons:

1. Inadequate parking: Parking regulations are contained in §1000-303, specifically requiring that each off-street parking spot be 9' by 19', and clearly contemplating that no off-street parking involve one vehicular parking spot blocking access to another vehicular parking spot. Table 6 in that section requires one parking spot for each four residents, plus one spot per each employee. The testimony indicated one employee per shift, with employees present 24/7, plus

no more than eight residents. That would suggest the necessity of at least six off-street parking spaces, one for each of the four employees required to staff the proposed use 24/7, plus two additional for the eight residents. Subsection A.4. provides that "Off-street parking areas for more than five (5) vehicles and access drives leading to the parking area which are accessible to the general public shall be graded for proper drainage and paved with concrete, bituminous asphalt or bituminous seal coat." Even the late offered parking lease does not bring the applicant into compliance with these provisions of the Ordinance, since the proposed parking spots are not on the same lot as the principal use, and they are not shown to be graded or paved. {3} Finally, §1000-800 B.1. requires that a "land development plan" be submitted whenever an application for special exception is submitted, and no land development plan is part of this record. A "land development plan" would have shown the exact location of off-street parking, and would not have shown required parking spots where such would violate local parking ordinances, interfere with required "sight triangles" at intersections, and/or prevent access by garbage trucks, school buses, snowplows, fire or other emergency vehicles.

2. §1000-806 A. of the Ordinance requires the Petitioner "to file a detailed statement of intent" which will "detail the proposed number and nature of the anticipated occupants." A document captioned as such is part of the record. Section 806.A. also provides that if required licensure does not exist, "the applicant shall demonstrate to the Zoning Hearing Board that the proposal satisfies a demonstrative (sic) need and shall be conducted in a responsible manner without detriment to surrounding properties." (emphasis supplied.) While Evans/Vassar asserted he would obtain proper licensure from the Commonwealth, no such licensure was available at the time of the hearing.

As a result, the ZHB considered the cross examination of the proponent, and the limited testimony of the Objectors and found that the proposed use would create an unusual burden in that specific geographic area because of the lack of 24 hour police, high drug activity in the area, inadequate security arrangements, and young children living in the immediate area of the proposed use.

As a result of the above findings, the Board determined that Evans/Vassar had not met his burden of proof of showing compliance with the literal requirements for the Special Exception.

#### TESTIMONY AND EXHIBITS

Terry Vassar testified first, and he described the proposed use. (Tr. 7-76). He was cross-examined by a number of local residents who had objections to the proposed use, and he conceded several points. The next witness was Mr. Ward, who testified that it was impossible to run "a line" to the police department because there is no police department that is open 24/7, and that it takes an hour or an hour and one-half for the State Police to respond to the area. He also expressed concerns about inadequate parking, and the children in the area, and noted that it is "a very congested area for families." (Tr. 77-78). The last witness was Mr. Ryan, who noted that a ninety-one year old woman lives in the adjacent building and she is very concerned about the proposed use.

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{1} While the Petitioner did submit a "parking lease" after argument, it was not admitted as evidence, and it was not in effect at the time the ZHB heard testimony in the case.

## DISCUSSION

As noted above, the initial burden is on the applicant to show compliance with the specific Ordinance requirements. This burden clearly was not met, as the original Petition for Special Exception did not have a "land development plan" attached, and it did not demonstrate compliance with the parking requirements in the Ordinance.

Off-street parking is required for every full-time staff member, and with one staff member working on each shift, and coverage seven days a week, twenty-four hours a day, there must be the equivalent of at least four full-time staff members. The Ordinance does not state anything about how many staff members are on duty at one time, it simply states that there must be one "off-street" parking spot for every employee. Without the required "land development plan" demonstrating compliance, it is impossible for this Court to disagree with the Board and the conclusions they reached.

As stated by the Commonwealth Court in Appeal of Thompson, 896 A.2d 659 (2006): "An applicant for special exception or conditional use must demonstrate that his proposed use meets the applicable requirements of the zoning ordinance when the application is submitted. Edgmont Township v. Springton Lake Montessori School, Inc., 154 Pa.Cmwlth. 76, 622 A.2d 418 (1993); Appeal of Baird, 113 Pa.Cmwlth. 637, 537 A.2d 976 (1988), petition for allowance of appeal denied, 521 Pa. 613, 557 A.2d 344 (1989). A promise to comply or conditions compelling future compliance cannot cure an otherwise noncompliant application. Edgmont Township. If we were to adopt a rule that to obtain a special exception all that would be required is for an applicant to promise to come into compliance at some future date, it would make the approval process meaningless because once an applicant promises it would be entitled to receive the special exception. Id., 622 A.2d at 420.

"In Baird, a zoning hearing board denied an applicant a special exception to operate a dog kennel on 11.86 acres of land because the applicant failed to show compliance with ordinance requirements applicable to buildings in the zone in question. Overturning the zoning board, the trial court held that because the lot was in excess of 11 acres, it was self-evident that the parcel was large enough to provide for any building configuration necessary to meet the zoning ordinance requirements. Reversing, we held that the zoning board properly denied the special exception because an applicant is required to show at the time of the hearing that it met the requirements of the ordinance. Baird, 537 A.2d at 978. We stated:

'We can find no authority imposing such a duty upon a zoning hearing board. Moreover, the proper function of a condition imposed upon a special exception is to reduce the adverse impact of a use allowed under special exception... not to enable the applicant to meet his burden of showing that the use which he seeks is one allowed by special exception.' Id., 537 A.2d at 977- 978.

"Similarly, in Lafayette College v. Zoning Hearing Board of the City of Easton, 138 Pa.Cmwlth. 579, 588 A.2d 1323 (1991), we overturned the grant of a special exception where the plan submitted to the Board did not comply with the on-site parking requirement necessary to obtain a special exception even though the grant of the special exception was conditioned on the applicant obtaining off-site parking. Rejecting that the off-site parking condition cured its failure to meet the specific requirement of on-site

parking, we held that the proper function of a condition imposed upon a special exception is to reduce the adverse impact of that permitted use, and not to enable the applicant to meet its burden of showing that it met the requirements necessary to obtain a special exception. Lafayette, 588 A.2d at 1326. The standard to be observed by the zoning board is whether the plan as submitted complies with specific ordinance requirements at the time the plan comes before it. Id. at 1327; see Baird."

In addition, since there was no license presented from the Commonwealth of Pennsylvania, the ZHB placed the burden on the Petitioner to show that the use "shall be conducted in a responsible manner without detriment to surrounding properties." The cross-examination of Vassar and the limited comments of the other witnesses demonstrated that the specific area of Brownsville Borough involved is densely populated, has children and elderly persons residing there, that the Borough does not have 24-hour police available, and the plans for the facility did not involve having security personnel on site or other satisfactory security arrangements. Under those circumstances, the ZHB concluded that the Petitioner had not met its burden of showing that the use would be "conducted in a responsible manner without detriment to surrounding properties."

The Board concluded that the applicant, Evans/Vassar, had not met his initial burden of establishing literal compliance with the Ordinance requirements, and this Court finds that the Board had substantial competent evidence to support that conclusion.

Moreover, even if that burden had been met, the objectors presented evidence that showed a high degree of probability that it will substantially affect the health and safety of the community and that there were no appropriate conditions that could reasonably be placed on the use to make it consistent with public health, safety and welfare.

For all of the above reasons, this Court enters the following:

ORDER

AND NOW, this 8th day of January, 2021, for the reasons set forth in the preceding Opinion, the appeal contesting the validity of Fayette County Zoning Hearing Board Resolution 18-51 is hereby DENIED, and the Resolution is upheld as being legally valid and enforceable.

BY THE COURT:  
STEVE P. LESKINEN, JUDGE

ATTEST:  
PROTHONOTARY



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