

**BEFORE THE ZONING HEARING BOARD OF
LOWHILL TOWNSHIP
LEHIGH COUNTY, PA**

IN RE: : **NO. ZHB-2024 -1**
APPEAL OF MARK AND :
LYNN BURKIT :

**DECISION AND ORDER OF THE LOWHILL TOWNSHIP
ZONING HEARING BOARD**

I. FINDINGS OF FACT.

1. On or about August 15, 2024, Mark and Lynn Burkit, husband and wife (the “Applicants”), filed with Lowhill Township (the “Township”) a Zoning Hearing Board Application for Hearing (the “Application”) seeking special exception approval for an “Auto Repair Shop” in connection with property known as 2945 Corporate Court, Fogelsville, PA 18069, PIN: 5447 84908099 1 (the “Property”). (B-2, 3, 4).

2. The Property is in the Township’s Rural Village (RV) Zoning District. (B-1, 2, 3).

3. The Applicants have standing as equitable owners pursuant to an Agreement of Sale, dated May 16, 2024. (B-5; NT 1 p. 22).

4. Hearings were held before the Zoning Hearing Board (the “Board”) on September 30 and October 21, 2024. (B.1, 13).¹

5. The Applicants were represented by Kevin F. Danyi, Esq. (“Counsel”). (B-4; NT 1 p.6).

6. Exhibits offered and admitted into evidence include Board Exhibits 1 through 15 and Applicant Exhibits 1 through 7, all as more particularly described in **Attachment A** hereto.²

7. Objectors appeared at the hearings. None were represented by counsel, and no one requested party status, but instead provided comment, under oath at the conclusion of the Applicants’ case in chief.

8. Objectors included:

¹ References to testimony are to the Notes of Testimony (“NT”) and the references “1” for the first hearing date and transcript and “2” for the second.

² There occurred a duplication of Exhibits, and where duplicated, reference herein is to the Board Exhibit.

a. Sally Schoffstall, Esq., an elder law attorney and part owner of an abutting property improved with an office building to the northeast having an address of 2987 Corporate Court (NT 1 pp. 150-51);

b. Mark Blose, of Kempton, PA, representing the interests of his mother, the owner and resident of 2929 Corporate Court, an abutting residential property with shared access on to that street with the “drum house” (NT pp. 169-70, 174);

c. Sherwood Boger, owner and resident of 2992 Windy Road, Fogelsville PA, a nearby residential property abutting the Blose property and which shares the Blose driveway access to Corporate Court (NT 1 pp. 175-76);

d. Joseph Howard, a resident of 2872 Tycolia Court, Fogelsville, PA 18069, a nearby residential property (NT 2 pp. 23-24); and

e. Cheryl Haisman, a resident of 7756 Clausville Road, a nearby residential property across the street from the bank (NT 2 pp. 26-27).

9. The Applicants presented the testimony of two witnesses including Mr. Mark Burkit and Mr. Mark Bradbury, a surveyor and land development consultant and President of Martin, Bradbury & Griffith. (NT 1 pp. 131-133).

10. Mr. Bradbury was accepted as an expert witness in the field of surveying, planning, and site plan design. (NT 1 p. 133).

11. Mr. Burkit is the President and shareholder of Specialty Cars Service Center, Inc., a Pennsylvania corporation which has for over 35 years specialized, and continues to specialize, in the service, refurbishment, and repair of Porsche automobiles (exclusive of SUVs) manufactured during the period 1948 through 1998 (the “Business”). (NT 1 pp. 26-28, NT 2 p. 20).

12. The Applicants are partners in 2945 Corporate Court, LLC., a limited liability company, formed to own the Property, which will then be leased to the Business. (NT 1 pp. 20-22, NT 2 pp. 20-21).

13. Mr. Burkit intends to move the Business from its current location in the Allentown area to the Property. (NT 1 pp. 110-11).

14. At present, the Property is a vacant lot, located on a cul-de-sac identified as “Corporate Court.” (B-2, 10, A-7).

15. Corporate Court serves a mix of residential, institutional, commercial, and office uses, including two residences (one owned by Katherine Blose and one with a home business involving

a drum school); a bank; a school intermediate unit; an office building, housing among other businesses, a methadone clinic and tree service company; and another office building housing Ms. Schoffstall's law office. A third home (Boger) is located behind the Blose home and shares the Blose driveway but has access to another street. (B-2, A-7; NT 1 pp. 37-42; 150-55, 165-67).

16. The Schoffstall office building at 2987 Corporate Court is built of brick and cedar siding, has space for 5 businesses, and presently houses Attorney Schoffstall's law office, a medical spa and a child psychologist. (NT 1 pp. 155-56).

17. The barn-style office building is located next along Corporate Court and is constructed of brick and cedar and houses various businesses including a tree cutting business and a methadone clinic (NT 1 pp. 156, 166-67).

18. The methadone clinic (had caused loitering and still creates litter problem) and a tree business, Asplundh, parks large tree trimming trucks in the parking lot. (NT 1 p. 166-67).

19. Next is a school intermediate unit, which cause significant problems on Corporate Court with standing bus traffic (4 to 8 buses) between the approximate hours of 7:15 and 8:00 AM and 1:30 to 2:15 PM, reducing Corporate Court to one lane. (NT 1 pp. 157-58, 161).

20. The properties in Findings 16 through 18 and the bank have parking lots which accommodate a number of vehicles, far more than what will be produced by the Business. (A-7; NT 1 pp. 37-42, 138-39).

21. Although the area along Corporate Court was sometimes referred to as a "business" or "professional" park, no evidence was submitted of any deed or other restrictions applicable to properties along Corporate Court. (NT 1 p. 163).

22. The Property consists of 1.2097 acres of vacant land (except for a PPL overhead electrical line easement) and has substantial street frontage along Corporate Court from the Blose and Bank driveways to the south to the cul-de-sac where the property line meets the Schoffstall property in the north. (B-2, 10, A-7).

23. The Property has on lot sewage disposal sites as depicted on the Zoning Exhibit Plan (the "Plan"). (B 10; NT 1 p. 136).

24. The Applicants' proposed improvements to the Property are described and depicted on the Plan prepared by Mr. Bradbury (B-10) and architectural drawings prepared by Zawada Enterprises, LLC (B-8, 9, and 15 and A-6, collectively the "Elevations"). (NT 1 pp. 133).

25. The Elevations depict a series of three revisions with the first set (B-8) submitted with the Application; the second (A-6), a revision submitted at the first hearing; and the third (B-15), a final revision submitted at the second hearing. (B-8, B-15, A-7; NT 1 p. 34, NT 2 pp. 14-19).

26. The Applicants appeared at a Township Planning Commission meeting on July 31, 2024. (B-12; NT 1 pp. 23-25).

27. The Township Engineer and Zoning Officer, Ryan D. Christman, of Keystone Consulting Engineers, issued a letter, dated July 26, 2024, indicating that the proposed use was “Automobile and Machinery Repair Shops,” a special exception use under Section 543.11 and that the Plan was in “general conformance with the Township’s sketch plan requirements. (B-7; NT 1 pp. 24-25).

28. In order to carry on the Business, the Applicants propose certain improvements to the Property including but not limited to:

- a. construction of an approximate 7,088 square foot (“SF”) pole-style building (the “Building”) (B-10; NT 1 pp. 35-36, 55);

- b. construction of a 24’ wide access drive from Corporate Court at the south end of the Property (B-10);

- c. construction of five, 10’x20’ parking spaces (3 for employees, 1 for customers, and 1 handicap) with a 24’ aisle (B-10; NT 1 pp. 135);

- d. construction of one, 10’x50’ loading area and a large turn-around area along the south side of the Property (B-10; NT 1 pp. 135);

- e. installation of dusk to dawn outdoor lighting consisting of downward facing and shielded, soffit lights to light the Building perimeter for aesthetic and security reasons, with no street posts unless required and no light shining onto the street or directly on to abutting property (NT 1 pp. 47, 48, 114, 116-17, 136);

- f. installation of one, non-lighted wall sign on the west face (front) of the Building to identify the Business from Corporate Court, to be specified at the time of land development (NT 1 pp. 52, 53, 116);

- g. installation of one Commonwealth-required state inspection sign on the south face of the Building near the garage entrance and not visible from Corporate Court (NT 1 pp. 103-04, 106-07);

h. construction / installation of buffer / planting strips and vegetation as required along the Property lines, and where feasible use of existing vegetation, all to be specified at the time of land development (B-10; 15; NT 1 pp. 126-27, 129, 145-47);

i. dumpster screening (B-10; NT 1 pp. 114-15);

j. stormwater management structures which may include porous paving, underground retention / infiltration or other BMPs to be specified at the time of land development, under circumstances where the Plan provides for less than the maximum impervious cover and building size. (B-10; N.T. 1 pp. 136-37, 144); and

k. no driveways to the rear of the Building (NT 1 p. 143);

29. The Plan will be modified to eliminate the 12' driveway extending beyond the Building's front entrance, and to eliminate the garage door located at the end of that driveway. (B-10, A-6; NT 1 p. 34).

30. Building size may be slightly reduced during land development plan review. (NT 1 pp. 30, 35-36).

31. The Building will generally include a 4000 SF area for vehicle storage (the "Storage Area") and a 2800 SF area housing generally the repair and machine shops, lunchroom and office (the "Work Area"). (NT 1 pp. 54-55).

32. The Building will be designed and constructed substantially in accordance with B-8 and A-6, except as modified by B-15 (relating to the front elevation) as discussed in Finding of Fact 33, below. (A-6; NT 2 pp. 14-19).

33. The front (generally west, facing Corporate Court) elevation of the Building will be designed and constructed generally as depicted in B-15 and consistent with the testimony of Mr. Burkit concerning inclusion of the "bump out" depicted on A-6, use of the stone veneer on the back of the porch, use of matching stone "wainscoting" along the front of the building, and use of the "architectural" timbers on the stone pillars (foundation) for the porch roof with a garden /planting strip (depicted in red) running across the front of the Building. (B-15, A-6; NT 2 pp. 14-19, 22-23).

34. To keep outside noise levels down, the Work Area will be constructed with drywall starting 48" from the floor and running up to the ceiling, with 2x6 insulated walls (using rockwool) and ceiling (blown in) insulation. Electrical impact wrenches will be used. (NT 1 pp. 80, 88-89, 119).

35. Ear protection is not required indoors. (NT 1 p. 120).

36. The Business will operate in the Township in the same manner as it operates at its current facility in Allentown (NT 1 p.29, 33, 50, 110-11).

37. The Business will be a specialty operation (not high volume) with a focus only on servicing, refurbishing, and repairing Porsche automobiles (no SUVs) manufactured between 1948 and 1998 with limited sales of such automobiles (NT 1 pp. 27, 49, 106).

38. The Business will further operate as follows:

- a. there will be 3 employees (inclusive of Mr. Burkit) (NT 1 p. 28, 44);
- b. hours of business operation will be 7:00 AM to 4:30 PM (Monday through Friday), with possible office work and work on personal, family vehicles occurring indoors during non-business hours (NT 1 p. 44, 112, NT 2 pp. 38-39);
- c. all automobiles will be stored inside, never outside (NT p. 28, 49, 54-55);
- d. customers will be seen by appointment only, and walk-ins will be turned away except for customers whose vehicles are stored at the Property pending or undergoing work (NT 1 p. 52, 117-19);
- e. the anticipated average weekly flow of customers will be about three (NT 1 p. 45);
- f. cars will only be sold as a service for customers of the Business, with sales by appointment only, and no cars displayed outside (NT 1 p. 49);
- g. an outside service will be used to dispose of used oil and rags, and used oil will be stored on site in 55-gallon drums until removed (NT 1 p. 57);
- h. but for new engine oil stored in the parts room, there will be no hazardous materials stored on site (NT 1 p. 58);
- i. there will be no pressure washing of engines (NT 1 p. 58);
- j. vehicle deliveries will primarily occur by customers driving their cars to the shop, however deliveries can also be made by flatbed truck, with other deliveries of materials by UPS and FedEx by panel vans (NT 1 pp. 59-61, 112, 122-24);
- k. if a tractor trailer is used to deliver a car, drop off will occur off site and outside the Corporate Court area, such as at a nearby garage or other facility (NT 1 pp. 59-61, 111-12);
- l. road testing of vehicles will not occur on Corporate Court (NT 1 pp. 62-64);

m. State inspection services will be provided by appointment only, but only for Porsche cars, and, on occasion, vehicles (moles) required to undergo emissions testing as part of the State licensing program. (NT 1 pp. 65, 102, 106, 118);

n. a machine shop will be located in the Work Area to work on parts for Porsche vehicles, and all such work will occur indoors (NT 1 pp. 68, 108);

o. scrap metal will be stored inside the Building and disposed of off-site (NT 1 p. 79);

p. there will be no automobile painting or rust repair at the site (NT 1 p. 87);

q. the Storage Area will be used to park customer vehicles awaiting or undergoing work (free of charge for larger projects) and personal vehicles (NT 1 pp 91-95, 99-100);

r. there will be no outside storage of automobiles or other items, with the exception of dumpsters, which will be screened (NT 1 pp. 114-15);

s. inside noise levels do not require the use of ear protection (NT 1 pp. 119-20);

t. no smoke will be generated except exhaust from vehicles (NT 1 p. 120);

u. no odors or vibrations will be generated (NT 1 p. 121);

v. the 10' x 50' loading space is sufficiently sized, and may be used, for flatbed deliveries and turn arounds (NT 1 p. 122-24);

w. an air compressor will be utilized and kept indoors (NT 1 pp. 141-42).

39. The Plan complies with the dimensional and bulk requirements of the Zoning District as relate to lot area and width, building coverage, and height and yard requirements. (B-10; NT 1 p. 134).

40. The Plan generally conforms to the requirements of Article 960, relating to Requirements for Special Uses (NT 1 p. 134).

41. The Plan provides for appropriate access by traffic under Section 1082.03 as it was designed to accommodate a tractor trailer but will now need to accommodate only flatbeds, garbage trucks, and delivery vans (NT 1 p. 135).

42. The Plan addresses parking and parking design, loading space, interior driveways, and other requirements of subsection 1082.04, and it accommodates necessary delivery vehicles and provides ample and fully adequate off-street parking for the contemplated number of employees (3) and the occasional customers (3 per week) with one handicap space. (NT 1 p. 135).

43. Ordinance Article 500 addresses the RV District and includes as a special exception use, “Automobile and Machinery Repair Shops” at subsection 543.11. (B-11).

44. Section 544 addresses lot area, width, building coverage, height and yard requirements in the RV District. (B-11).

45. Article 500, Section 543 requires that special exception uses are subject to approval pursuant to Articles 960 and 1080. (B-11).

46. Article 960 addresses requirements for special uses, and Section 961 establishes standards to guide the Board in its review of site plans, including subsections 961.051 and 961.052 which address, respectively, safe street access and provision of “ample” off-street parking and vehicle storage areas. (B.11).

47. Section 962 notes that the requirements of Section 961 are supplementary, and if they are less than District requirements, the latter prevail. (B-11).

48. Article 930 addresses Parking and Truck Loading Space Requirements and at Section 931 addresses off-street parking including, parking space dimensions (10’ x 20’) and the minimum number off-street parking spaces based upon certain uses (which do not include reference to an Automobile Repair Shop) and off-street truck loading spaces (section 932) based upon net floor area square footage (1 space in the instant case).³

49. Article 1080 addresses special exception uses and at Section 1081 authorizes approvals in accordance with that Article and Article 960 (to the extent applicable) and further authorizes the imposition of “conditions and safeguards” as the Board “may deem necessary to implement the purposes of this Zoning Ordinance.” (B-11).

50. Section 1082 requires a Board finding that the use “will not be prejudicial to the character of the neighborhood” but is silent as to which party bears the burden. (B-11).

51. Other applicable requirements appear in Section 1082 as follows:

a. that there is appropriate provision for access facilities adequate for estimated traffic from public streets and sidewalks to assure public safety and avoid traffic congestion, that vehicle entrances / exits will be clearly visible from the street and not within 75’ of a street intersection (1082.03);

³ Subsection 931.03 addresses the situation where the proposed use is not listed and refers an applicant to the most similar use. A discussion as to parking occurred on the record with the Zoning Officer. See also subsection 1082.04 which addresses “fully adequate” parking in the context of a conditional use. (NT 1 pp76-78).

b. that there are “fully adequate” parking areas and off-street loading spaces for the anticipated number of occupants, employees, and patrons, and that the layout of parking and truck loading spaces and interior driveways is convenient and conducive to safe operation (1082.04);

c. that protective planting strips, not less than 10’ or more than 30’ in width may be required in side or rear yards with evergreen material meeting certain specifications so as to provide and “effective natural screen” between non-residential and residential districts or uses (1082.05); and

d. that there shall be adequate provisions for collection and disposal of stormwater runoff from the site (1082.07). (B-11).

52. The number of parking spaces provided is ample and fully adequate considering the number of employees (3), the low volume of customer traffic, and the substantial vehicle Storage Area (4000 SF).

53. The character of the neighborhood is one of a mix of uses, including a bank, an intermediate school, two office buildings (housing uses including a methadone clinic and a tree service company), a school (generating significant bus traffic every school day), residences (including one with a home occupation) and substantial parking areas for the non-residential uses; and while the proposed use differs from other uses in the neighborhood, it is not prejudicial to the character of the neighborhood.

54. While the Building is constructed as a “pole” building it is not for that reason prejudicial to the character of the neighborhood.

55. The Objectors have not offered substantial evidence that either the Building or the use is prejudicial to the character of the neighborhood and that the use and the Building will to a high degree of probability generate adverse impacts not normally generated by the use and that such impacts will pose a substantial threat to the health and safety of the community.

56. The Board finds Mr. Burkit and Mr. Bradbury credible and persuasive.

57. The Board finds Attorney Schoffstall credible but unpersuasive with respect to the issue of prejudice to the character of the neighborhood.

58. The hearings were advertised in the manner set forth in Exhibits B-1 and B-13.

59. The Board voted unanimously (3 to 0) to approve the special exception, subject to the conditions set forth on the record and in this Decision and Order.

II. CONCLUSIONS OF LAW.

1. The hearings were advertised and conducted in accordance with the requirements of the Pennsylvania Municipalities Planning Code as amended (the “MPC”).
2. The Applicants have standing as the equitable owners of the Property.
3. The Applicants bear the burden of proof regarding entitlement to a special exception to operate an automobile repair shop in the RV District and at the Property.
4. The Applicants have submitted substantial evidence in support of their Application to approve an automobile repair shop as a special exception use at the Property.
5. The Applicants have sustained their burden of proof with respect to each, applicable Ordinance requirement for a special exception to operate an automobile repair shop at the Property as supported by the record and as set forth in the preceding Findings of Fact.
6. The preceding Findings of Fact are supported by substantial evidence.
7. The Board may impose conditions and safeguards upon the award of the special exception, provided that such conditions and safeguards are necessary to implement the purposes of the Ordinance.
8. The conditions and safeguards imposed herein are necessary to implement the purposes of the Ordinance.
9. The proposed off-street parking complies with the requirements of Ordinance subsections 1082.04 and 961.052.
10. The proposed Automobile Repair Shop and Building are not prejudicial to the character of the neighborhood.
11. The Objectors have failed to sustain their burden of proof that the use and the Building are prejudicial to the character of the neighborhood and that the use and the Building will to a high degree of probability generate adverse impacts not normally generated by the use and that such impacts will pose a substantial threat to the health and safety of the community.

III. DISCUSSION

Before the Board is a request for approval of an automobile repair shop, a special exception in the Township's Rural Village (RV) District. See *Section 543.11*.⁴ Special exception procedures are found in Article 1080. Section 1081, titled "Grant of Power" gives the Board power to "grant a permit for a special exception use on a particular site...subject to ... this Article [1080] and Article 960 to the extent applicable" This Section also authorizes "conditions and safeguards" necessary "to implement the purposes of this...Ordinance."

Hearings in the matter spanned two nights. Applicants' witnesses included Mr. Mark Burkit, the President of Specialty Cars Service Center, Inc., and his site planner, Mr. Mark Bradbury. Five Objectors appeared and offered sworn comment. Grounds for objection generally included prejudice to the character of the neighborhood based upon the nature of the use (automobile repair shop), noise, traffic, and Building design.⁵

A special exception is not an exception to the zoning ordinance but rather a use to which an applicant is entitled provided the *specific (or objective)* standards enumerated in the ordinance are met. The applicant has both the duty of presenting evidence and the burden of persuading the zoning Board that the proposed use satisfies those standards. *Quaker Valley School District v. Leet Tp. Zoning Hearing Bd.*, 309 A.3d 279, 288 (Pa. Commw. 2024). Once an applicant meets that burden of proof and persuasion, a presumption arises that the proposed use is consistent with the health, safety, and general welfare of the community, and the burden then shifts to objectors to present evidence and persuade the board that the proposed use will to a *high degree of probability* generate adverse impacts not normally generated by the use in question, and that these impacts will pose a *substantial threat* to the health and safety of the community. *Id.* at 289. This has been described as a "heavy burden." To meet this burden, objectors must offer more than unsubstantiated concerns, vague generalities, or mere speculation as to possible harm. *Id.*

Whether special exception criteria can be *general* or *specific*. The phrase "specific subjective criteria" has been defined as criteria which are "reasonable definite conditions" that

⁴ The Board interprets Section 543.11 as providing for two, independent uses, including an automobile repair shop and a machinery repair shop.

⁵ As will be discussed below, Ordinance Section 1082 requires, without placing the burden on any particular party, that the Board make a "special finding" that the "use will not be prejudicial to the character of the neighborhood."

are “detailed in the ordinance.” See, *Tower Access Grp., LLC v. S. Union Twp. Zoning Hearing Bd.*, 192 A.3d 291, 301 (Pa. Commw. 2018), citing *JoJo Oil Co. v. Dingman Township Zoning Hearing Bd.*, 77 A.3d 679, 687-88 (Pa. Commw. 2013). In contrast, “general, nonspecific or non-objective requirements” include health and safety. *Id.* Moreover, where an ordinance does not expressly place the burden of persuasion regarding detrimental effects to the health, safety, and welfare on the applicant, “the applicant has the burden of persuasion only as to specific requirements, while objectors have the burden as to all general detrimental effects.” *Tower Access Grp., LLC*, 192 A.3d 291 at 302, citing *Allegheny Tower Associates, LLC v. City of Scranton Zoning Hearing Bd.*, 152 A.3d 1118, 1124 (Pa. Commw. 2017).

In *Cogan Properties, LLC v. E. Union Twp. Zoning Hearing Bd.*, 318 A.3d 981, 989 (Pa. Commw. 2024), citing *Bray v. Zoning Bd. of Adjustment*, 410 A.2d 909, 911-12 (Pa. Commw. 1980), the court outlined the shifting of burdens of proof and persuasion as follows:

In outline form, rules concerning initial evidence presentation duty (duty) and persuasion burden (burden) in special exception cases may be restated as follows:

Specific requirements, e.g., categorical definition of the special exception as a use type or other matter, and objective standards governing such matter as a special exception and generally:

The applicant has both the duty and the burden.

General Detrimental Effect, e.g., to the health, safety and welfare of the neighborhood:

[The o]bjectors have both the duty and the burden; the ordinance terms can place the burden on the applicant but cannot shift the duty.

General Policy Concern, e.g., as to harmony with the spirit, intent or purpose of the ordinance:

[The o]bjectors have both the duty and the burden; the ordinance terms cannot place the burden on the applicant or shift the duty to the applicant.

(Emphasis added).

Turning to the matter at issue, while the use is identified as a special exception in the RV District pursuant to Articles 1080 and 960, the Ordinance does not identify conditions specific to

an Auto Repair Garage. In addition, the Ordinance contains a requirement at subsection 1082.02 that the Board make a specific finding that the “use will not be prejudicial to the character of the neighborhood.” The Board considers this to be a “General Detrimental Effect” and thus the burden of the Objectors. See *Cogan Properties, LLC*, at 318 A.3d 989.

The Board finds that the Applicants have submitted substantial evidence⁶ in support of the Application, and that they have met their burden of proof with respect to the specific requirements of the Ordinance. These include, safe ingress and egress to/from the Property; ample and fully adequate off-street parking and loading areas, compliance with lot bulk and dimensional requirements, stormwater management compliance, hazardous material (oil) handling, lighting requirements, buffer and landscaping strips, and noise, smoke, vibration, and other concerns. The Board finds also that *even if* the burden of proof concerning the general requirement of “prejudice to the character of the neighborhood” was placed upon the Applicants, they have met the same.

Nonetheless, that burden is on the Objectors; and the Board finds that the Objectors failed to present substantial evidence in support thereof. Furthermore, the Board has found that that the Objectors failed to meet their “heavy burden” to prove that the use and the Building will to a high degree of probability generate adverse impacts not normally generated by the use and that such impacts will pose a substantial threat to the health and safety of the community.

The Objectors’ fears regarding stormwater management, flooding, noise, and increased traffic are speculative and do not constitute substantial evidence. With respect to traffic, the record supports only a minimal increase and far less than one might expect with other auto repair facilities. Indeed, the proposed use is less intense than other uses permitted in the District.⁷

Here the evidence indicates that the proposed automobile repair shop will have no more impact (and probably less impact) on the neighborhood than the existing businesses. Applicants propose the operation of a niche business which specializes in repairing, servicing, and

⁶ “Substantial evidence” necessary to support a decision is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Metal Green Inc.*, 266 A.3d 495, 513 (Pa. 2021).

⁷ Increased traffic is insufficient to deny a special exception absent a high probability that the use will generate traffic not normally generated by that type of use and that the abnormal traffic threatens safety. *Cogan Properties, LLC*, 318 A.3d at 997. Permitted uses in the RV District include automobile and other machinery sales with accessory service facilities including filling stations (541.16), building material sales, storage yards and construction related businesses (541.26), and wholesale establishment, distribution station, and storage building (541.25).

refurbishing Porsche vehicles, with some vehicles having values in or approaching seven figures. All vehicles will be stored inside the Building, and clients will be seen by appointment only. At its present location, the Business sees approximately three (3) customers per week. Evidence was submitted that four (4) parking spaces and one (1) handicap space constituted ample and fully adequate off-street parking considering the limited number of employees, infrequent customer visits, and size of the interior Storage Area. In addition, the Business will operate only between the hours of 7:00 AM and 4:30 PM Monday through Friday with the possibility of office work and work on personal vehicles over the weekend.

But for screened dumpsters, there will be no storage of vehicles, parts, or other materials outside, and no advertising flags or banners. Signage will be limited and lighting controlled. Noise will be reduced through Building insulation and use of modern tools. Hearing protection will not be required.

Applicants will be able to comply with stormwater, landscaping, and buffer requirements, and they agreed to preclude tractor trailer deliveries to the Property. The only other types of vehicles visiting the Property will be delivery vehicles (e.g. UPS and FedEx), a garbage truck, and an occasional flat-bed truck (to deliver a vehicle directly into the building). Substantial evidence was provided that the access drive and the layout of the parking and loading areas provided sufficient room for the handling of all vehicles and the ability of vehicles to enter and turn around on the Property to safely exit to Corporate Court.

There is no evidence of hazardous material storage (other than oil) or the conduct of any activity in the shop which would create odors, smoke, unusual waste, or vibrations. Used oil is taken offsite by an outside service, and no painting or pressure washing of engines occurs on site.

Substantial evidence was offered concerning the neighborhood, which is fairly characterized as “mixed-use.” The neighborhood is generally defined by Corporate Court, which starts at Claussville Road and ends at a cul-de-sac. Along this cul-de-sac is a bank with a substantial parking lot; an intermediate unit with substantial off-street parking and which causes daily congestion on Corporate Court due to bus traffic; and another office building with substantial parking which houses a tree service and a methadone clinic. At the end of the cul-de-sac is another office building, which provides space for multiple offices and vehicle parking. Next to the proposed use is a residence with a home-based business (a drum school), and abutting the Property is a driveway leading to two residences.

In short, regardless of the legal duty with respect to the burden of proof or persuasion, the Applicants presented substantial evidence that the proposed use would not be “prejudicial to the character of the neighborhood.” An order follows.⁸

IV. ORDER.

AND NOW, this ____ day of _____ 2024, upon consideration of the Application of Mark and Lynn Burkit for special exception approval pursuant to Articles 1080 and 960 of the Lowhill Township Zoning Ordinance to authorize the operation of an Auto Repair Shop use on property located at 2945 Corporate Court, Orefield, Pennsylvania 18069 in the Township’s Rural Village (RV) Zoning District and consideration of the Record in this matter, the same is hereby **GRANTED** subject to the following conditions:

1. Receipt of land development approval from the Township for the proposed improvements to the Property associated with the proposed use;
2. The approval of this special exception use is based upon the representations, testimony, and exhibits offered by or on behalf of the Applicants in the hearing and include, without limitation, the specific representations as to the nature, scope, character, and operation of the auto repair shop and the design and construction of the improvements to the Property, all as set forth in Board Exhibits 3, 4, and 8, and A-6 as modified by B-15;
3. If, in the discretion of the Township Zoning Officer, the operation or intensity of the proposed use becomes such that the proposed off-street parking for the use is considered inadequate; the Applicants will provide additional off-street parking spaces, as determined by the Township Zoning Officer to be necessary to accommodate the proposed use’s operations based upon consideration of customer traffic and the number of employees;
4. There shall be no outdoor storage of vehicles, vehicle parts, or any materials of any kind on the Property, except refuse which is contained in an appropriate container and awaiting

⁸ Following the close of the hearing and the reading of the proposed motion and conditions, a question was raised by Mr. Bradbury concerning the impact of land development review on parking and adjustment to macadam areas to accommodate stormwater facilities and other “intricacies.” The Board agreed that conditions falling within the scope of Mr. Bradbury’s concerns were subject to land development plan review and the possible need for minor modifications. (NT 2 pp. 36-37).

pickup in a fully screened location, and all dumpsters or outdoor waste storage areas on the Property, if any, shall be screened so as to shield their view from surrounding properties;

5. There shall be no outdoor display of vehicles for sale on the Property and no signs advertising vehicles for sale shall be displayed on the Property;

6. Signage shall be limited to one building mounted, wall sign displaying the name of the automobile repair shop for purposes of identifying the location of the Business to incoming customers and such other signs as are required by law to maintain licensing as a vehicle inspection / emissions testing station; and all such signage shall comply with Township sign standards;

7. The Building shall be designed and constructed and the Business shall be operated to reasonably limit noise, odors, vibrations, and light at the Property boundaries;

8. To the extent reasonably possible, existing trees on the Property shall be maintained, and the Applicants shall install and continuously maintain a separate planting strip, meeting at least the minimum requirements of Section 1082.05 along the Property's side and rear yards; with said planting plan to be approved by the Township Board of Supervisors;

9. The delivery to, or pickup at, the Property of customer vehicles by tractor-trailers shall be prohibited, and no deliveries or pickups shall occur within the right-of-way of Corporate Court;

10. No vehicles which are in any way associated with the use shall be permitted to park or stand on Corporate Court;

11. Outdoor lighting on parts of the Building facing residential uses shall be designed and operated to reduce intensity at such time when the Business is not in operation (i.e., dimming at night time);

12. The outdoor idling of vehicles shall not be permitted except as necessary to perform diagnostic services;

13. All customer visits shall be by appointment only;

14. Operating hours shall be from 7:00 a.m. to 4:30 p.m. on weekdays with no weekend hours. This condition does not apply to routine office work or work on personal vehicles;

15. The 12-foot driveway extension depicted on the Plan going past the office shall be eliminated;


16. The garage door at the southwest side of the building shall be eliminated; and

17. Except for “moles,” state inspections shall be limited to Porsche automobiles.

BY THE BOARD:



HARRY YONAK, Chairman



GLEN MOYER, Member



THOMAS ZUBY, Member

Date of Written Decision:
November _____, 2024

Date of Mailing Written Decision:
November _____, 2024

Attachment A – Exhibit List

**APPEAL OF MARK AND LYNN BURKIT, CASE NO. 2024-1
EXHIBIT LIST**

BOARD EXHIBITS

- B-1 Hearing Notice
- B-2 Property Information/GIS/Assessment Record
- B-3 Zoning Application, received 8/15/2024
- B-4 Addendum to Application, received 8/15/2024
- B-5 Agreement of Sale
- B-6 Sketch Plan Application, received 7/17/2024
- B-7 KCE Review Letter (Sketch), dated 7/26/2024
- B-8 Zawada First Floor Plan, dated 7/12/2024
- B-9 Building Elevations (4 Sheets)
- B-10 Zoning Ex. Plan, Sheet 1 of 1, dated 8/15/2024
- B-11 Zoning Ordinance Excerpts
 - A. Section 329 “GARAGE, PUBLIC”
 - B. Section 431 “RURAL VILLAGE STATEMENT OF INTENT”
 - C. Section 543 “SPECIAL EXCEPTION USES”
 - D. Section 544 “LOT AREA, ETC.”
 - E. Section 1080 “SPECIAL EXCEPTION USES”
 - F. Section 960 “REQUIREMENTS FOR SPECIAL USES”
- B-12 Planning Commission Review Letter
- B-13 Notice – Second Hearing
- B-14 Kyle David Letter, dated 9/26/24
- B-15 Zawada Elevation Drawing (Revised)

APPLICANT EXHIBITS

- A-1 Agreement of Sale
- A-2 KCE Review Letter, dated 7/26/24
- A-3 KCE Letter dated 8/5/24
- A-4 Zoning Application and Addendum
- A-5 Zoning Site Plan
- A-6 Revised Color Building Elevations
- A-7 Google Eart Photo

ATTACHMENT A