

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MABSCO ENTERPRISES, LLC,	: No. CV-2024-00992
Appellant,	:
	:
v.	:
	: ZONING APPEAL
LYCOMING COUNTY	:
ZONING HEARING BOARD,	:
Appellee,	:
	:
v.	:
	:
LYCOMING COUNTY,	:
Intervenor.	: Land Use Appeal

OPINION & ORDER

The above-captioned matter came before this Court on December 19, 2024, for argument on a Land Use Appeal—filed by the Mabsco Enterprises, LLC (hereinafter “Appellant”) on September 16, 2024—appealing the decision of the Lycoming County Zoning Hearing Board (hereinafter “Appellee”). On October 10, 2024, Lycoming County (hereinafter “Intervenor”) filed a Notice of Intervention per 53 P.S. § 11004-A. Both Appellant and Intervenor having filed their briefs in the above-captioned matter per this Court’s Order of October 10, 2024, the Court now renders this Opinion and Order.

I. BACKGROUND

The above-captioned matter involves the denial of a zoning application filed by the Appellant in 2024, seeking to modify the terms of a special exception granted to Appellant in 2021 for the operation of a nano-distillery as a home business. When the home business special exception was granted in 2021, Appellee permitted the nano-distillery use, but denied Appellant’s request for on-site tastings or sales. When Appellant filed the 2024 special exception application, the Lycoming County Zoning Administrator (hereinafter the “Zoning Officer”), initially refused to schedule a Special Exception Hearing. The Zoning Officer took the position that the Appellant’s application for a modification of the terms of the existing home business special exception was not a special exception application, but rather an

application for a permit to operate a retail liquor store. After a hearing eventually conducted on July 24, 2024, the Lycoming County Zoning Hearing Board (hereinafter the “Board”) affirmed the Zoning Officer’s determination. Appellant’s Br. at 1-2. Intervenor contends that while Appellant’s nano-distillery was approved as a home business special exception in 2021, Appellant’s request to modify that special exception is an application to operate a liquor store, that “retail sales are generally not permitted in the Resource Protection (RP) District[,]” and that “the nanodistillery could not be expanded with[out] further special exception approval.” Intervenor’s Br. at 2.

In its August 27, 2024 Decision (hereinafter the “2024 Decision of the Board”), the Board affirmed the Zoning Officer’s determination, indicating that—among other things—the “[i]nclusion of a tasting room and provision for retail sales would increase traffic to the property,” which would “[a]lso increase noise at the site” and “[h]ave a negative scenic impact on the property and the surrounding area.” 2024 Decision of the Board, at 5. The Board also cited, e.g., the Lycoming County Zoning Ordinance (hereinafter the “Ordinance”), articulating the definitions of “Home Business” and “Commercial Retail” *Id.* at 5-6.

II. ISSUE PRESENTED

WHETHER THE APPELLEE ABUSED ITS DISCRETION, OR COMMITTED AN ERROR OF LAW, IN AFFIRMING THE ZONING OFFICER’S DETERMINATION REGARDING THE APPELLANT’S 2024 APPLICATION, WITHOUT CONDUCTING A FULL HEARING ON WHETHER THE PROPOSED MODIFICATION TO THE EXISTING HOME BUSINESS SPECIAL EXCEPTION DID OR DID NOT CONFORM TO THE REQUIREMENTS OF SECTION 3240L OF THE ORDINANCE.

III. BRIEF ANSWER

APPELLEE ABUSED ITS DISCRETION, OR COMMITTED AN ERROR OF LAW.

IV. DISCUSSION

This Court has taken no additional evidence on appeal. When the trial court takes no additional evidence, the scope of review in an appeal is limited to a determination of whether the governing body “[a]bused its discretion or committed an error of law.” *Warwick Land Development, Inc. v. Board of Supervisors of Warwick Township, Chester County*, 695 A.2d

914, 917 n. 6 (Pa. Commw. Ct. 1997) (citing *Rouse/Chamberlin, Inc. v. Board of Supervisors of Charlestown Township*, 504 A.2d 375 (Pa. Commw. Ct. 1986)); see generally *Appeal of M.A. Kravitz Co., Inc.*, 460 A.2d 1075, 1081 (Pa. 1983) (“In considering a zoning appeal, where the court of common pleas takes no additional evidence, the appellate courts are limited to a determination of whether the board committed an abuse of discretion or error of law.”) (internal citation omitted).

Moreover, “[a]n abuse of discretion exists if the Board of Supervisors' findings are not supported by substantial competent evidence.” 695 A.2d at 917 n. 6 (internal citation omitted); cf. *In re Richboro CD Partners, L.P.*, 89 A.3d 742, 754-55 (Pa. Commw. Ct. 2014) (“In conditional use proceedings where the trial court has taken no additional evidence, the Board is the finder of fact, empowered to judge the credibility of witnesses and the weight afforded to their testimony; a court may not substitute its interpretation of the evidence for that of the Board.”) (citing *Tennyson v. Zoning Hearing Board of West Bradford Township*, 952 A.2d 739, 743 n. 5 (Pa. Commw. Ct. 2008); *In re Cutler Group, Inc.*, 880 A.2d 39, 46 (Pa. Commw. Ct. 2005)); see generally *Valley View Civic Association v. Zoning Board of Adjustment*, 462 A.2d 637, 639-40 (Pa. 1983) (“[T]he Board abused its discretion only if its findings are not supported by substantial evidence.”) (internal citations omitted).

“Substantial evidence” is “[s]uch relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” 462 A.2d at 640 (citing *Consolidated Edison Co. v. NLRB*, 305 U.S. 197 (1938); *Republic Steel Corp. v. Workmen's Compensation Appeal Board*, 421 A.2d 1060 (Pa. 1980); *Norfolk and Western Railway Co. v. Pennsylvania Public Utility Commission*, 413 A.2d 1037 (Pa. 1980); *Pennsylvania State Board of Medical Education and Licensure v. Schireson*, 61 A.2d 343 (Pa. 1948); *Pennsylvania Labor Relations Board v. Kaufmann Department Stores, Inc.*, 29 A.2d 90 (Pa. 1942)).

Citing *Smith v. Zoning Hearing Board*, 734 A.2d 55, 57 (Pa. Commw. Ct. 1999), our Commonwealth Court noted the “[c]ommon rule that appellate courts reviewing a governing body's adjudication...generally should defer to the interpretation rendered by the governing body[]”; however, our Commonwealth Court also noted that “[t]his rule must sometimes bend to the second rule, found in [53 P.S. § 10603.1], which provides: ‘[i]n interpreting the language

of zoning ordinances to determine the extent of the restriction upon...the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.” *Williams Holding Group, LLC v. Board of Supervisors of West Hanover Township*, 101 A.3d 1202, 1213 (Pa. Commw. Ct. 2014). Our Commonwealth Court therefore concluded that “[a]mbiguous language in an ordinance” must be interpreted “[i]n favor of the property owner and against any implied extension of the restriction.” *Id.* (citing *Isaacs v. Wilkes-Barre City Zoning Hearing Board*, 612 A.2d 559, 561 (Pa. Commw. Ct. 1992)); see generally *Kleinman v. Lower Merion Township Zoning Hearing Board*, 916 A.2d 726, 729 (Pa. Commw. Ct. 2006) (opining that a provision is ambiguous when “[i]t is open to more than one interpretation” and “[b]ecause the language is ambiguous...the trial court correctly construed the language in favor of the landowner.”).

Additionally, “[w]hen interpreting zoning ordinances, this Court relies on the common usage of words and phrases and construes language in a sensible manner.” *City of Hope v. Sadsbury Township Zoning Hearing Board*, 890 A.2d 1137, 1143-44 (Pa. Commw. Ct. 2006) (citing *Steeley v. Richland Township*, 875 A.2d 409, 414 (Pa. Commw. Ct. 2005)). As noted by our Commonwealth Court:

The question of **whether a proposed use falls within a given category specified in an ordinance is a question of law.** *Danwell Corp. v. Zoning Hearing Board of Plymouth Township*, 115 Pa. Commonwealth Ct. 174, 540 A.2d 588, *petition for allowance of appeal denied*, 520 Pa. 620, 554 A.2d 511 (1988). This issue is one of statutory construction in which the function of this court is to determine the intent of the legislative body which enacted the ordinance. Accordingly, the court is bound by the definition of the terms in question as the ordinance itself defines them. However, where the “ordinance does not specifically define the term sought to be construed, and the words are ones in common usage, they are to be given their common usage meaning.” *Id.* at 184, 540 A.2d at 593.

Sabatine v. Zoning Hearing Board of Washington Township, 651 A.2d 649, 653 (Pa. Commw. Ct. 1994) (emphasis added).

The Zoning Ordinance Sections at Issue

Article 3 of the Lycoming County Zoning Ordinance, Division 3200, Section 3240L—

Home Business—provides as follows:

1. Definition

A home business is conducted on a lot in conjunction with a residential dwelling unit. Such uses include: automotive, lawn mower, or appliance repair shops; carpentry, upholstery, woodworking, or metal working shops; antique shops; and other similar uses compatible with the character of the residential dwelling and the zoning district.

2. Supplemental Controls

a. The home business shall be compatible with the residential character of the dwelling or the immediate vicinity. The home business shall not produce offensive noise, vibration, dust, odors, pollution, interference with radio or television reception, traffic congestion, or other objectionable conditions, which are audible, visible, or otherwise detectable by human senses at the property line.

b. A home business may be conducted inside the dwelling or within an accessory building or garage, but shall not occupy more than sixty (60%) percent of the total floor area of the dwelling unit unless the accessory structure is an existing wood or stone barn.

c. The business shall be conducted by a resident of the dwelling, and no more than four (4) full-time equivalent employees shall be employed in the business.

d. No more than two (2) home businesses shall be allowed on a single property.

e. The home business shall be carried out entirely within the dwelling or accessory structure.

f. Outside storage of materials incidental to the conduct of the business, including no more than two (2) vehicles under repair may be permitted, provided such storage areas are screened so that they are not visible from adjoining properties.

g. No show windows or advertising outside the premises other than the permitted home business announcement sign (see Article 8) shall be used.

LYCOMING COUNTY, PA., ZONING ORDINANCE art. 3, § 3240L (2021).

Article 3 of the Lycoming County Zoning Ordinance, Division 3200, Section 3240F—Commercial Retail—provides as follows:

1. Definition

[SIC 274, 275, 276, 277, 278, 2791, 52, 53, 54, 554, 56, 57 and 59] Retail uses include stores selling paint, glass, wallpaper, and/or hardware, but excluding stores selling lumber and building materials; general merchandise stores; food stores; gasoline/convenience marts (without service bays and service functions limited to inflating tires, changing windshield wipers, adding oil, and other minor services); apparel and accessory stores; furniture and home furnishing stores; and miscellaneous goods such as crafts, art, gifts, sporting goods, pharmaceuticals, liquor, books, toys, and cameras; and miscellaneous publishing and commercial printing establishments which primarily sell these products (see Section 3250C for Light Manufacturing).

2. Supplemental Controls

a. Occasional (as opposed to repetitive and regular) retail sales, including but not limited to, flea markets and yards sales, do not require a Zoning/Development Permit.

LYCOMING COUNTY, PA., ZONING ORDINANCE art. 3, § 3240F (2021).

Article 3 of the Lycoming County Zoning Ordinance, Division 3100, Section 3120, Table 3120 provides, in part, as follows:

General Use	Rural			Suburban			Urban		Preservation
	AG	RP	CS	RC	E	SE	SM	OS	
Commercial (Section 3240, pg. 36)									
A. Office	N	N	N	N	P	N	N	S	P
B. Services	N	N	N	N	P	N	N	S	P
C. Standard Restaurant	N	N	N	N	P	N	N	S	P
D. Fast Food Restaurant	N	N	N	N	P	N	N	S	P
E. Tavern	N	N	N	N	P	N	N	S	P
F. Retail	N	N	N	N	P	N	N	S	P
G. Heavy Retail/Service	N	N	N	N	P	N	N	S	P
H. Shopping Center	N	N	N	N	P	N	N	S	P
I. Commercial Lodging	N	N	N	N	P	N	N	S	P
J. Country Inn	N	N	N	N	P	N	N	S	P
K. Home Occupations	P	S	P	P	P	N	N	S	P
L. Home Businesses	P	S	P	P	P	N	N	S	P
M. Campgrounds	N	N	N	N	N	N	N	S	P
N. Commercial Recreation	N	N	N	N	N	N	N	S	P
O. Commercial Amusement	N	N	N	N	N	N	N	S	P
P. Adult Entertainment	N	N	N	N	N	N	N	S	P
Q. Communication Tower	S	S	S	S	N	N	N	S	P
R. Landing Areas	P	N	P	P	N	N	N	S	P
S. Airports	N	N	N	N	N	N	N	S	P
T. Air Support	S	S	P	P	N	N	N	S	P
U. Dispensaries	N	N	N	N	N	N	N	S	P
V. Hunting Preserves	S	S	P	P	N	N	N	S	P
W. Event Venue	N	N	N	N	N	N	N	S	P
Industrial (Section 3250, pg. 53)									
A. Ag Processing	S	N	S	N	N	N	N	S	P
B. Sawmills	S	N	S	N	N	N	N	S	P
C. Light Industry	N	N	N	N	N	N	N	S	P
D. Oil & Gas Staging Facility	P	P	S	N	S	S	S	P	P
E. Oil & Gas Compressor Processing	P	P	S	N	S	S	S	P	P
F. Refining Facility	P	P	S	N	S	S	S	P	P
G. Heavy Industry	N	N	N	N	N	N	N	S	P
H. Oil & Gas Water Reuse Storage Facility	P	P	P	N	S	S	S	P	P
I. Extraction	N	N	N	N	N	N	N	S	P
J. Oil & Gas Development	P	P	P	N	S	S	S	P	P
K. Drilling	N	N	N	N	N	N	N	S	P
L. Junk Yards	N	N	N	N	N	N	N	S	P
M. Groves/Processors	N	N	N	N	N	N	N	S	P
N. Medical Marijuana Transport Vehicle	N	N	N	N	N	N	N	S	P

P = Permitted by right in this district with a Zoning Permit
 N = Not permitted in this district
 S = Permitted in this District only with a Special Exception
 Temporary Uses - See Division 3300 (pg. 71)
 Accessory Uses - See Division 3400 (pg. 75)

LYCOMING COUNTY, PA., ZONING ORDINANCE art. 3, § 3120, Table 3120 (2021).

Article 10 of the Lycoming County Zoning Ordinance, Division 10100, Section 10110—General Procedure for a Zoning/Development Permit Application—provides, in part, as follows:

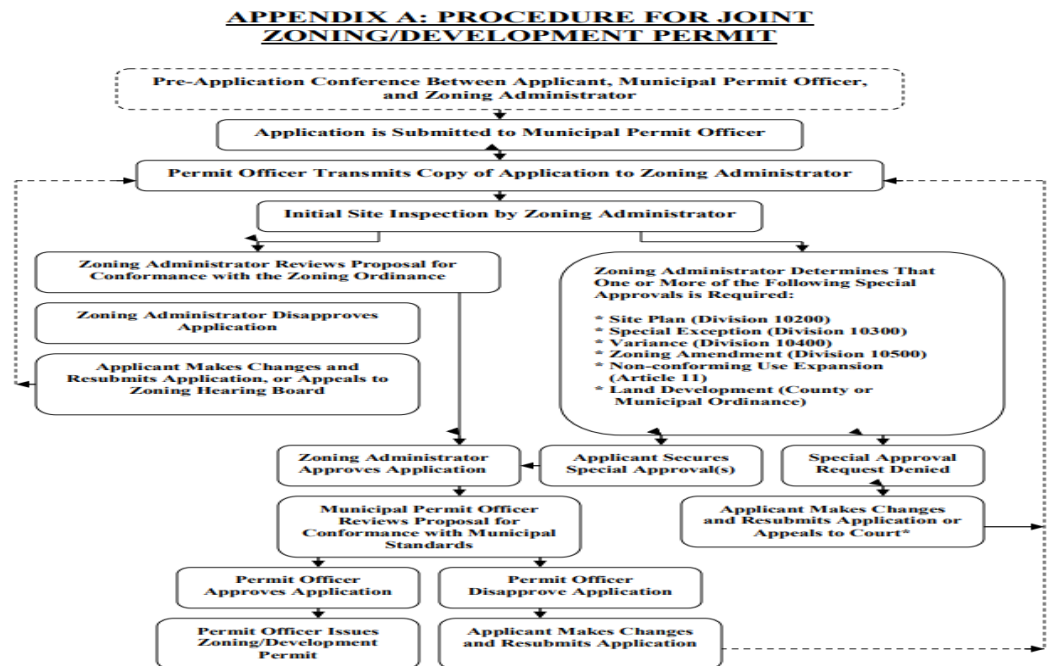
All persons desiring to undertake any new construction, substantial improvement of an existing structure, or change in the use or increased intensity of use of a building or lot shall apply to the municipal permit officer for a Zoning/Development Permit by completing a joint permit application form and by submitting the required fee. The municipal permit officer shall then refer a copy of the joint application to **the Zoning Administrator, who shall then either grant or deny the zoning approval or refer the application to the Zoning Hearing Board for their consideration.**

....

Refer to Appendix A for an illustration of general procedures for Zoning/Development Permits.

LYCOMING COUNTY, PA., ZONING ORDINANCE art. 10, § 10110 (2021) (emphasis added).

Appendix A of the Lycoming County Zoning Ordinance provides as follows:



* Site Plan Appeals are made to the Zoning Hearing Board.

LYCOMING COUNTY, PA., ZONING ORDINANCE app. A (2021).

Article 10 of the Lycoming County Zoning Ordinance, Division 10300—Special Exception Procedures—provides as follows:

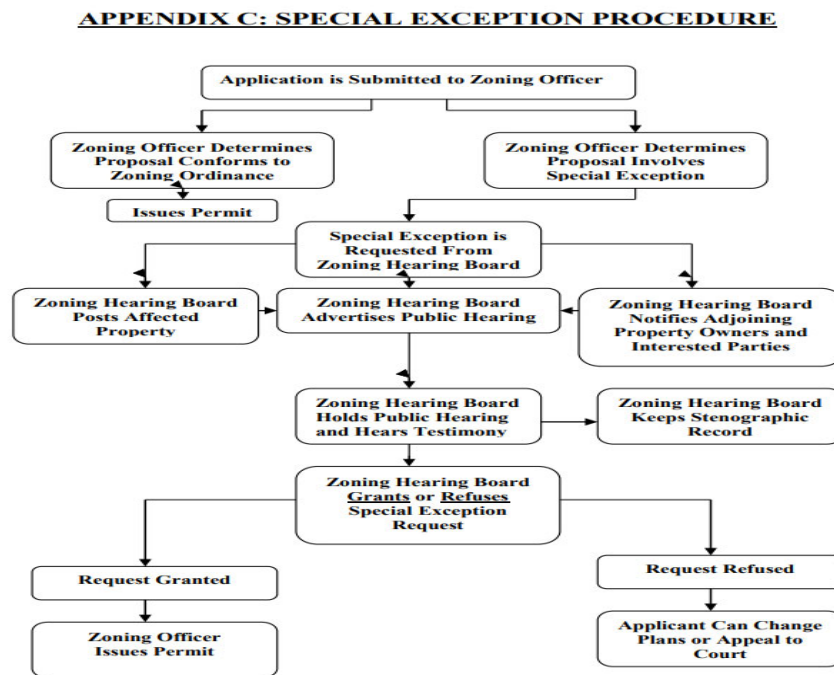
Special Exception uses have a special impact or uniqueness such that their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location. The Zoning Hearing Board may grant Special Exceptions only for those uses as are provided in Section 3120, Table of Permitted Uses.

When such a use is proposed, a review by the Lycoming County Zoning Hearing Board will be conducted to determine whether the proposed use should be permitted. In making such a determination, the Board may attach reasonable conditions and safeguards, in addition to those already expressed in the Ordinance.

A summary of the procedure for obtaining a Special Exception is contained in Appendix C.

LYCOMING COUNTY, PA., ZONING ORDINANCE art. 10, div. 10300 (2021) (emphasis added).

Appendix C of the Lycoming County Zoning Ordinance provides as follows:



LYCOMING COUNTY, PA., ZONING ORDINANCE app. C (2021).

Article 10 of the Lycoming County Zoning Ordinance, Division 10300, Section 10320—Application for a Special Exception—provides, in part, as follows:

A. Application. Applications for a Special Exception permit shall contain all the information required for a Simplified Site Plan Review as specified in Section 10230. The Zoning Administrator may require additional information as provided under Section 10240 (General Site Plan Requirements) as necessary for the Zoning Hearing Board to make the findings required by Section 10310.

B. Processing by the Zoning Hearing Board. Applications for a Special Exception shall be processed by the Zoning Hearing Board as follows:

1. Copies of the application shall be distributed to the secretary of the township board of supervisors, the secretary of the township planning commission, to the regional office of the Pennsylvania Department of Transportation if the property abuts a State Highway, and to other affected officials or agencies as determined by the Zoning Administrator.

2. **Public Hearing Required and Notice of Hearings.** The Zoning Hearing Board’s decision to approve or deny a Special Exception shall be made only after public notice and hearing. Within sixty (60) days of receipt of an application, the Zoning Hearing Board shall establish a reasonable time and place for and hold a public hearing thereon, giving notice as follows:

(a) **Notice.** A public hearing shall be held by the Zoning Hearing Board after a public notice has been published in accordance with the definition of “Public Notice” in Article 14 of this Ordinance. A copy of such notice shall be mailed to the Secretary and Chairman of the Board of Supervisors for the Municipality affected by the proposed special exception at least ten (10) days prior to the date of such hearing.

(b) **Posting.** The subject property shall be posted in a conspicuous place with a written notice of the pending hearing action at least seven (7) days prior to the public hearing.

(c) **Recommendations.** No later than ten (10) days prior to the date set for the hearing on the application, the Zoning

Administrator shall file a written report thereon with the Zoning Hearing Board, including information from each official or consultant to which the application has been referred. A copy of such report shall be mailed to the applicant, the secretary of the municipal governing body, and to any person who has made a timely request for the same, and copies will be made available in the office of the Lycoming County Planning Commission. The report shall recommend any changes in the plans as submitted, and the conditions for approval, if any, necessary to bring the plans into compliance with any applicable ordinance or regulation and the Comprehensive Plan of Lycoming County. Conditions for approval may also be designed to eliminate any adverse effects of the proposed development on aspects of the general health, safety, and welfare of the community for which the official or consultant has special responsibility.

....

5. **Amendments.** The decision of the Zoning Hearing Board shall apply specifically to the application and plans submitted and presented at the public hearing. Any subsequent changes or additions may be subject to further review and public hearing by the Zoning Hearing Board as a separate Special Exception use.

....

7. **Expansion of Existing Special Exception Uses.** The expansion or enlargement of a Special Exception use in existence as of the effective date of this Ordinance does not require Special Exception approval but shall meet the requirements of this Ordinance, insofar as possible, prior to issuance of a Zoning/Development Permit. If compliance with the standards of this Ordinance is not achieved, a variance approval from the Zoning Hearing Board shall be required prior to issuance of a Zoning/Development Permit.

LYCOMING COUNTY, PA., ZONING ORDINANCE art. 10, § 10320 (2021).

Article 12 of the Lycoming County Zoning Ordinance, Division 12400—Zoning Administrator—and Section 12410—Powers and Duties of the Zoning Administrator—provides, in part, as follows:

The Zoning Administrator, as appointed by the Lycoming County Board of Commissioners, shall administer and enforce this Ordinance in accordance with its provisions.

....

The duties and responsibilities of the Zoning Administrator shall include, but not necessarily be limited to, the following:

A. Administer and enforce the Zoning Ordinance enacted by the Lycoming County Board of Commissioners so as to manage and promote the public health, safety, convenience, and general welfare of the citizens of Lycoming County pursuant to appropriate statutes and ordinances.

....

H. Receive, review, and act upon (either granting or denying) all zoning and other permit applications authorized by the aforementioned ordinances.

LYCOMING COUNTY, PA., ZONING ORDINANCE art. 12, div. 12400 & § 12410 (2021).

Our Commonwealth Court, in *Agnew v. Bushkill Township Zoning Hearing Board*, opined the following regarding special exceptions:

A special exception is a conditionally permitted use, legislatively allowed where specific standards and conditions detailed in the ordinance are met. *Bray v. Zoning Board of Adjustment*, 48 Pa.Cmwth. 523, 410 A.2d 909 (1980). A special exception is not an “exception” to the zoning ordinance; rather, it is a use permitted in accordance with the express standards and criteria in the zoning ordinance. *Shamah v. Hellam Township Zoning Hearing Board*, 167 Pa.Cmwth. 610, 648 A.2d 1299 (1994). **The applicant has the burden of proving: (1) that the proposed use is a type permitted by special exception and (2) that the proposed use complies with the requirements in the ordinance for such a special exception.** *Appeal of Baird*, 113 Pa.Cmwth. 637, 537 A.2d 976, 977 (1988). **It is presumed that the local legislature has considered that the special exception use satisfies local concerns for the general health, safety, and welfare.** *Shamah*, 648 A.2d at 1303. Accordingly, once an applicant for a special exception shows compliance with the specific requirements of the ordinance, the burden shifts to the protestors to prove that the proposed use will have an adverse effect on the general public. *Shamah*, 648 A.2d at 1303–1304.

Agnew v. Bushkill Township Zoning Hearing Board, 837 A.2d 634, 637 (Pa. Commw. Ct. 2003) (emphasis added).

Based on Table 3120 of the Ordinance, it is clear to this Court that “Home Businesses” in the RP district is “Permitted in this District only with a Special Exception.” LYCOMING COUNTY, PA., ZONING ORDINANCE art. 3, § 3120, Table 3120 (2021).

Appellant contends that it has operated a nano-distillery pursuant to the 2021 special exception, and that its 2024 special exception application simply seeks to modify the terms of the special exception to permit Appellant to allow on-site tastings and sales. The Zoning Officer, initially refused to schedule a Special Exception Hearing, contending that the modification would effectively convert a home business into a liquor store. The Board affirmed the Zoning Officer’s determination. Appellant’s Br. at 1-2. Intervenor contends that, while Appellant’s nanodistillery was approved as a home business in 2021, the approval was based on “[a] special exception hearing as a Home Business[,]” that the Board “[f]ound that retail sales are generally not permitted in the Resource Protection (RP) District[,]” and that “[t]he nano-distillery could not be expanded with[out] further special exception approval.” Intervenor’s Br. at 2.

While Appellant was entitled to a full and fair hearing on the merits of the 2024 application, it is clear from the record of the July 24th proceeding before the Board that, no such hearing took place. Rather, the Board simply conducted a “review hearing” on the Zoning Officer’s erroneous conclusion that permitting on-site tastings or sales would convert the home business into a retail liquor store. By way of example, Board member Stephen Brady asked, at the Board hearing on July 24, 2024, “[w]hat the officer does is decide whether it is a Special Exception and, therefore, can be reviewed by us for approval. So is him saying it’s not a Special Exception, isn’t saying he’s not granting it, it’s saying that there is no opportunity to receive a Special Exception[,]” to which the Board Chairman (William J. Klein) responded, “Right.” Reproduced Record (hereinafter “RR”) at 9.

Based on Division 10300, “[w]hen such a use is proposed, a review by the Lycoming County Zoning Hearing Board will be conducted to determine whether the proposed use should be permitted.” LYCOMING COUNTY, PA., ZONING ORDINANCE art. 10, div. 10300 (2021).

Appendix C of the Ordinance, for example, indicates that, upon an application “[s]ubmitted to the Zoning Officer[,]” there are two outcomes: either 1) “Zoning Officer Determines Proposal Conforms to Zoning Ordinance” or 2) “Zoning Officer Determines Proposal Involves Special Exception.” LYCOMING COUNTY, PA., ZONING ORDINANCE app. C (2021). If it is the first outcome, a permit is issued, and if it is the second outcome, a “Special Exception is Requested from Zoning Hearing Board.” *Id.* Here, the Zoning Officer denied the Appellant’s application and proceeded with neither outcome, because the Zoning Officer made a determination that “retail uses” are not permitted in the RP district. RR at 14-15.

A review of the transcript of the Board hearing conducted on July 24, 2024, reveals that the Board decided to “bifurcate” the hearing. At page 11, the Board conducted an Executive Session in order to decide whether Appellant was entitled to a hearing on the merits of the special exception application. After that Executive Session, the Board concluded that it would first take up the Zoning Officer’s (clearly erroneous) determination that the Appellant was not entitled to a hearing on the merits. Remarkably, at page 53 of the transcript, counsel for the Intervenor objected to a question by counsel for the Appellant, on the basis that the question goes to the merits of the special exception application. Counsel for Intervenor argued that questions on the merits of the special exception application are improper until after “[t]he Board determines that it is a proper Special Exception use, then we can get into whether or not the factors can be imposed or not.” RR at 53; *see, e.g.*, RR at 61 (indicating that counsel for Intervenor stated “I am going to object for this reason. We’re running on the edge of a blade here as to whether he starting to talk about what would be relevant to a Special Exception versus the interpretation of the Ordinance. So I just want to get out there that we are not going to open the door to a Special Exception Hearing until the Board determine that it would be appropriate to have a Special Exception Hearing...”); *see also* RR at 62 (indicating that counsel for the Board stated “I think it is getting close to the edge of becoming a Special Exception Hearing so we might limit the testimony further.”); *see generally* RR at 69 (indicating that counsel for Intervenor stated “If it’s part of the Application, I don’t have an objection to it. I object to the testimony that seemed to go beyond the scope of this particular hearing.”).

The Zoning Officer, David Hubbard, testified at the July 24th Board hearing. RR at 13. Beginning with his report to the Board, the Zoning Officer indicated—among other things—that the Zoning Officer “[d]enied a Special Exception request to conduct retail sales with a public tasting room, in conjunction with the approved home business, wholesale distillery use[,]” that “[t]he property currently contains an existing single-family dwelling house with a detached wholesale distillery business, a shed and the property sits off of a private drive.” RR at 14-15. The Zoning Officer also read the exhibit-letter from Shannon L. Rossman, Director of AICP at the Planning and Community Development Office of Lycoming County, which indicated the characteristics of the property in question, the geographical terrain surrounding the property, the nature of rural districts, that “[t]he requested use of retail sales and the tasting room...” would “[i]ncrease traffic[,]” and that access to the property was based on a private driveway which would have impacts on neighboring parcels, “[e]rosion potential, parking, increased noise, increased scenic impact.” RR at 16-18. The Zoning Officer’s testimony continues in a lengthy (and lively) discussion regarding—among other things—the definitions of “Home Business” and “Retail” per the Ordinance, the meaning of the clause “[a]nd other similar uses compatible with the character of the residential dwelling and the zoning district[,]” and the Zoning Officer’s overall determination. RR at 23-52.

Afterwards, the property owner, Matthew Sehenuk, testified at the July 24th Board hearing. RR at 56. In response to counsel for the Appellant’s question “What did you apply for? Just describe a little bit about what it is you are doing and what is it that you want to do?”, Mr. Sehenuk testified—among other things—that there was an initial Special Exception approval of his distillery home business in 2021 with conditions specifying how further expansions needed additional Special Exception approval, that he is now applying for a such further expansion (e.g., a tasting room), that his actual application submitted “[s]pecifically states, ‘Home business, small distillery’ and lists limited hours, sales on site[,]” that there would be no alterations to the building and “[n]o physical expansion of the business[,]” and that “[b]ased on the application submitted the proposed use is home business.” RR at 57-62; *see, e.g.*, RR at 64 (indicating Mr. Sehenuk testifying to the narrative that was included in his application, in part, as “The use would continue to use the existing building as the site and the existing driveway for

ingress and egress. The intention is to limit customer/visitor times to no more than 24 hours per week.”); *see also* RR at 77 (indicating Mr. Sehenuk testifying that “[w]e are not trying to change use to a retail use. We want ancillary retail sales as allowed...within the home business...”). Counsel for the Appellant asked Mr. Sehenuk “[w]hat kind of intensity do you envision, and to what extent would your efforts and activities on the property be something other than meeting with retail customers...?”, and—before a response was provided—counsel for the Intervenor objected, arguing the following:

I am going to object for this reason. We’re running on the edge of a blade here as to whether he starting to talk about what would be relevant to a Special Exception versus the interpretation of the Ordinance. So I just want to get out there that we are not going to open the door to a Special Exception Hearing until the Board determine that it would be appropriate to have a Special Exception Hearing. So I think these kinds of questions about the nature of the use, and all of those things, and how it is going to be used, et cetera, if after there is a determination that, in fact, he can have the use there in the first place. Which [the Zoning Officer] has articulated why we believe it shouldn’t be allowed.

RR at 61.

The Board overruled that objection, but counsel for the Board noted that “I think it is getting close to the edge of becoming a Special Exception Hearing so we might limit the testimony further.” RR at 61.

Members of the public also provided testimony at the July 24th Board hearing. RR at 84. Ms. Delgado Cano, for example, testified to her concerns regarding a hypothetical expansion of the business in question, and the potential for an increase in intensity (and noise) from such an expansion. RR at 85-87. Ms. Georgiana Strait testified that she lives down the street from the Appellant and has watched that business flourish over the years. RR at 87-88. In response to these comments, counsel for the Intervenor noted that “I think the issues have been framed. It’s not a popularity issue, it’s a legal issue.” RR at 88. After a brief recess, the Board proceeded to a vote on whether to affirm the Zoning Officer’s determination. RR at 89.

As our Commonwealth Court has opined numerous times, “[a]mbiguous language in an ordinance” must be interpreted “[i]n favor of the property owner and against any implied extension of the restriction.” 101 A.3d at 1213 (citing *Isaacs v. Wilkes-Barre City Zoning*

Hearing Board, 612 A.2d 559, 561 (Pa. Commw. Ct. 1992)); *see generally* 916 A.2d at 729 (opining that a provision is ambiguous when “[i]t is open to more than one interpretation” and “[b]ecause the language is ambiguous...the trial court correctly construed the language in favor of the landowner.”). The clause “[a]nd other similar uses compatible with the character of the residential dwelling and the zoning district[]” in 3240L of the Ordinance appears ambiguous; therefore, this Court will read it “[i]n favor of the property owner and against any implied extension of the restriction.” 101 A.3d at 1213 (citing *Isaacs v. Wilkes-Barre City Zoning Hearing Board*, 612 A.2d 559, 561 (Pa. Commw. Ct. 1992)).

While there is substantial evidence in the record to support Zoning Hearing Board Findings of Fact Numbers 1 through 11, Findings 12 and 13 and 14 are not supported by substantial evidence. Findings 12 and 13 and 14 are not supported by substantial evidence because the Zoning Hearing Board never undertook to conduct a fully evidentiary hearing on those issues. Rather, the Board erroneously conducted a mere “review hearing” on the conclusion of the Zoning Officer that Appellant was not entitled to a hearing on the merits of the 2024 application.

For the reasons more fully set forth above, the Court will grant the appeal, reverse the Decision of the Zoning Hearing Board rendered on August 27, 2024, and remand the matter to the Zoning Hearing Board to conduct a hearing on the merits of the application. **In doing so, the Court wishes to make clear the very narrow basis for the Court’s ruling. Nothing set forth herein is intended to suggest that Appellant is entitled to the requested modification of the 2021 special exception for a Home Business. Nothing set forth herein is intended to suggest that Appellant is entitled to conduct on-site tastings, or to conduct retail sales in connection with the 2021 special exception for a Home Business. The Court’s sole intention is to make clear that Appellant is entitled to a factual hearing on the merits of whether the proposed modifications to the existing special exception for a Home Business do, or do not, comply with the Supplemental Controls listed in Article 3 of the Lycoming County Zoning Ordinance, Division 3200, Section 3240L.**

ORDER

AND NOW, this 21st day of January 2025, based upon the reasons more fully stated above, it is hereby **ORDERED and DIRECTED** as follows:

1. The appeal from the August 27, 2024 Decision of the Lycoming County Zoning Hearing Board is sustained.
2. Appellant's application for a special exception is remanded to the Lycoming County Zoning Hearing Board to conduct a hearing on the merits of Appellant's application.
3. Nothing set forth herein is intended to suggest that Appellant is entitled to the requested modification of the 2021 special exception for a Home Business. Nothing set forth herein is intended to suggest that Appellant is entitled to conduct on-site tastings, or to conduct retail sales in connection with the 2021 special exception for a Home Business.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Court Administrator
Marc S. Drier, Esquire
Fred Holland, Esquire
J. Michael Wiley, Esquire