Division of Development Administration and Review
City of Pittsburgh, Department of City Planning
412 Boulevard of the Allies, Second Floor
Pittsburgh, Pennsylvania 15219

ZONING BOARD OF ADJUSTMENT

Date of Hearing: September 18, 2025
Date of Decision: October 28, 2025

Zone Case: 112 of 2025
Address: 210 East End Avenue
Lot and Block: 175-K-1
Zoning Districts: R2-L
Ward: 14
Neighborhood: Point Breeze

Request: Occupancy for a multi-unit residential building for ten units

Application: BDA-2025-06633

Special Exception	Section 921.02.A.4	Change of use from funeral home plus one dwelling unit to multi-unit residential (10 units)

Appearances:

Applicant: Jason Roth

Opposed: Paula Suhrbier, Robert Edgar, Danielle Schwartz, Lilia Sevova

Findings of Fact:

1. The Subject Property is located at 210 East End Avenue in an R2-L (Residential Two Unit Low Density) District in Point Breeze.

2. A 1978 Certificate of Occupancy permits the use of the three-story structure on the Subject Property for "funeral home and one dwelling unit and one car detached garage and seven outdoor parking stalls."

3. In Zone Case No. 26 of 2009, the Board granted a special exception to allow the change of the use of the building from the nonconforming funeral home use to a proposed four-unit residential use. Although the Board approved the four-unit residential use, no building permit or Certificate of Occupancy was ever issued and the approval lapsed pursuant to Code Section 922.07.F.

4. In Zone Case No. 3 of 2015, the Board considered a revised request for a special exception to allow the change of the funeral home use to a proposed five-unit residential use.

According to testimony in the 2015 case the upper floors of the building had been used as the funeral home owner's residence. When the funeral home use ceased in 2009, the residential use of the upper floors continued. As of the time of the 2015 decision, the building had not been converted to a multi-unit residential use.

5. With the 2015 decision, the Board approved the request for the change to five residential units, subject to a condition which required the applicant to submit a site plan that delineated seven on-site parking spaces. As with the 2009 approval, no Certificate of Occupancy for the five-unit use, as permitted with the 2015 approval, was ever issued and the approval lapsed.

6. Despite the absence of any Certificate of Occupancy for any residential use and the Board's 2015 decision, which limited the proposed change of use to five residential units, the current Applicant acknowledged that the structure has been used for eight residential units since some time before the current owner purchased the property in 2015.

7. The current Applicant seeks approval to expand the unauthorized use of the building for eight units to use for ten residential units.

8. The Applicant asserted that five surface parking spaces and two parking spaces in a garage on the property could be made available to tenants, and that on-street parking is typically available in the neighborhood.

9. The Applicant identified several other multi-unit residential uses in the proximate area of the Subject Property.

10. The Applicant generally asserted that the proposed multi-unit residential use would be more consistent with the residential character of the neighborhood, as compared to the funeral home use.

11. The Applicant did not provide any specific information as to how the current use of the building for eight units is consistent with the context of the neighborhood, or any evidence as to how the addition of two more units would impact surrounding properties.

12. The Applicant did not demonstrate that the eight units described comply with the Code's definition of a "dwelling unit."

13. Paula Suhrbier, the owner of the property at 7613 Brashear Street; Robert Edgar, the owner of the property at 201 East End Avenue; Danielle Schwartz, the owner of the property at 200 East End Avenue; and Lilia Sevova, the owner of the property at 211 East End Avenue, all appeared at the hearing to oppose the request.

14. The neighbors asserted that the building has been poorly managed and as fallen into disrepair, and that the density of the current eight-unit use has had detrimental impacts on the adjacent properties and the surrounding neighborhood. The neighbors' concerns included the physical deterioration of the structure, the lack of maintenance and the insufficiency of waste receptacles. The neighbors also noted the lack of usable on-site parking spaces and the traffic/parking impacts of the current residential use.

15. The Board found the testimony of the neighboring property owners to be credible. Because the illegal use for eight units has continued for a number of years, their testimony regarding the detrimental impacts of the illegal use is not speculative.

Conclusions of Law:

1. 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.

2. Code Section 921.02.A.4 permits the change of one nonconforming use to another where the proposed use is "of the same general character or of a character that is more closely conforming than the existing, nonconforming use" and is generally consistent with the prior nonconforming use with respect to the impact of the proposed use on the surrounding area.

3. The funeral home use, as described in the 1978 Certificate of Occupancy, is a legally nonconforming use in the R2-L District. The multi-unit residential use proposed is also not permitted in R2-L Districts and would also be nonconforming in that district.

4. The Code defines "dwelling unit" as "a building or portion thereof designed and used for residential occupancy by a single family and that includes exclusive sleeping, cooking, eating and sanitation facilities."

5. 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. 5 Heidelberg Twp.*, 918 A.2d 181 (Pa. Comm. Ct. 2007*); see also Cogan Properties, LLC v. East Union Twp. Zoning Hearing Bd.*, 318 A.2d 981 (Pa. Commw. Ct. 2024) and *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. *Cogan*, 318 A.3d at 986, quoting *Siya Real Est., LLC v. Allentown City Zoning Hearing Bd.*, 210 A.2d 1152, 1157 (Pa. Commw. 2019).

6. Section 922.07.D sets forth the general review criteria for special exceptions. Section 922.07.D.1 provides that the Board is to approve a special exception only if the proposed development is determined to comply with all applicable provisions of the Code and if the listed criteria are met.

7. Section 922.07.D.1.d provides that a development is not to create detrimental operational impacts. Consideration is to be given to "adjacent and surrounding land uses which may have differing sensitivities to such operational impacts."

8. Pennsylvania courts have consistently recognized that zoning boards may attach reasonable conditions to a decision in an effort to mitigate potential impacts from a proposed use. *See, e.g., MarkWest Liberty Midstream & Res., LLC v. Cecil Twp. Zoning Hearing Bd.*, 184 A.3d 1048 (Pa. Commw. Ct. 2018); *Appeal of Maibach, LLC*, 26 A.3d 1213, 1216 (Pa. Commw. Ct. 2011); *HHI Trucking & Supply Inc. v. Borough Council of Borough of Oakmont*, 990 A.2d

152, 161 (Pa. Commw. Ct. 2010); *Coal Gas Recovery, L.P. v. Franklin Twp. Zoning Hearing Bd.*, 944 A.2d 832 (Pa. Commw. Ct. 2008); *Sabatine v. Zoning Hearing Bd. of Washington Twp.*, 651 A.2d 649 (Pa. Commw. Ct. 1994); *Hill v. Zoning Hearing Bd. of Maxatawny Twp.*, 597 A.2d 1245, 1249 (Pa. Commw. Ct. 1991).

9. Where a use is permitted by special exception, but the evidence indicates that the use will have adverse impacts, a zoning board should consider whether the imposition of conditions could limit the impacts of the use to an acceptable level, as an alternative to denying the proposed special exception. See Robert S. Ryan, *Pennsylvania Zoning Law and Practice*, § 5.2.7.

10. With its decision in Zone Case No. 3 of 2015, the Board recognized that use of the existing structure for no more than five residential units would be a reasonable change of the nonconforming funeral home use that would have limited impacts on the surrounding area, subject to the condition that seven on-site parking spaces were to be provided.

11. No Certificate of Occupancy for the approved five-unit use was ever issued.

12. To the extent that the structure has been used for eight residential units, without a Certificate of Occupancy, that use was never approved and is illegal.

13. The Applicant did not demonstrate that the existing eight “units” are “dwelling units” that comply with the Code’s definition.

14. The Applicant also did not demonstrate that the illegal use of the funeral home structure for eight “units” has been consistent with the neighborhood or that it has operated without detrimental impacts on the surrounding area.

15. To the contrary, one of the consequences of operating without approvals is that the off-site impacts of the use are not speculative and the owners of neighboring properties were able to present substantial and credible evidence of the detrimental impacts of the use.

16. The Board recognizes the property rights associated with a nonconforming use and that some change to the nonconforming funeral home use is necessary to allow some viable use of the property, without detrimental impacts on the surrounding neighborhood. Thus, with its 2015 decision, the Board concluded that use of the structure for no more than five residential would be appropriate, subject to the condition that seven usable on-site parking spaces were identified. No Certificate of Occupancy was ever issued for that use.

17. The current illegal use of the structure for eight residential units, which may or may not be “dwelling units” under the Code’s definition, has had significant detrimental impacts. The Board can only reasonably conclude that the proposed use for what the Applicant describes as ten units would exacerbate the existing impacts.

18. For these reasons, the Board concludes that the application for the change of the nonconforming use from the funeral home use to a ten-unit residential use must be denied.

19. The current use for eight residential units, as operating, was never approved and has had significant detrimental impacts on the surrounding area. The Board concludes that an

application for the change of the nonconforming use to an eight-unit residential use must also be denied.

20. The current use for eight units cannot legally continue without a Certificate of Occupancy and must be discontinued.

21. The Board would consider a revised application for use of the Subject Property for no more than five residential dwelling units, but will not issue an approval for that use without additional evidence including compliance or an intent to comply with the five-unit limitation; the proposed units must be "dwelling units" within the Code's definition; at least five usable on-site parking spaces will be provided; improvements to the structure will be made; and an operational management plan will be put in place.

Decision: The Applicant's request for a special exception to allow a change of nonconforming use, pursuant to Code Section 921.02.A.4, from a funeral home to ten residential units is hereby DENIED. A change of use to allow eight residential units is also DENIED and that use of the property must be discontinued.

The Board will consider a revised application for the change of use to no more than five residential units but will not issue an approval for a five-unit use without additional evidence, including compliance or an intent to comply with the five-unit limitation; the proposed units must be "dwelling units" within the Code's definition; at least five usable on-site parking spaces will be provided; improvements to the structure will be made; and an operational management plan will be put in place.

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.