



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

Dates of Hearings: January 18 and April 4, 2024
Date of Decision: May 29, 2023

Zone Case: 193 of 2023
Address: 5300 Stanton Avenue
Lot and Block: 81-M-150
Zoning Districts: R1D-L
Ward: 10
Neighborhood: Stanton Heights

Owner: Nazareth Literary and Benevolent Institution
Applicant: Nathan Doherty, employee of Vincentian Collaborative System, itself the sole shareholder of Vincentian De Marillac, the Ground Lessee of the Property
Request: Change of non-conforming use to community home or other new/unlisted use

Application: DCP-ZDR-2023-10900

Special Exception	Section 921.02.A.4	Change non-conforming use from nursing home to community home or other new/unlisted use
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Appearances:

Applicant: Robyn B. Eisen, Dean Owrey, Nathan Doherty, Justin L. McCall, Lucy Schoyer, Katie LaForest

Opposed: Joyce Meggerson-Moore, John Trenz, Paula Davis, Karen and Ken Palmer, Peter Nigra, Melita Hatley, Andre Young, Ariana Abajian, Renee De Michei Farrow, Zach Schindehette, Rommie Hawkins, Chris Ryder, Brittany Bloam

In Support: Councilperson Deborah Gross, Benjamin Filio, Chris Sandvig, John Creasy, Karl Thomas, Heather Conrad, Gabrielle Strong, Philip Lawson, Jeremiah Miller, Christopher Beam

Observing: Corey Layman, Anthony Williams, David Hartman

Findings of Fact:

- **Description of the Subject Property**

1. The Subject Property is located at 5300 Stanton Avenue in an R1D-L (Residential One Unit Detached Low Density) District in Stanton Heights. Nazareth Literary and Benevolent Institution owns the Subject Property and a related entity, Vincentian Collaborative System, is the sole shareholder of Vincentian De Marillac, which is the ground lessee of the property. (1/18 Tr. 7-8).

2. The area of the Subject Property is approximately 6.5 acres. (App. Exs. 1 and 4).¹

3. The grade of the Subject Property has a significant upward slope from Stanton Avenue and areas of mature trees and vegetation screen the building and parking lot on that parcel from the right-of-way and nearby properties. (1/18 Tr. 21; App. Exs. 1 and 4).

4. At the rear of the Subject Property is the undeveloped Parcel No. 81-M-175, which the Nazareth Literary and Benevolent Institution also owns. The area of that parcel is approximately 3.7 acres and consists primarily of a densely-wooded, steep hillside. At the rear of Parcel No. 81-M-175 are parcels with frontages on Rosecrest Drive, in the same R1D-L District. Somerville Street terminates at the property line of Parcel No. 81-M-175. (App. Exs. 1 and 4).

5. The Subject Property is also adjacent to the undeveloped Parcel No. 82-N-325, which the Nazareth Literary and Benevolent Institution owns. The area of that parcel is approximately 8.5 acres. It has frontage on Stanton Avenue and is in the same R1D-L District. It consists primarily of a densely-wooded, steep hillside. (App. Exs. 1 and 4).

6. Parcels in a P (Parks) District are located immediately across Stanton Avenue from the Subject Property. Parcels in an R1D-H (Residential One Unit Detached High Density) District are located across Stanton Avenue from Parcel No. 82-N-325.

7. The 2-story brick building on the Subject Property is set back approximately 242' from the Stanton Avenue property line and the undeveloped, 3.7-acre Parcel No. 81-M-175 separates the building on the Subject Property from the parcels on Rosecrest Drive. One residential property on Somerville Street abuts a 10' pedestrian walkway/utility easement that separates that parcel from the Subject Property. The building on the Subject Property is set back 204' from that property line, on the parking lot side of the building. (App. Ex. 4).

8. The building was, until recently, used for the Vincentian De Merillac nursing home. (1/18 Tr. 7-10).

9. The interior of the building includes 28 bedrooms, which are designed for shared use; shared bathrooms; a communal dining space; and gathering spaces. (1/18 Tr. 21-22).

10. A surface parking area with 40-space surface parking area and a receiving area are adjacent to the building. (App. Exs. 1 and 4).

¹ References to exhibits are to the Applicant's 1/18 presentation PDF, by page number, and to the supplemental application exhibits by exhibit number.

11. The building has a single mailing address and single utilities. (1/18 Tr. 21).

- **Use of the Subject Property for a “Nursing Home”**

12. A 1945 Certificate of Occupancy permits the use of the Subject Property for “Nursing home on first and second floors; 3rd floor not to be occupied by patients.” (App. Ex. 6). The 1945 Certificate of Occupancy was for the original building used for the permitted use. (1/18 Tr. 14).

13. A 1964 Certificate of Occupancy for the parcel permits “Nursing Home (Extension).” The 1964 Certificate of Occupancy is consistent with the original use for a nursing home and the building that currently exists on the property. (1/18 Tr. 14).

14. A nursing home use on the Subject Property operated continuously from as early as 1945 and in the existing building from 1963 until March, 2023. (1/18 Tr. 9-10, 14).

15. The Pennsylvania Department of Health licensed Vincentian De Merillac as a skilled nursing care facility to provide care for up to 50 patients, both on a short-term and long-term basis. (1/18 Tr. 8-9).

16. When in active use, the nursing home operated continuously, 24 hours per day, 7 days per week, with approximately 20 to 30 staff members on-site at all times. (1/18 Tr. 13).

17. Staff members either used the on-site parking or public transportation. (1/18 Tr. 13).

18. Residents of the facility did not drive and family members typically provided residents transportation when necessary. (1/18 Tr. 13-14).

19. Residents and their families were permitted access to the nursing home throughout the day, with visiting hours that extended into the late evening. (1/18 Tr. 13).

- **Proposed Change in Use for the Existing Building**

20. The owner of the Subject Property authorized the application for the proposed use of the Subject Property and is to retain ownership of the Subject Property.

21. Community Human Services Corporation (CHS) proposes to lease the existing building on the Subject Property for use for its Bridge Employment and Training (BET) Program, which would provide transitional housing for up to 56 individuals who are experiencing housing instability. (1/18 Tr. 16).

22. The BET program would provide training and support for participants in gaining employment and transitioning into independent housing. (1/18 Tr. 16).

23. The proposed use is not for a temporary housing shelter but is a residential program for selected participants who have experienced housing instability and are seeking assistance with employment and transition to permanent housing. (1/18 Tr. 23-24).

24. The Allegheny County Department of Human Services would select program participants through a screening process that would include consideration of an individual’s

vulnerability score as assessed through the Allegheny Housing Assessment tool; stability in the shelter system for at least one month; ability to live with multiple individuals in a shared space; and high level of interest in gaining employment, income and independent housing. (1/18 Tr. 16, 4/4 Tr. 124-25).

25. Program participants would be required to agree to a code of conduct, and CHS would have a system to address violations of that code, which could result in termination from the program. (1/18 Tr. 18-19).

26. Consistent with the interior design of the existing building, program participants would share bedrooms and bathrooms, and CHS would provide communal dining and programs on the site. (1/18 Tr. 21-22).

27. Approximately 8 to 9 staff members would be on-site during the day on weekdays. At least 3 staff members would be on-site at night and on weekends. (1/18 Tr. 17).

28. Staff and a third-party entity would monitor the security cameras on the property. All staff members would be trained in crisis intervention and de-escalation tactics. (1/18 Tr. 18).

29. Program participants would be able to access the building at all times with an electronic key fob, and would be allowed to have visitors until 10 p.m. (1/18 Tr. 18-19).

30. Most of the program participants would not own a vehicle and would rely primarily on public transportation. (1/18 Tr. 19-20).

31. CHS does not propose to make any alterations to the exterior of the building. (1/18 Tr. 21-22).

32. The existing 28 bedrooms and the communal living spaces for the former nursing home would be used, with only minor modifications to the interior of the building. (1/18 Tr. 21-22).

33. Zoning Administrator Corey Layman testified that the proposed use is one that the Code does not specifically list but, based on his knowledge of the Code's use definitions, stated that the proposed use is most comparable to the Code's definition of the "community home" use. (1/18 Tr. 26-29).

- **Notice And Conduct Of The Hearings Before The Board**

34. The Board conducted hearings on the application on both January 18 and April 4, 2024.

35. For the January 18, 2024 hearing, the Planning Department provided the Applicant with one orange notice poster, which the Applicant posted along the Stanton Avenue frontage of the Subject Property as of December 22, 2023. (App. Ex. 5).

36. In accordance with Section 922.01.C.1, the Planning Department mailed direct notice of the January 18, 2024 hearing to the owners of the 10 parcels that are located adjacent to or across Stanton Avenue from the Subject Property, Parcel No. 81-M-150.

37. In response to concerns regarding sufficiency of the notice, as raised at the January 18, 2024 hearing, the Applicant asked the Board to conduct a second hearing to allow for additional notice and participation, which was scheduled for April 4, 2024.

38. For the April 4, 2024 hearing, the Planning Department provided the Applicant with twelve orange notice posters, which the Applicant posted along the Stanton Avenue frontages of the Subject Property and the adjacent Parcel No. 82-N-325, as of March 14, 2024. (4/4 Tr. 98-99; Supp. App. Ex. 6).

39. In accordance with Section 922.01.C.1, the Planning Department mailed direct notice of the April 4, 2024 hearing to the owners of 40 parcels, including all parcels that abut the Subject Property and Parcel Nos. 81-M-150 and 82-N-325.

40. At the conclusion of both hearings, the Board provided the participants an opportunity to submit proposed findings of fact and conclusions of law. The Board received post-hearing submissions following both the January 18 and the April 4 hearings from the Applicant and Britany Bloam (on behalf of Andre and Robyn Young). Peter Nigra, who acknowledged that he lacked standing, also provided a post hearing submission.

41. The Board also received a number of written communications, both in support and opposed, from both those who testified and who did not.

42. The record closed on April 11, 2024 and the Applicant agreed to a one-day extension for the issuance of this decision.

- **Applicant's Testimony And Evidence**

43. The Applicant presented four primary witnesses. (1/18 Tr. 5-25).

44. Dean Owrey, on behalf of Vincentian De Marillac, described the use of the property for the nursing home. (1/18 Tr. 5-15). He noted that the building on the Subject Property had been used as a skilled nursing facility for up to 50 residents, who shared bedrooms and bathrooms. It primarily served older patients who had been discharged from a hospital for rehabilitation care or patients who required nursing care. (1/18 Tr. 9-10). Mr. Owrey also testified that approximately 20 to 30 staff members were on-site at all times and that visiting hours for families extended into the late evening. (1/18 Tr. 13). When the facility closed, the owner sought alternative uses that would align with organization's mission, in an as-is condition. (1/18 Tr. 9, 4/4 Tr. 127).

45. Lucy Schoyer, the director of housing programs for CHS, described the proposed use of the Subject Property for the BET program. (1/18 Tr. 15-20, 85-86). Ms. Schoyer distinguished the BET program from a housing shelter and described the selection process for participants. She explained that the participants who are selected for the BET program are committed to gaining employment, increasing income and working towards moving into independent housing upon graduation from the program. (1/18 Tr. 16). Those participants who do not comply with the code of conduct and program agreement would be terminated from the program. (1/18 Tr. 86). Ms. Schoyer also described the group programming that would be conducted on site, including employment training and issues related to being a tenant and living independently. (1/18 Tr. 17-18). She stated that 8 to 9 employees would be on site during weekday hours and at least 3 community support specialists would be on site overnight. (1/18

Tr. 17-18). No visitors would be permitted in the building after 10 p.m. and no residents would own their own vehicles. (1/18 Tr. 19-20).

46. Alicia Romano, the CEO of CHS, emphasized that the participants selected for the program on the Subject Property would score as “low risk,” using the Allegheny County Department of Human Services’ Allegheny Housing Assessment tool. She stated that the program participants would be selected because they are committed to finding employment and obtaining long-term housing. (4/4 Tr. 125-26).

47. Katie LaForest, the project architect, described how the existing interior configuration of the building, with shared bedrooms and bathrooms and communal space for dining and other gathering spaces, could be used for the proposed use, with only limited alterations, if any. She indicated that the proposed use would not require any exterior alterations to the existing building. (1/18 Tr. 20-22).

48. Councilperson Deborah Gross appeared at the hearing and submitted a letter of support for the request, which Councilperson Khari Mosley also signed. (1/18 Tr. 79-82).

49. Benjamin Filio, a resident of the property at 5407 Camelia Street; Chris Sandvig, the owner of the property at 847 Jancey Street; John Creasy and Karl Thomas, representing the Open Door Presbyterian Church; Heather Conrad, the owner of the property at 907 Jancey Street; Gabrielle Strong, the owner of the property at 5014 Somerville Street; Philip Lawson, the owner of the property at 1347 Simona Drive; and Jeremiah Miller, the owner of the property at 1560 Hawthorne Street, appeared at the hearing to support the request. (1/18 Tr. 30-46).

50. Christopher Beam, on behalf of Pro Housing Pittsburgh, also provided testimony in support of the request. (4/4 Tr. 117-19).

51. David Hartman, the owner of the property at 935 Morningside Avenue, appeared at the hearing to express concerns about the quality of pedestrian infrastructure and accessibility near the Subject Property, but did not oppose the proposed use. (4/4 Tr. 113-16).

52. The participants who appeared to support the request generally favored the re-use of the site and the mission of CHS to provide support for individuals experiencing housing instability.

- **Objectors’ Testimony And Evidence**

53. A number of individuals appeared at the January 18 hearing to express concerns and objections regarding the proposed use of the Subject Property.

54. Several individuals at the January 18 hearing asserted that the community had not received sufficient notice of the hearing.

55. The individuals who appeared at the January 18 hearing to oppose the request included Joyce Meggerson-Moore, representing the Stanton Heights Community Council; John Trenez, owner of the property at 5017 Somerville Street; Paula Davis, owner of the property at 5050 Somerville Street; Karen and Ken Palmer, owners of the property at 5097 Rosecrest Drive; Peter Nigra, a resident of a property on Trinity Street; Melita Hatley, owner of the property at 5046 Somerville Street; Andre Young, owner of the property at 5047 Somerville Street; Ariana

Abajian, owner of the property at 5037 Somerville Street; Renee De Michei Farrow, owner of the property at 4929 Coleridge Street; Zach Schindehette, owner of the property at 4701 Somerville Street; and Rommie Hawkins, owner of the property at 4300 Stanton Avenue. (1/18 Tr. 47-79).

56. The individuals who appeared at the April 4 hearing to oppose the request included Joyce Meggerson-Moore; Reverend Dale Snyder, representing the Bethel AME Church; Karen Palmer; Chris Ryder, owner of the property at 637 Chislett Street; and Chief Ikana Howell Makeena. (4/4 Tr. 113-22, 129-31).

57. Brittany Bloam, Esquire, appeared at both hearings on behalf of Andre and Robyn Young, in opposition to the proposed use.

58. The participants who opposed the proposed use generally expressed concerns about how the individuals who would be selected to participate in the program on the Subject Property might impact the surrounding neighborhood.

59. A number of individuals expressed what were generally described as “security concerns,” and asserted that the residents of the proposed use might loiter in the wooded areas, might access the surrounding residential neighborhoods and might be responsible for increasing crime in the area. (1/18 Tr. 53, 58-59, 68-72; 4/4 Tr. 111-13).

60. Several individuals noted concerns about what might happen if a resident was evicted from proposed use but chose to remain in the area. (1/18 Tr. 55, 75).

61. Several individuals questioned accessibility from the site to public transportation because of the steep grade of Stanton Avenue and the condition of the sidewalks and the potential impacts of increased foot traffic on those routes. (1/18 Tr. 58, 64-65, 76).

62. Concerns were expressed about the safety of children, based on the proximity of the Subject Property to Sunnyside School and the Neighborhood Academy. (1/18 Tr. 72; 4/4 Tr. 122-23, 129-30).

63. The concerns expressed were not based on substantial evidence and were generally speculative.

Conclusions of Law:

- **Relevant Provisions Of The Zoning Code**

1. Code Section 911.03.A authorizes the Zoning Administrator to determine the appropriate use classification of new uses or uses not listed or defined in the Zoning Code, based on the similarity of the proposed use to other uses permitted under the Code.

2. The Zoning Administrator determined that the proposed use is a “new or unlisted use,” and is most consistent with the Code’s definition of the “community home” use.

3. The Code defines “community home” as:

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.

4. Pursuant to Section 911.02, the "community home" use is permitted as a special exception in all residential zoning districts and in all non-residential districts, with the exception of GI (General Industrial) and P (Park) Districts. The use is permitted subject to the criteria set forth in Section 911.04.A.84. By designating the community home use as a "special exception," the governing body has determined that the use is one that is appropriate in the identified districts and is 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. The use criteria do not limit the number of residents in a community home, but do not allow for shared bedrooms.

5. The current Code does not include a definition of "nursing home." The Code defines "assisted living" as "a facility for the accommodation of convalescents or chronically ill persons, in which such nursing care and medical services of prescribed or are performed under the general direction of persons licensed to provide such care or services in accordance with Commonwealth laws." The only residential district where "Assisted Living Class C" uses, for more than 18 patient beds" are permitted are RM (Residential Multi-Unit) Districts, as a conditional use.

6. The Code defines the "multi-suite residential" use as "a building or portion thereof, containing rooms rented as sleeping or living quarters, without private kitchens and with or without private bathrooms. Lodging or meals or both are provided for compensation on a weekly or monthly basis." Multi-suite residential uses are not permitted in any residential districts.

7. Section 921.02.A.4 allows for the change of use of a property from one nonconforming use to another as a special exception, "provided that the new use shall be of the same general character or of a character that is more closely conforming than the existing, nonconforming use." The factors that the Board is to consider in assessing the relative intensity of the use include, but are not limited to, hours of operation; number of parking spaces; physical size and design characteristics of the building relative to surrounding buildings; and traffic generation. The Board is also to use the "Use Classification System" in considering intensity.

8. Section 921.02.A.5 provides that the applicant bears the burden of demonstrating that a proposed change of a nonconforming use will not result in "greater negative impacts" than the former nonconforming use.

9. Section 921.02.B.2.d provides that a nonconforming use may be presumed to be abandoned if the use has been discontinued, vacant or inactive for a continuous period of a year. However, that presumption can be rebutted where the Board is provided sufficient evidence that the owner had no intention to abandon the use.

10. Section 922.07.D.1 sets forth the general standards for the consideration of special exceptions, which include 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.

- **Relevant Legal Standards**

11. A nonconforming use is one that existed before the enactment of a new zoning restriction, with which the use does not conform. Robert S. Ryan, *Pennsylvania Zoning Law and Practice*, § 7.1.1. A nonconforming use creates a vested property right in the landowner. *Pappas v. Zoning Bd. of Adj. of the City of Philadelphia*, 589 A.2d 675, 676 (Pa. 1991), citing *Gross v. Zoning Bd. of Adj. of the City of Philadelphia*, 227 A.2d 824, 827 (Pa. 1967).

12. Property rights in a nonconforming use cannot be abrogated unless the use is intentionally “abandoned.” *Metzger v. Bensalem Twp. Zoning Hearing Bd.*, 645 A.2d 369, 370 (Pa. Commw. Ct. 1994).

13. A party asserting abandonment must introduce evidence to establish both an intent to abandon the use and that the use was actually abandoned. Actual abandonment of a nonconforming use cannot be inferred from or established by “mere proof of a failure for a time to use the property or of a temporary use of the property not inconsistent with an intention to use it for the original purpose.” *Pappas*, 589 A.2d at 677, citing *Appeal of Twp. of Upper Darby*, 138 A.2d 99 (Pa. 1958); see also *Latrobe Speedway, Inc. v. Zoning Hearing Bd. of Unity Twp.*, 720 A.2d 127 (Pa. 1998). (Pennsylvania Supreme Court held that “the use in question need not be in actual operation at the time of the ordinance’s enactment in order to retain its nonconforming status.”); *Sullivan v. Zoning Bd. of Adj.*, 478 A.2d 912, 915 (Pa. Commw. Ct. 1984) (intent to abandon cannot be inferred from nonuse alone).

14. In *Latrobe Speedway*, the Court noted the fact that the owner had retained the indicia of the nonconforming racetrack use, including the track, grandstands, fence, light stands and outbuildings, which rebutted the presumption of an intent to abandon the use. 720 A.2d at 128, 132.

15. Under Pennsylvania law, a special exception is a form of a permitted use. A use that is permitted as a special exception “evidences a legislative decision that the particular type of use is consistent with the zoning plan and presumptively consistent with the health, safety and welfare of the community.” *Allegheny Tower Assoc’s., LLC v. City of Scranton Zoning Hearing Bd.*, 152 A.3d 1118, 1123 (Pa. Commw. Ct. 2017), citing *Greth Dev. Grp., Inc. v. Zoning Hearing Bd. of L. Heidelberg Twp.*, 918 A.2d 181 (Pa. Comm. Ct. 2007) and Robert S. Ryan, *Pennsylvania Zoning Law and Practice*, § 5.1.1; see also *Bray v. Zoning Bd. of Adj.*, 410 A.2d 909 (Pa. Commw. Ct. 1980). By designating a use as a “special exception,” the governing body has determined that the use is one that is appropriate in the zoning district, subject to the criteria that the governing body has established for the use.

16. To prove a “detrimental impact,” objectors to a proposed special exception cannot simply speculate about potential impacts 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 a proposed use will be substantial. *Manor Healthcare Corp.*, 590 A.2d 65, 71

(Pa. Commw. Ct. 1991) (quoting *Archbishop O'Hara's Appeal*, 131 A.2d 587, 596 (Pa. 1957)). 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. 1988); *Commonwealth of Pennsylvania Bureau of Corrections v. Pittsburgh City Council*, 532 A.2d 12, 14-15 (Pa. 1987). See also *JoJo Oil Co., Inc. v. Dingman Twp. Zoning Hearing Bd.*, 77 A.3d 679, 688-89 (Pa. Commw. Ct. 2013) (An assertion that a proposed use would have a detrimental effect on public safety must be established 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).

- **Sufficient Notice Of Both Hearings Was Provided**

17. Several individuals who attended the January 18 hearing expressed concerns that sufficient notice had not been provided both by posting of notice and by direct mailing of notice.

18. The posted and directly mailed notices provided for the January 18 hearing complied with the Code's requirements with respect to the Subject Property, but did not include direct notices for parcels proximate to Parcel Nos. 81-M-75 and 82-N-325, which are under the same ownership. Although they are distinct parcels, they are informally considered to be part of the same site.

19. The Board agreed to conduct a second hearing to allow for additional notice, taking into account properties proximate to Parcel Nos. 81-M-75 and 82-N-325, in addition to the Subject Property.

20. The posted and directly mailed notices of the April 4 hearing complied with the Code's notice requirements.

21. Sufficient notice, in compliance with the Code's requirements, was provided with respect to both hearings.

- **Consideration Of The Proposed Use Of The Subject Property**

22. The first issue the Board must consider is whether the use of the Subject Property for a "nursing home" use is legally nonconforming, as a matter of law. Because that use was permitted on the Subject Property under the 1945 and 1964 Certificates of Occupancy, the Board concludes that the "nursing home" use is legally nonconforming in the R1D-H District.

23. Under the Code's current use definitions, an "assisted living facility," which is most consistent with the "nursing home" use, would also be nonconforming in the R1D-H District.

24. The legal nonconforming use of the existing building on the Subject Property for a "nursing home," has been inactive since March 2023. However, the legal nonconforming use has not been "abandoned," as a matter of law. The Applicant provided substantial and credible evidence that the indicia of the nonconforming use – the existing building with its interior configuration for shared bedrooms and bathrooms and communal dining and other group spaces, with a 40-space parking area – have not been altered. The alternatives that the owner has considered for the building have all involved its use in an as-is condition. No significant changes were made to the interior or exterior of the existing building and none are proposed.

The owner has not intended to and has not actually abandoned the legal nonconforming use of the property.

25. Section 921.02.A.4 permits the change of use of a property from one nonconforming use to another as a special exception. In reviewing a proposed change of use, the Board is to consider whether the new use is of the same general character of the existing, nonconforming use and whether it is of a character that is more closely conforming to the Code's requirements than the existing nonconforming use. The Board is to assess the relative intensity of the use based on factors including hours of operation; number of parking spaces; size and design of the building; and traffic generation. The Board is also to use the "Use Classification System" in considering intensity.

26. In considering the Code's various use descriptions, the Board agrees with the Zoning Administrator that the proposed use is most similar to the "community home" use, which the Code defines as a group of more than 8 individuals living together, with shared common facilities. The definition states that the use "includes halfway houses where persons are aided in readjusting to society." The criteria for the community home use do not allow for shared bedrooms but otherwise require a single means of ingress/egress, single utilities, no exterior alterations and sufficient on-site parking.

27. The use, as proposed here, would involve use of an existing building, with no exterior alterations, to allow of group of more than 8 individuals to share living spaces, including bedrooms, bathrooms, communal dining and common areas, so that they can participate in programs designs to aid them in gaining employment, increasing income and moving into independent housing. The building would have a single means of ingress/egress, single utilities and a 40-space on-site parking area. Minimal interior renovations and no exterior alterations are proposed.

28. The use, for the program proposed, is not consistent with the definition of the "multi-suite residential" use, which involves rooms rented on a weekly or monthly basis. None of the evidence presented supports a conclusion that the proposed use would involve payment for room and board on a weekly or monthly basis or would otherwise resemble a multi-suite residential use.

29. The "community home" use is permitted in all residential districts, including R1D-L Districts, as a special exception. Nursing homes and/or assisted living uses are not permitted R1D-L Districts. Thus, under the Use Classification System, the community home use, which is permitted as special exception, would be considered less intensive than the assisted living use, which is not permitted.

30. The request at issue is for a change of a nonconforming use under Section 921.02.A.4, from the nonconforming nursing home use to an "undefined" use, which the Board concludes to be most similar to a community home use.

31. The determination that the proposed "undefined" use is similar to a community home use does not transform the application to a request for a special exception for a community home use and does not require the Board to apply the special exception criteria for that use when considering the change of a nonconforming use.

32. For a special exception for the change of nonconforming use under Section 921.02.A.4, the Board is to consider the relative intensity of the proposed use, as compared to the existing nonconforming use.

33. The Applicant provided substantial and credible testimony and evidence that the intensity of the proposed use would be comparable to the existing nonconforming use. The hours of operations would be the same; the number of on-site parking spaces would be the same; the number of employees on site would decrease; and the physical size and design of the building would remain the same. Because only employees and visitors would typically drive to the site, with comparable operational and visiting hours, traffic generation would be the same.

34. The existing nonconforming nursing home was licensed for up to 50 patients and the proposed use envisions use of the building for up to 56 residents. The limited difference in the number of residents will not have any appreciable effect on the intensity of the use, particularly where residents will not own vehicles.

35. Under the objective measures of “intensity” of use as set forth in the Code, the Applicant demonstrated that the proposed use will be comparable and will not exceed the intensity of the existing nonconforming use.

36. The objectors suggest that the Board should make a qualitative assessment of the potential intensity of the new use proposed, based on speculative presumptions that the residents would be more ambulatory, would come and go from the site on a more frequent basis and, because they are participating in a program for individuals who are experiencing housing instability, would have a detrimental impact on the area. The objectors did not offer any credible evidence to support a claim of greater intensity as a consequence of additional pedestrian activity potentially associated with the proposed use or because the residents would be participants in the program, as described.

37. The objectors also suggest that the Board should consider the ratio of staff to residents as a measure of intensity, apparently presuming that, without more supervision, the participants in the program on the property of the property would increase the intensity of the use, necessarily to the detriment of the area. No legal or factual basis exists for evaluating the comparative intensity of the use on this basis.

38. The Applicant presented substantial and credible evidence that the proposed use will not result in detrimental impacts on nearby residents and properties. The existing building on the property is located on a 6.5 acre parcel and is set back 242’ from Stanton Avenue. A 3.7-acre parcel which consists of a steep, wooded hillside, is located at the rear of the parcel. Another steeply-sloped, heavily-wooded, 8-5-acre parcel abuts the Subject Property along Stanton Avenue. The Applicant proposes to use the existing building, which has been used for residential use for up to 50 individuals, in a nursing home setting, for the residential use of up to 56 individuals, in a shared living setting, who would make use of the same 28 shared bedrooms, bathrooms, dining and communal spaces, without modification of the interior or exterior of the building. Employees and any visitors will make use of the 40 onsite parking spaces.

39. For these reasons, the Board concludes that it is appropriate to approve the proposed change of the existing nonconforming use, pursuant to Section 921.02.A.4, to the use, as described to the Board, for no more than 56 participants in the BET program, as selected

using the Allegheny County Department of Human Services' Allegheny Housing Assessment tool and subject to the code of conduct for the program.

40. The Board appreciates the full participation of neighboring residents and has considered the concerns presented. However, the objecting participants presented only speculative concerns and did not demonstrate, to a high degree of probability, that the proposed use would have detrimental effects on the community or the public interest.

Decision: The Applicant's request for a special exception pursuant to Section 921.02.A.4, to allow the change from a nonconforming "nursing home" use to the unlisted use for the Bridge Employment and Training (BET) Program, as described to the Board, is hereby APPROVED, subject to the condition that the property shall not be used for more than 56 participants in the BET program, who are to be selected using the Allegheny County Department of Human Services' Allegheny Housing Assessment tool and who are subject to the code of conduct for the program.

s/Alice B. Mitinger
Alice B. Mitinger, Chair

s/Lashawn Burton-Faulk
LaShawn Burton-Faulk

s/ John J. Richardson
John J. Richardson

Note: Decision issued with electronic signatures, with the Board members' review and approval.