



**Division of Development Administration and Review**

City of Pittsburgh, Department of City Planning

200 Ross Street, Third Floor

Pittsburgh, Pennsylvania 15219

**ZONING BOARD OF ADJUSTMENT**

**Date of Hearing:** July 13, 2017  
**Date of Decision:** October 12, 2017

**Zone Case:** 245 of 2017  
**Address:** 420 Grove Street  
**Zoning Districts:** RM-M  
**Ward:** 5  
**Neighborhood:** Middle Hill

**Owner:** Gaudenzia Foundation, Inc.  
**Applicant:** Moss Architects (for the Owner)

**Request:** New construction of 3-story structure for use as community home, with parking.

<b>Special Exception</b>	911.02/911.04.A.84	Use of community home is a Special Exception in the RM District
<b>Variance</b>	911.04.A.84(c)	Number of unrelated persons shall not exceed an average of one per bedroom; 15 bedrooms for 30 persons requested
<b>Variance</b>	903.03.C.2	Minimum 25' front setback required; 0' requested Minimum 10' side setback required; 0' and 5' requested Minimum 25' rear setback required; 5' requested
<b>Variance</b>	912.04.C	Minimum 10' side setback required; 0' requested for accessory structures
<b>Variance</b>	918.03	Parking lot shall be screened; no screening proposed
<b>Variance</b>	914.10	One off-street loading space required; 0 proposed

**Appearances:**

- Applicant: Joel Patterson, Andrew Moss, Hal D. Coffey (Attorney)
- In-Favor: Brent Thompson, Cindy Ohmori, Anna Foster
- Opposed: Cherylie Fuller, William Fuller, Brenda Tate, Marimba Milliones, David Serbin, Felicity Williams

**Findings of Fact:**

- **Identification of the Subject Property and the Applicant:**

1. The Subject Property is located at 420 Grove Street, in the Middle Hill neighborhood.
2. The Applicant, Gaudenzia Foundation, Inc. (“Gaudenzia”), is Pennsylvania’s largest drug and alcohol treatment system. Gaudenzia currently owns and operates an in-patient drug and alcohol rehabilitation facility at 2012 Centre Avenue, proximate to the Subject Property.
3. With the application at issue here, Gaudenzia proposes to construct on the Subject Property a three-story, 11,000 sf building for use as an in-patient drug and alcohol rehabilitation facility, with 30 beds, staff offices, dining facilities and rooms for counseling and rehabilitation programs.

- **Description of the Subject Property**

4. The Subject Property is a 9,072 sf parcel, which is comprised of 4 consolidated parcels, and is located in an RM-M (Multi-Unit Residential, Moderate Density) District.
5. Calliope Way is located at the rear of the Subject Property and an unnamed 15’-wide alley extends along one side of the property from Grove Street to a garage/warehouse building on the opposite side of Calliope Way.
6. The parcel located across the unnamed alley from the Subject Property is within the LNC (Local Neighborhood Commercial) District that extends along the Centre Avenue corridor.
7. The grade of the Subject Property slopes downward from the interior side property line to the unnamed alley and from the rear to the front.
8. The Subject Property is currently vacant and has been for a number of years. However, a 1923 Sanborne Fire Insurance Map depicts a number of buildings located on the property, built to the front, rear and side property lines.
9. A number of vacant properties and structures in the immediate vicinity of the Subject Property do not comply with the Code’s dimensional standards for the RM-M District.

- **Description of the Proposed Structure:**

10. Gaudenzia proposes to construct a 50’/3-story building, which has been designed to address the topographical irregularities of the site and to be consistent with the context of the area. The primary means of access would be from an entrance on the Grove Street corner of the building, proximate to the unnamed alley.

11. As proposed, the building would have a 0' setback from the front property line on Grove Street; a 5' setback from the interior side property line; a 5' setback from the property line on the unnamed alley; and a 5' setback from the rear property line on Calliope Way.

12. The proposed height would comply with the Code's 55'4-story height limitations.

13. The design of the proposed building includes an interior courtyard area intended to provide outdoor space for patients and staff.

14. Gaudenzia also proposes to locate 6 parking spaces on the unnamed alley side of the property, with a 0' setback. No screening for the parking area is proposed.

15. The site plan does not allow for an on-site loading space. Because deliveries would occur approximately once per week, Gaudenzia proposes to use the Grove Street right-of-way for deliveries. Use of the right-of-way instead of an on-site loading space would require approval from the Department of Public Works.

16. A series of new trees and screening along Grove Street are also proposed.

- **Proposed Use of the Property:**

17. Gaudenzia's proposed in-patient drug and alcohol rehabilitation facility would include bedrooms, staff offices and rooms for counseling and rehabilitation programs. It would also have a common cooking and dining area.

18. The facility is intended to serve up to 30 people, with 15 bedrooms and an average of two persons per bedroom,

19. Residents would typically remain at the facility for up to 90 days for rehabilitation.

20. Six to seven employees for the facility would typically be on-site at any time.

- **Procedural Background:**

21. The Board conducted a hearing on Gaudenzia's application on July 13, 2017.

22. At the hearing, Gaudenzia presented evidence and testimony relating to the design of the building; the context of the neighborhood, including surrounding structures and uses; Gaudenzia's existing facility, which is proximate to the Subject Property; and the intended operations of the new facility, which is intended to replace the existing facility. Gaudenzia also presented testimony regarding the community process that preceded the hearing.

23. Gaudenzia offered testimony that the state licensing requirements for drug and alcohol programs include square footage requirements per client, per bedroom, which affected the number of bedrooms proposed for the facility.

24. At the conclusion of the presentation of Gaudenzia's testimony, several nearby residents expressed concerns regarding the proposed facility and Marimba Milliones, the CEO and President of the Hill Community Development Corporation ("Hill CDC"), requested a continuance.

25. Because substantial testimony and evidence had been presented before the request for a continuance was made, the Board determined that a grant of a continuance of the hearing was not

appropriate but allowed Gaudenzia and the Hill CDC additional time for an additional community meeting to discuss the proposal.

26. The Board also provided Gaudenzia and the Hill CDC the opportunity to present additional information relating to the community meeting and proposed findings of fact and conclusions of law for the Board's consideration.

27. The Board received and considered post-hearing submissions from Gaudenzia and the Hill CDC.

28. At the hearing and in the post-hearing submissions, a variety of opinions, both positive and negative, were expressed with respect to the potential impact of the proposed facility on the neighborhood and its compatibility with the neighborhood and plans for the Centre Avenue corridor.

### **Conclusions of Law:**

- **Relevant Provisions of the Zoning Code**

1. The Code's definition of "community home" is:

a group of more than eight unrelated disabled persons living together as a single housekeeping unit with shared common facilities. If required, staff persons may reside on the premises. A Community Home may not be a Multi-Suite Residential use or an Assisted Living use as defined in Section 911.02. For the purposes of this definition, 'disabled' means 'handicapped' as defined according to the Fair Housing Act Amendments of 1988, 42 U.S.C.S. 3602(h), and any amendments thereto. This use does not include Custodial Care Facilities. This use includes halfway houses where persons are aided in readjusting to society following a period of hospitalization or institutionalized treatment for a medical, psychiatric, developmental, emotional, or other disability or handicap. This does not include halfway houses for people leaving a correctional facility.

Code Section 911.02 (Use Table).

2. Pursuant to Code Section 911.02, the "community home" use is permitted in essentially all zoning districts, including all residential zoning districts, as a special exception, subject to the specific criteria set forth in Section 911.04.A.84.

3. The Code's specific criteria are: (a) the dwelling unit shall have one primary means of ingress/egress, a single mail box, single utility connections and common cooking/eating areas; (b) no alteration to exterior structure, unless required under health/safety codes; (c) the number of unrelated disabled persons is not to exceed an average of one per bedroom; (d) one parking space for every 3 persons on duty; (e) on-site offices limited to the program use; and (f) the Board is to determine that the proposed Community Home will not impact the neighborhood by contributing to "the saturation of Community Homes or other social service institutions."

4. Code Section 922.07.D sets forth the general criteria for the Board's review of a special exception, including whether the proposed use would create detrimental visual impacts; transportation impacts on vehicular or pedestrian circulation or traffic; operational impacts; health, safety and welfare impacts (including noise, emissions and vibrations); impact on property values; and impact on future and potential development in the vicinity of the property.

5. Section 922.02.E sets for the general conditions for approval of a variance.

- **Relevant State and Federal Law**

6. Under Pennsylvania law, a special exception is a form of a permitted use. By designating a use as a “special exception” in a zoning district, the governing body has determined that the use is one that is appropriate in that district and is thus presumptively consistent with the promotion of the public health, safety and general welfare. *Bray v. Zoning Board of Adjustment*, 410 A.2d 909 (Pa. Commw. Ct. 1980). If the use complies with the standards set forth in the ordinance, it is presumed to be consistent with the public interest. See, e.g., *Broussard v. Zoning Bd. of Adj. City of Pittsburgh*, 907 A.2d 494, 499 (Pa. 2006); *Joseph v. North Whitehall Twp. Bd. of Supervisors*, 16 A.3d 1209, 1215 (Pa. Commw. Ct. 2011); *Union Twp. v. Ethan Michael Inc.*, 979 A.2d 431, 437 (Pa. Commw. Ct. 2009); see also Robert S. Ryan, *Pennsylvania Zoning Law and Practice*, § 5.1.2.

7. The applicant for special exception approval has the initial burden to show that its proposal complies with the specific criteria delineated in the ordinance. *Bray*, 410 A.2d at 910. By demonstrating compliance with the specific criteria, the applicant establishes that the proposal is presumptively consistent with the promotion of public health, safety and welfare. *Bray*, 410 A.2d at 911; see also *Tennyson v. Zoning Hearing Bd.*, 952 A.2d 739, 746 (Pa. Commw. Ct. 2008); *East Manchester Zoning Hearing Bd. v. Dallmeyer*, 609 A.2d 604, 610 (Pa. Commw. Ct. 1992); *Manor Healthcare Corp. v. Lower Moreland Twp. Zoning Hearing Bd.*, 590 A.2d 65, 70 (Pa. Commw. Ct. 1991); Ryan, *Pennsylvania Zoning Law and Practice*, § 5.2.6.

8. Once the applicant for a special exception meets its initial burden of demonstrating compliance with the specific criteria, the burden shifts to any objectors to attempt to demonstrate that the use as proposed would result in adverse impacts not normally generated by that type of use and not anticipated when the governing body determined that the use is allowed in designated zoning districts, subject to the criteria it established. See, e.g., *Bray*, 410 A.2d at 911; *Archbishop O’Hara’s Appeal*, 131 A.2d 587, 596-97 (Pa. 1957); *HHI Trucking & Supply, Inc. v. Borough Council of the Borough of Oakmont*, 990 A.2d 152, 159 (Pa. Commw. Ct. 2010), citing *East Manchester Zoning Hearing Bd.*, 609 A.2d at 610; *Joseph*, 16 A.3d at 1211; *Tennyson*, 952 A.2d at 746; *In Re Thompson*, 896 A.2d 659, 679 (Pa. Commw. Ct. 2006); *Marquise Investment, Inc. v. City of Pittsburgh*, 11 A.3d 607, 616 (Pa. Commw. Ct. 2010).

9. To prove a “detrimental impact,” objectors to a proposed special exception cannot simply speculate but must raise specific issues regarding the effect of the proposed use on the public interest and they must show with “a high degree of probability” that the effect of the proposed use will be substantial. *Manor Healthcare Corp.*, 590 A.2d at 71 (quoting *Archbishop O’Hara’s Appeal*, 131 A.2d 587, 596 (Pa. 1957)).

10. Expressing concerns about the possible impact of effects normally associated with a permitted use is insufficient to establish a high degree of probability of specific detrimental consequences. *Archbishop O’Hara’s Appeal*, 131 A.2d at 596-597; *Moyer’s Landfill*, 450 A.2d at 279.

11. Opinions, without more substantive evidence, do not satisfy the objectors’ burden of proof. *Appeal of R.C. Maxwell Co.*, 548 A.2d 1300, 1304 (Pa. Commw. Ct. 1988); *Commonwealth of Pennsylvania Bureau of Corrections v. Pittsburgh City Council*, 532 A.2d 12, 14-15 (Pa. 1987) (Court rejected the assertion that a pre-release center should be treated as a *per se* detriment to the community); see also *JoJo Oil Co., Inc. v. Dingman Twp. Zoning Hearing Bd.*, 77 A.3d 679, 688-89 (Pa. Commw. Ct. 2013) (A proposed use’s detrimental effect on public safety must be established with evidence, to a high degree of probability, noting that general concerns of the possibility of an explosion were insufficient to warrant denial of a special exception).

12. The Pennsylvania Supreme Court has summarized the five general criteria for determining whether to grant a variance as: 1) unique circumstances or conditions of a property would result in an unnecessary hardship; 2) no adverse effect on the public welfare; and that 3) variance proposed is the

minimum variance that would afford relief with the least modification possible. *Marshall v. City of Philadelphia and Zoning Bd. of Adj.*, 97 A.3d 323, 329 (Pa. 2014); see also *Hertzberg v. Zoning Board of Adj. of the City of Pittsburgh*, 721 A.2d 43 (Pa. 1998), citing *Allegheny West Civic Council v. Zoning Bd. of Adj. of the City of Pittsburgh*, 689 A.2d 225 (Pa. 1997).

13. In *Valley View Civic Ass'n v. Zoning Bd. of Adj.*, 462 A.2d 637 (Pa. 1983), the Pennsylvania Supreme Court held that the variances must only be granted for substantial, serious and compelling reasons. The party seeking the variance bears the burden of proving that unnecessary hardship will result if the variance is denied and that the proposed use will not be contrary to the public interest. *Id.*

14. In *Hertzberg*, the Court explained that a dimensional variance is distinct from a use variance and is subject to a less restrictive standard because an applicant seeking a dimensional variance asks only for a reasonable adjustment of the zoning regulations to accommodate a use of property that is permitted. *Hertzberg*, 721 A.2d at 47-48. In considering whether an unnecessary hardship has been established with respect to a requested dimensional variance, multiple factors can be considered, including the economic detriment to the applicant if the variance is denied, financial hardship associated with strict compliance with the zoning ordinance and the characteristics of the surrounding neighborhood. *Hertzberg*, 721 A.2d at 49-50.

15. An applicant is not required to show that the property cannot be used in any manner or for any purpose permitted under the zoning ordinance or that the property would be valueless without a variance. *Hertzberg*, 721 A.2d at 48-49, citing *Halberstadt v. Borough of Nazareth*, 687 A.2d 371, 373 (Pa. 1997); *Marshall*, 97 A.3d at 330.

16. However, “[m]ere economic hardship will not of itself justify a grant of a variance.” *Marshall*, at 330, quoting *Wilson v. Plumstead Township Zoning Hearing Bd.*, 594 Pa. 416, 936 A.2d 1061, 1069 (2007) (citation omitted); see also *Valley View*, 462 A.2d at 640.

17. Under federal law, the Fair Housing Act Amendments (“FHA”) forbid discrimination “against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap.” 42 U.S.C. § 3604(f).

18. The FHA explicitly applies to recovering drug and alcohol addicts. See 42 U.S.C. § 3604(f)(3)(B); *United States v. Southern Management Corp.*, 955 F.2d 914 (4<sup>th</sup> Cir. 1992).

19. Under the federal Fair Housing Act, Code Section 911.04.A.84(f) is not enforceable.

- **Requested Relief**

20. Gaudenzia seeks dimensional variances from the Code’s setback and other site development standards to allow for the proposed structure on Subject Property.

21. Gaudenzia also seeks approval to use the site for a “community home” use. Although that use is permitted as a special exception in the RM-M District, the specific criteria for the use include the requirement that the number of disabled persons living in the home shall not exceed an average of one per bedroom. Because Gaudenzia proposes an average of two persons per bedroom, it seeks a variance from that requirement.

- **Dimensional Variances**

22. With respect to the requested variances from the setback requirements for the proposed structure, Gaudenzia presented sufficient, substantial evidence to demonstrate that the topographical irregularities of the site create a hardship that precludes strict compliance with the setback requirements.

The proposed setbacks would be consistent with the other structures in the immediate vicinity of the site and would not result in any substantial impact, particularly where the structure would comply with the Code's height limitations and appropriate landscaping would be provided.

23. The topography of the site also precludes strict compliance with the screening requirements for the parking area and the requirement for one on-site loading space. The requested variances from those provisions are appropriate, subject to approval from the Department of Public Works of the proposal to use the public right-of-way for deliveries.

24. For these reasons, based on the evidence presented and the legal standards applicable to dimensional variances, the Board concludes that approval of the dimensional variances and variance from the screening and loading space requirements is appropriate.

- **Special Exception for “Community Home” and Variance from Section 911.04.A.84(c)**

25. The Code permits the “Community Home” use in all residential districts and almost every other zoning district, including LNC Districts. By designating a use as a “special exception” in these districts, the governing body has determined that the use is one that is appropriate in these districts and presumptively consistent with the promotion of the public health, safety and general welfare, subject to the specific criteria set forth in Section 911.04.84.

26. Gaudenzia submitted sufficient, substantial evidence to demonstrate compliance with the requirements relating to the primary means of access, utility connections, common cooking/eating areas, parking and on-site offices limited to the program use.

27. However, in proposing a facility that would serve 30 persons in 15 bedrooms, Gaudenzia is required to seek a variance from Section 911.04.84(c), which provides that the number of persons served by a community home “shall not exceed an average of one (1) per bedroom.”

28. Because the person per bedroom provision relates to the density of the proposed use, as specifically prescribed in the special exception criteria, it cannot be viewed under the less restrictive standards applicable to dimensional variances and must be treated as a request for a use variance.

29. Gaudenzia indicated that the state licensing requirements for square footage per person, per bedroom limited how many bedrooms could be provided in the proposed facility. This reference, without additional evidence, was not sufficient to meet the applicant's burden of proving that a variance from the person per bedroom limitation should be granted.

30. Without the requested variance from Section 911.04.A.84(c), Gaudenzia cannot meet its initial burden of demonstrating compliance with all of the Code's specific criteria for a special exception for the “Community Home” use and thus the requested special exception must be denied.

**Decision:** The Applicant's request for dimensional variances from the site development standards is APPROVED, subject to the condition of approval from the Department of Public Works for use of the right-of-way for deliveries; and the Applicant's request for a variance from Section 911.04.A.84(c) is DENIED, and thus its request for a special exception pursuant to Section 911.04.A is also DENIED.

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**Alice B. Mitinger, *Chair***

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**LaShawn Burton-Faulk**

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**John J. Richardson**