

**BEFORE THE LOWER SOUTHAMPTON TOWNSHIP
HEARING OFFICER, BUCKS COUNTY PENNSYLVANIA**

IN RE	:
THE APPLICATION OF	: CONDITIONAL USE
FEDERATION HOUSING, INC	: HEARING
	:

OPINION

FINDINGS OF FACT

1. On February 2, 2026, Federation Housing, Inc. (the “Applicant”) submitted a Conditional Use Application (the “Application”) to the Lower Southampton Township Board of Supervisors (the “Board”) relative to real property commonly referred to as 1834 Brownsville Road and designated as Bucks County Parcel 21-016-490 (the “Property”).
2. The Applicant is the equitable owner of the Property with standing to pursue the Application.
3. The Property is approximately 1.77 acres located within the TC-Town Center Zoning District of Lower Southampton Township (the “TC District”).
4. The Property is currently improved with a vacant single-family detached dwelling.
5. The Application requests Conditional Use approval pursuant Lower Southampton Township Zoning Ordinance (the “Ordinance”) §27-1302.2.A to allow development of the Property into a 52-unit, three-story, age-qualified apartment building (the “Building”) with office or retail space on the first floor, and other associated improvements (the “Development”).
6. Pursuant to Section 913.2 of the Pennsylvania Municipalities Planning Code (53 P.S. §10101, *et seq.*) (the “MPC”), the Board, at its Public Meeting on May 27, 2026, appointed independent attorney Joseph C. Kuhls, Esquire (the “Officer”) as hearing officer authorized to conduct the

required public hearing on the Application.

7. A duly advertised public hearing on the Application (the Hearing”) commenced on June 10, 2026, was continued, and closed on June 24, 2026.

8. The Applicant was represented at the Hearing by Joseph M. Blackburn, Esquire (“Blackburn”).

9. Lower Southampton Township (the ‘Township”) was represented at the Hearing by David A. Keightly, Jr., Esquire (“Keightly”).

10. No other person or entity appeared at the Hearing in support of or in opposition to the Application, in-person, virtually, or by letter.

11. Keightly and Blackburn, on behalf of their respective clients, waived decisions and findings by the Board and agreed to accept the decision and findings of the Officer as final, subject to appeal.¹

12. At the Hearing, the Officer entered the following exhibits into the record:

- a) Hearing Exhibit 1 — Legal Notice;
- b) Hearing Exhibit 2 — Proof of Publication;
- c) Hearing Exhibit 3 — Certificate of Mailing;
- d) Hearing Exhibit 4 — Affidavit of Posting; and
- e) Hearing Exhibit 5 — Notes of April 7, 2026 Township Planning Commission Meeting.

13. At the Hearing, the Applicant introduced the following exhibits into the record:

- a) Exhibit A-1 — Curriculum Vitae of Justin Giannotti, P.E.;
- b) Exhibit A-2 — 8-page Plan Set (the “Plans”); and

¹ See June 24, 2026 Notes of Testimony (N.T.) pages 6-7.

c) Exhibit A-3 — Curriculum Vitae of John Maninno.

14. At the Hearing, the Township introduced the following exhibits into the record:

a) Exhibit T-1 — Aerial Photograph of area around the Property;

b) Exhibit T-2 — Tax Map; and

c) Exhibit T-3 — 21-pages of Photographs.

15. Ordinance §27-1302.2.A permits by conditional use “[a]partment buildings”, such as the Building and Development, provided twenty percent (20%) of the building’s first-floor street frontage is occupied by office or retail uses. See Ordinance §27-1302.2.A(1).

16. The Township concedes that the Application satisfies the 20% requirement set forth in Ordinance §27-1302.2.A(1).²

17. Ordinance §27-1302.2.A(2) states that apartment buildings “should”³ follow additional standards set forth in Ordinance §27-1303 and Ordinance §27-1306.

18. If the Application is approved, the Development will then be required to proceed through the Land Development Process with Lower Southampton Township and receive Land Development Approval, among other things, before construction of the Development and operation of the proposed use.

19. Justin A. Geonnotti, P.E. (“Geonnotti”) testified as an expert in the field of civil engineering in support of the Application, and supported by that testimony the Officer finds as fact:

a) that the Building and Development are permitted by Conditional Use pursuant to Ordinance §27-1302.2.A;

² See Keightly’s statement at N.T. page 102, lines 23-25: “I am not going to argue that they haven’t met that as far as what they presented today, 20% first floor use.”

³ The “Discussion” section of this Opinion addresses whether this unique use of the word “should” imposes a definitive obligation to conform with Ordinance §§27-1303 and 1306; or expresses merely the drafters’ preference that a user strive to achieve the standards set forth in those Ordinance Sections.

- b) that over 20% of the Building's first-floor street frontage is designated for office or retail uses in conformance with Ordinance §27-1302.2.A(1);
- c) that the office/retail use proposed for the Building's first floor street frontage will be in no manner associated with the operations of the Building's apartment use as a leasing office, storage, etc.;
- d) that the office/retail use proposed for the Building's first floor street frontage will be independent, "third-party", stand-alone, office/retail uses;
- e) that the Property consists of approximately 1.77 acres, in satisfaction of the 2,500 square-foot minimum lot area designated by Ordinance §27-1303.1;
- f) that the Subject Property has a lot width of 209.7 feet, which satisfies the minimum lot width standard of 25 feet in Ordinance §27-1303.2;
- g) that the Building will be constructed up to and immediately abutting the sidewalk, pursuant to Ordinance §27-1303.3;
- h) that the Building will provide two side yard setbacks, each exceeding 10 feet, pursuant to Ordinance §27-1303.4;
- i) that the Development will result in 62.6% of the Property being covered by impervious surface, well within and conforming to the 100% maximum impervious surface coverage criteria of Ordinance §27-1303.5;
- j) that the Building is proposed at three stories and no more than 35 feet high, in conformance with the 2-story minimum and 35-foot height maximum criteria of Ordinance §27-1303.6;⁴
- k) that the Building's height of 35 feet has been calculated in conformance with the definition of "Building Height" in Ordinance §27-202 as (in relevant part) the "vertical distance measured from the mean elevation of the proposed finish grade at the front of

⁴ The next consecutive subsection (Ordinance §27-1303.7) is a non-residential building footprint limitation inapplicable to the residential Building at issue in this Application.

the building the highest point of the roof”;

- l) that the Development incorporates 8-foot-wide sidewalks along all street frontages, pursuant to Ordinance §27-1306.1.A;
- m) that the Development incorporates sidewalks connecting the street frontage to all front building entrances, parking areas, and any other locations on the Property that generate pedestrian traffic, as set forth in Ordinance §27-1306.1.B; and
- n) that the Development continues the sidewalk pattern across the driveway, in conformance with Ordinance §27-1306.1.C.

20. The Township offered no objection to Geonnotti’s qualifications as an expert in the field of civil design engineering.

21. John Maninno, AIA, NCARB (“Maninno”) testified as an expert in the field of architecture in support of the Application, and supported by that testimony the Officer finds as fact:

- a) that the Building’s front façade includes an “everyday public entrance” and is oriented towards the “commercial/main” street frontage, pursuant to Ordinance §27-1306.2.B(1);⁵
- b) that all the Building’s primary entrances are accentuated with a protrusion, canopy, and overhang feature, in conformance with Ordinance §27-1306.2.B(3);
- c) that the Building does not have any “blank walls” and incorporates eight (8) of the architectural treatments enumerated in Ordinance §27-1306.2.C(1)⁶, where provision of only four (4) is sufficient to satisfy that Section;
- d) that the Building’s ground-floor windows are a maximum of 20 inches above the sidewalk, comprise 60% of the ground-floor front façade, and provide views into ground-floor businesses, all in conformance with Ordinance §27-1306.2.C(2)(a);

⁵ The next consecutive Ordinance Section, §27-1306.2.B(2), applies only to buildings on corners, and is not relevant to the Building or this Application.

⁶ The eight (8) architectural elements actually incorporated into the Building are described in Ordinance §27-1306.2.C(1)(a)-(e), (i), (k) and (l).

- e) that, in conformance with Ordinance §26-1306.2.C(2)(b), the upper-story front façade of the Building consists of 36% window area, none of which is boarded or covered;
- f) that, in conformance with Ordinance §27-1306.2.C(2)(c), there is no smoked, reflective, or black glass in any of the Building's windows;
- g) that the Building's flat roof with articulated parapet is "in keeping with the character" of the roofs of adjacent buildings, pursuant to Ordinance §27-1306.2.D;
- h) that there is no architectural consistency, theme, or rhythm in the vicinity of the Subject Property;
- i) that buildings in the vicinity of the Subject Property vary in massing, with heights ranging from one to three stories;⁷
- j) that buildings in the vicinity of the Subject Property reflect a variety of materials;
- k) that the Building is architecturally compatible with the buildings in its vicinity as a result of its similar massing, the incorporation of similar varietal materials, and the incorporation of similar architectural features, as suggested by Ordinance §27-1306.2.E;
- l) that there is only one other building on the same block as the Property which fronts on and is oriented facing Brownsville Road;
- m) that the Building retains the "architectural rhythm"⁸ of building openings on the same block as the Property, specifically the single building mentioned in Finding of Fact 21(l) above, through the incorporation of larger panes of glass and banks of windows, as suggested by Ordinance §27-1306.2.F(1);

⁷ See N.T. page 60.

⁸ See Ordinance §27-1306.F.

- n) that the Building maintains the “horizontal rhythm”⁹ of façades in the vicinity of the Property through
 - i. its incorporation of similar window alignment and massing, spacing,
 - ii. its incorporation of cornices and awnings,
 - iii. and alignment of its top, middle, and base floors with buildings in its vicinity.
 - iv. A ground level base distinguished by articulation and both stone and masonry materials,
 - v. and a distinct outline achieved through the incorporation of projecting parapets and cornices,all of which are suggested by Ordinance §26-1306.2.F(2);
- o) that the Building is articulated into massing “more or less” proportional to adjacent structures, and maintains whatever “architectural rhythm” exists (if any) in the surrounding area, as suggested by Ordinance §26-1306.2.G(1); and
- p) that the Building façade’s longest uninterrupted/unarticulated horizontal dimension is 32 feet, fully compliant with the suggestion of Ordinance §26-1306.2.G(2) that such dimension “should generally” not exceed 50 feet.

22. The Township offered no objection to Maninno’s qualifications as an expert in the field of architecture.

23. Lower Southampton Township Manager Joseph Galdo testified on behalf of the Township in opposition to the Application:

- a) that he has served as Township Manager for over seven (7) years;
- b) that he is familiar with Lower Southampton Township and the surrounding area;
- c) that the Property is currently a residential parcel with an unoccupied dwelling which only takes up a small portion of the parcel;
- d) that he does not believe the existing dwelling on the Property has been occupied at any point during his tenure as Township Manager;

⁹ See Ordinance §27-1306.F(2).

- e) that the segment of Brownsville Road that fronts along the Property is not flat;
- f) that the photographs introduced by the Township into the record of the Hearing accurately and fairly represent the Property and surrounding area;
- g) that the parcels adjacent to the Property having frontage along Clearview Avenue are “predominantly mostly residential, maybe a small commercial footprint there, but for the most part it’s one-story to two-story properties”¹⁰;
- h) that there is a mix of residential and commercial uses in the vicinity of the Property;
- i) that he is not aware of any three-story buildings in the vicinity of the Property; and
- j) that the Building bears a footprint comparable to many other properties in its vicinity.

24. Several area residents made unsworn comments at the Hearing relative to the Application.

DISCUSSION

A conditional use is a use permitted by the applicable zoning ordinance which requires that a public hearing be conducted by (in this case) a hearing officer to determine whether the applicant satisfies ordinance requirements necessary to establish entitlement to the conditional use requested . See Pennsylvania Zoning Law and Practice, Robert S. Ryan, Chapter 5.

To establish entitlement to the apartment building permitted by conditional use pursuant to Ordinance §27-1302.2.A, the Applicant has the burden to prove that specific objective criteria of the Ordinance have been met. The duty to go forward and burden of proof then shifts and thereafter lies with protestants to show that the Development poses a substantial threat to general public welfare and public policy concerns of the Ordinance.

“Conditional uses are evidence that the municipality has determined the particular use is not adverse to the public interest per se. Once an applicant

¹⁰ See N.T. page 71.

has presented evidence to establish the specified standards in the ordinance, the application must be granted, unless the protestors to such an application have presented sufficient evidence that such a use would pose a substantial threat to the community. “¹¹

The first level of inquiry, then, is to determine what specific ordinance standards he Applicant must satisfy in order to establish entitlement to an apartment building pursuant to the conditional use permitted by Ordinance §27-1302.2.A, and requested in the Application.

The Applicant is certainly required to conform with the mandatory, specific, and objective demand set forth in the Ordinance §27-1302.2.A subsection (1) requirement that “[t]wenty percent of the first floor of the building located along the street frontage shall be office or retail use” (emphasis added). The record, including without limitation the unrefuted testimony of the Applicant’s expert witness Geonnotti, unequivocally supports the Officer’s conclusion that the Applicant satisfies that requirement, as amply illustrated in the Findings of Fact above. Importantly, the Township (the only party opposed to the Application) also concedes and admits that the Development satisfies Ordinance §27-1302.2.A(1). See footnote 2.

As explained, Ordinance §27-1302.2.A, subsection (1) expresses a mandatory requirement that 20% of “street frontage shall be office or retail uses” (emphasis added). In stark contrast, subsection (2) of that same section suggests only that “Apartment buildings should follow the standards of §§ 27-1303 and 1306” (emphasis added). The drafters’ deliberate use in subsection (2) of a word other than “shall” must be interpreted as an expression of intent to avoid the compulsory meaning of “shall”¹², and to not mandate that apartment buildings strictly conform with the TC District’s “General standards” set forth in §27-1303 and/or the Specific design standards” set forth in §27-1306. The Officer finds the deliberate use of word “should” (as opposed to “shall”) in regard to apartment buildings is intended to denote an advisory suggestion, and will not read the word “shall” where it does not exist.

Further, the change in wording (from “shall” to “should”), at the very least, creates serious doubt as to whether the Ordinance drafters intended that apartment buildings be required to strictly conform with standards expressed in §§27-1303 and 27-1306. Where such doubt exists, the MPC, §603.1, demands that:

¹¹ Visionquest National, Ltd. v Board of Supervisors of Honeybrook Township, 524 PA 107, 569 A.2d 915 (1990).

¹² “Shall” is defined in §27-201.A(5) of the Ordinance itself as “always mandatory”. “Should” is undefined.

“In 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”.

Accordingly, the Officer is bound to resolve doubt over the meaning of “should” in favor of the Applicant, and find that “should” (as used in Ordinance §27-1302.2.A(2)) was intended to denote a preference, and not a mandatory obligation further restricting use of the Property to standards of Ordinance §§27-1303 and 27-1306.

For all the reasons set forth above, apartment buildings, unlike other uses permitted in the TC Town Center District, are not required to strictly adhere to the “General standards” of §27-1303 and/or the “Specific design standards” of §27-1306.

This interpretation is even further supported by the vague and subjective nature of Ordinance §§27-1303 and 27-1306 criteria. Descriptions such as “architectural rhythm”, “should generally”, “more or less”, “in keeping with character”, and “horizontal rhythm” are far more reasonably read as directional goals, than read as understandable benchmarks upon which an application should rise or fall, and/or an applicant might reliably design.¹³

Notwithstanding the conclusion that Ordinance §27-1303 and §27-1306 criteria are not mandatory regulations imposed upon the Development by the Ordinance, the unrefuted testimony of Applicant’s expert civil engineer and expert architect establishes that the Applicant has, in fact, followed those suggestions and satisfied all the applicable criteria recited in those sections, as amply explained in the Findings of Fact above. Importantly, the Township also concedes and admits that the Application conforms with the guidelines enumerated in Ordinance

¹³ Courts have long held that local zoning ordinances may be void: if they mandate activity in terms so ambiguous that reasonable people may differ as to what is actually prohibited; if persons of common intelligence must guess as to their meaning; and/or if they invite arbitrary and discriminatory enforcement because they do not set reasonably clear guidelines for law officials and courts. See Farley v. Zoning Hearing Board of Lower Merion Township, 161 Pa. Cmwlth. 229, 636 A.2d 1232 (1994); and Fisher v Viola, 789 A.2d 787 (Pa. Cmwlth. 2001). Whether some of the provisions in Ordinance §§27-1303 and 27-1306 may be void for vagueness and therefore unenforceable has not been raised by the Applicant, so will not be addressed here. It is worth noting, however, that the highly subjective provisions of those Ordinance Sections might be saved from voidness in this case by the logical interpretation that they are intended as guidelines, rather than strict mandates.

§§27-1303.1, 27-1303.2, 27-1303.3, 27-1303.4, and 27-1303.5.¹⁴

The Township does allege that the Development fails to propose the 8-foot-wide sidewalk design described in Ordinance §27-1306.1.A due to one small note on Sheet 1 of the Plans which depicts a width measurement of “ 7.6’ ” at a point along the sidewalk near the Building’s east corner. The Township argues that the Application should be denied on that basis.

Applicant’s expert engineer Geonnotti, however, testified under oath that the subject note is merely a typographical mistake, and that “[w]e can make all sidewalks 8 feet wide along the frontage *so we will be meeting that [8-foot width] requirement*” (emphasis added).¹⁵ It should also be noted that plans initially submitted with the original Application bear the correct “8.0” designation at precisely that point along the Building’s east corner.

Obviously and admittedly, Exhibit A-2 contains a scrivener’s error. The Township now contends that a single inaccuracy on one of the Plans is somehow conclusive and irredeemable proof of non-compliance with Ordinance requirements, and insists on ignoring the sworn testimony of Applicant’s expert civil engineer affirming that 8-foot-wide sidewalks are being proposed along the Property frontage in conformance with Ordinance §27-1306.1.A.

The Officer rejects that strained contention, and finds that the Applicant has proposed 8-foot-wide sidewalk along the Property’s frontage in full and complete conformance with Ordinance §27-1306.1.A.

As explained above, the Applicant has established conformance with all applicable specific and objective criteria of the Ordinance set forth in §§27-1302, 27-1302 and 27-1306. Pursuant to well-established Pennsylvania law on conditional uses, the duty now shifts to the Township to bring forth evidence satisfying the heavy burden of establishing that, notwithstanding the Ordinance literally and specifically permitting a three-story, 35-foot-high-apartment building upon the Property, this specific Development is somehow uniquely detrimental to the public welfare, contrary to public policy, and in violation of Ordinance §27-2207 general criteria applicable to all conditional use applications in the Township.

¹⁴ See the Keightly statement at N.T. page 106, lines 13-14 that “I don’t take issue with numbers 1 through 5 in 1303”.

¹⁵ See N.T. page 32, lines 11-13.

Galdo, the Lower Southampton Township Manager of seven-plus years, was the Township's only witness. The record does not indicate he is a civil engineer, architect, or land planner. The primary focus of his testimony was to share his general familiarity with the area surrounding the Property. Nothing in Galdo's testimony, or the exhibits authenticated and explained by Galdo, are sufficient to rebut the presumption that the Application is in accordance with the Lower Southampton Comprehensive Plan¹⁶; consistent with the spirit of the Ordinance¹⁷; in the best interest of the public welfare¹⁸; suitable for the Property¹⁹; in harmony with the character of the area²⁰; suitable in terms of effect on traffic and safety²¹; and in keeping with all other general standards set forth in Ordinance §27-2207.

The Officer, therefore, finds and concludes that the Application should be granted as it satisfies all applicable specific and general regulations of the Ordinance necessary to establish entitlement to the Conditional Use requested. Pursuant to authority granted by MPC §913.2, the Officer further deems it appropriate that certain conditions be imposed upon approval of the Application to more adequately safeguard the public welfare and further implement the purposes of the Ordinance, and imposes those conditions in the attached Order. All conditions in the Order were agreed to by the Applicant on the record of the Hearing.

CONCLUSION OF LAW

1. The Applicant has, subject to the conditions set forth in the Order, satisfied the criteria necessary to establish entitlement to the conditional use permitting the Building and Development pursuant to Ordinance §27-1302.2.A.

SEE ATTACHED ORDER

¹⁶ See Ordinance §27-2207.3.A.

¹⁷ See Ordinance §27-2207.3.A.

¹⁸ See Ordinance §27-2207.3.B.

¹⁹ See Ordinance §27-2207.3.C.

²⁰ See Ordinance §27-2207.3.C.

²¹ See Ordinance §27-2207.3.D.