

# FAYETTE LEGAL JOURNAL

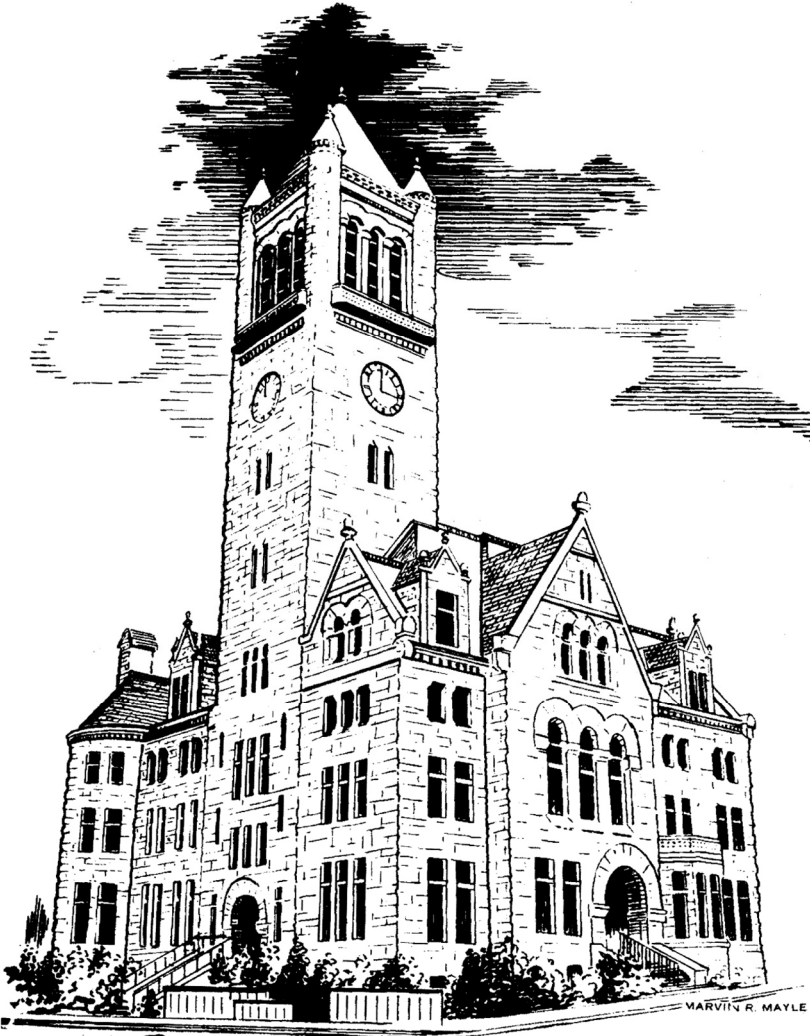
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## FAYETTE LEGAL JOURNAL

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**NOTICE**

Notice is hereby given that a Certificate of Organization was filed with the Pennsylvania Department of State, on September 13, 2023, for a Limited Liability Company, organized under the Limited Liability Company Law of 1994, as from time to time amended. The name of the Company is Granny’s Diner LLC, having the address of 120 Penn Street, Point Marion, Pennsylvania 15474.

James E. Higinbotham, Jr., Esq.  
 HIGINBOTHAM LAW OFFICES  
 68 South Beeson Boulevard  
 Uniontown, PA 15401  
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**NOTICE OF ACTION IN MORTGAGE FORECLOSURE**

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA  
 CIVIL ACTION – LAW  
 NO.: 2023-01569

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING,  
 Plaintiff,  
 vs.

Jessie Thibodeau, as Believed Heir and/or Administrator of the Estate of Joseph R. Thibodeau; Unknown Heirs and/or Administrators of the Estate of Joseph R. Thibodeau (if any),  
 Defendants

TO: Jessie Thibodeau, as Believed Heir and/or Administrator of the Estate of Joseph R. Thibodeau; Unknown Heirs and/or Administrators of the Estate of Joseph R. Thibodeau (if any)

You are hereby notified that Plaintiff, NewRez LLC d/b/a Shellpoint Mortgage Servicing, filed an Action in Mortgage Foreclosure endorsed with a Notice to Defend, in the Court of Common Pleas of Fayette County, Pennsylvania, docketed to No. 2023-01569, seeking to foreclose the mortgage secured by the real estate located at 128 Spear Lane, Markleysburg, PA 15459.

A copy of the Action in Mortgage Foreclosure will be sent to you upon request to the Attorney for the Plaintiff, Manley Deas Kochalski LLC, P. O. Box 165028, Columbus, OH 43216-5028. Phone 614-220-5611.

You have been sued in court. If you wish to defend against the claims in this notice, you must take action within twenty (20) days after this publication, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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IN THE COURT OF COMMON PLEAS OF  
 FAYETTE COUNTY PENNSYLVANIA  
 CIVIL DIVISION  
 NO.: 811 of 2023 GD

NOTICE OF COMPLAINT IN ACTION TO  
 QUIET TITLE

VISTA DRIVE REALTY CORP.,  
 Plaintiff,  
 vs.  
 TINA L. SCALISE,  
 Defendant.

**NOTICE**

To: Tina L. Scalise

There has been an action to Quiet Title for property located at 110 W. Ridgeview Drive, South Union Township, Uniontown, PA 15401. The parcel number for the property in question is 34-27-002909.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

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**JUDICIAL OPINION**

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA  
CIVIL DIVISION

GERTRUDE L. KOURY, :  
Appellant, :  
 :  
 :  
v. :  
CITY OF CONNELLSVILLE :  
ZONING HEARING BOARD, : No. 1120 of 2022, G.D.  
Appellee. : President Judge Steve P. Leskinen

**OPINION AND ORDER**

LESKINEN, P.J.

July 12, 2023

Before the Court is Appellant, Gertrude Koury’s, appeal of the Opinion, Decision, and Order of the City of Connellsville Zoning Hearing Board dated May 24th, 2022. After consideration of the entire record in this matter and argument of the parties in support of their positions, the Court hereby issues the following Opinion and Order:

**Factual and Procedural History**

Appellant, Gertrude Koury, (“Koury”) has owned the subject property in this appeal, 202-206 South Arch Street in the City of Connellsville (“Property”), for more than fifty years. Koury leased the Property to Regard Recovery of Pennsylvania (“Regard Recovery”) by commercial lease dated May 25th, 2021. Both the lease term and Regard Recovery’s occupancy began on July 1st, 2021. (Certified Record (“CR”) at B5.) Regard Recovery leased the Property with the intent to operate a treatment center for Opioid Use Disorder, where patients would receive injections of Vivitrol or Sublocade on a monthly basis as part of a treatment program. (Hearing Transcript at pages 9-17.) Vivitrol was approved for use in 2006 and Sublocade in 2017 and both are used to prevent relapses of opioid dependency. *Id.* Regard Recovery applied for a business license from the City of Connellsville on July 9th, 2021, and received Permit #0807. (CR at B7.) Regard Recovery later acquired Trilogy Wellness, LLC (“Trilogy”) and began operating the location at the Property under that name. (Transcript p. 45.) On February 14th, 2022, Trilogy applied for a new business license under the Trilogy Wellness name, using the same contact information from the July 2021 application and noting on the application form that Trilogy was previously known as Regard Recovery. (CR at B8.) Trilogy testified that for all functional purposes relevant to their operations at the Property, this was only a name change, as the plan for services at the property did not change when Regard Recovery acquired Trilogy and began operating the location under the Trilogy name. (Transcript p. 46.)

On December 15th, 2021, The City Council of the City of Connellsville passed a resolution “[T]o authorize and direct preparation of a zoning amendment and Zoning Ordinance relating to the use of property for suboxone or drug treatment facilities and to refer the same to the City and County Planning Commission.” (CR at B12.) On February 15th, 2022, Connellsville Mayor, Greg Lincoln, introduced Bill No. 2 of 2022, amending the 2012 zoning ordinance. Bill No. 2 of 2022 was enacted on April 19th, 2022, effective April 29th, 2022. (CR at B14.)

By letter dated March 31st, 2022, Tom Currey, the Health, Code & Zoning Officer for the City of Connellsville, notified Trilogy and Koury “that the owner and occupant of the [Property] are in violation of the City of Connellsville’s Zoning Ordinance (Ordinance #1492 adopted August 4th, 2012, as modified by Resolution No. 12-15-21, adopted December 15, 2021 and Bill No. 2 of 2022, introduced February 15, 2022) as a result of the current use of the property as a Medical Clinic, as defined in such ordinances...” (CR at B16.) Trilogy timely filed an appeal of the determination of violation by letter dated April 12th, 2022. (CR at B1.) Koury, by timely letter dated April 18th, 2022, objected to the determination on the grounds that the matter was not yet ripe for enforcement, as it was predicated on an amendment to the zoning ordinance that had not yet been enacted. (CR at B2.) The City of Connellsville Zoning Hearing Board (“ZHB”) held an appeal hearing on May 24th, 2022, and issued an Opinion, Decision, and Order dated the same day (“ZHB Decision”) denying the appeals. Koury timely filed a Notice of Land Use Appeal on June 22nd, 2022.

This Court notes that though the ZHB Decision includes the heading “Special Exception and Use Variance Petition of Trilogy Wellness,” Trilogy’s appeal letter makes no reference to any request for a special exception or variance, but requests “an official appeal in regard to your determination.” The ZHB Decision stated that “[t]he Appellant’s appeal of the Notice of Zoning Violation is denied,” with no reference made in the “Decision” section to any special exception or use variance petition. Thus, this matter shall be considered as an appeal of the determination that there was a violation.

### **Standard of Review**

When a trial court does not take new evidence in a land use appeal, as is the case here, the court’s scope of review is limited to a determination of whether the ZHB committed an error of law and whether the necessary findings are supported by substantial evidence in the record. *Township of Exeter v. Zoning Hearing Board of Exeter Township*, 962 A.2d 653, 659 (Pa. 2009) (distinguished on other grounds). Substantial evidence is relevant evidence which a reasonable mind would accept as adequate to support the conclusion reached. *Id.*

### **Trilogy’s Use of the Property Under the 2012 Ordinance and 2022 Amendment**

The City of Connellsville Zoning Ordinance #1942, as adopted on August 4th, 2012 (“2012 Ordinance”), defined the following term relevant to this matter in Article XI, §11-100 Definitions and word usage:

OFFICE/CLINIC, MEDICAL- A building or part of a building where one (1) or more licensed medical professionals provide diagnosis and treatment to the general public without surgical procedures, overnight accommodation or pharmacy and which may include such uses as reception areas, offices, consultation rooms, and x-ray facilities, providing that all such uses have access only from the interior of the building.

When Bill No. 2 of 2022 was enacted on April 19th, 2022 (effective ten days later) also known as Ordinance No. 1563 (“2022 Amendment”), it removed the definition of OFFICE/CLINIC, MEDICAL from §11-100, and added the following relevant definitions:

CLINIC, MEDICAL – A building or part of a building where one (1) or more licensed medical professionals provide diagnostic health, medical, surgical, and/or psychiatric services and/or treatment to the general public on an outpatient basis,



where patients are not provided with board or kept overnight or general pharmacy services, and which may include such uses as reception areas, offices, consultation rooms, and x-ray facilities, providing that all such uses have access only from the interior of the building. Medical clinics include urgent care clinics, methadone, suboxone, buprenorphine, and other medication assisted treatment, maintenance, or detoxification facilities and clinics, but do not include business offices and professional offices.

**OFFICE, PROFESSIONAL** – A building or part of a building in which one (1) or more persons are employed in the provision of professional or consulting services in the fields of law, medicine, architecture, design, engineering, accounting, or similar professions as a individual or group practice. A professional office shall not include any other use defined in this zoning ordinance.

The 2012 Ordinance listed “Office/Clinic, Medical” as a permitted use in C-1, C-2, and C-3 zoning areas. The 2022 Amendment only allows for the use of Clinic, Medical in C-2 and Industrial zoning areas and only as a special exception. Office, Professional is a permitted use in C-1, C-2, and C-3 zoning areas.

Currey testified that under the 2012 Ordinance (prior to the 2022 Amendment) the “Office/Clinic, Medical” use excludes use as a pharmacy. (Transcript, p. 61.) Currey interpreted the Webster’s dictionary definition of pharmacy, “the art or practice or profession of preserving, compounding and dispensing medical drugs,” in making his determination regarding Trilogy’s use of the property. *Id.* Currey went on to testify that this “dispensing medication that was in violation of the zoning ordinance of 2012, the original zoning ordinance,” led them to go through in December and set a resolution to clarify this. *Id.* “We introduced that zoning ordinance and said, hey, look, we’re going to make this a better ordinance.” *Id.* at 62.

Mr. Currey testified that due to the administration of injections, which constituted use as a pharmacy, Trilogy’s intended use would not have complied with “Office/Clinic, Medical” use in the 2012 Ordinance, which precludes pharmacy uses. *Id.* at 63. Under the 2022 Amendment, which was specifically enacted to address the use of drug treatment clinics, Trilogy’s use would be considered a “Clinic, Medical” use, which would be limited to the C-2 and Industrial zoning areas and requiring a special exception.

Though the Statutory Construction Act does not specifically apply to the construction of zoning ordinances, the courts have nonetheless applied the principles of the Act in interpreting zoning laws. *Slice of Life, LLC v. Hamilton Township Zoning Hearing Board*, 207 A.3d 886, 902 (Pa. 2019). Under §1903 of the Act, words and phrases are construed according to the rules of grammar and according to their common and approved usage, but technical words and phrases and such others as have acquired a peculiar and appropriate meaning are construed according to that appropriate meaning or definition. 1 Pa. C.S.A. §1903. When a statutory term is without express definition, the definition of that term is a question of law, not of opinion testimony. *Coleman v. W.C.A.B.*, 842 A.2d 349, 352 (Pa. 2004). Zoning ordinances must be liberally construed and interpreted broadly so that a landowner may have the benefit of the broadest possible use of the land. *Tennyson v. Zoning Hearing Board of West Bradford Township*, 952 A.2d 739, 745 (Pa. Cmwlth. 2008). Neither the 2012 Ordinance nor the 2022 Amendment define “pharmacy.”

Pharmacies and the practice of pharmacy in Pennsylvania are regulated by the State

Board of Pharmacy. 49 Pa. Code, Chapter 27. The Board's rules are promulgated in the Pennsylvania Code, of which courts must take judicial notice under 45 Pa. C.S.A. §506. (See also: *Roskwitalski v. Reiss*, 402 A.2d 1061, 1064 (Pa. Super. 1979).) The rules of the State Board of Pharmacy, and the Pharmacy Act (63 P.S. §390-1 et seq.), under which the rules were issued, set forth specific definitions of various terms relating to the practice of pharmacy. These definitions include:

Pharmacy Act 63 P.S. §390-2:

(2.1) "Dispense" or "Dispensing" means the preparation of a prescription or non-prescription drug in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the drug.

(10) "Pharmacist" means an individual duly licensed by the State Board of Pharmacy to engage in the practice of pharmacy.

(11) "Practice of pharmacy" means the provision of health care services by a pharmacist, which includes the interpretation, evaluation and implementation of medical orders for the provision of pharmacy services or prescription drug orders; the delivery, dispensing or distribution of prescription drugs; participation in drug and device selection; drug administration; drug regimen review; drug therapy management, including such services provided under the Medicare Prescription Drug, Improvements, and Modernization Act of 2003 (Public Law 108-173, 117 Stat. 2066); 2 drug or drug-related research; compounding; proper and safe storage of drugs and devices; management of drug therapy pursuant to section 9.33 or, if in an institutional setting, consistent with the institution's assignment of clinical duties pursuant to a written agreement or protocol as set forth in section 9.1; 4 maintaining proper records; patient counseling; and such acts, services, operations or transactions necessary or incident to the provision of these health care services. The "practice of pharmacy" shall not include the operations of a manufacturer or distributor as defined in "The Controlled Substance, Drug, Device and Cosmetic Act."

(12) "Pharmacy" means every place properly issued a permit by the Board of Pharmacy where drugs, devices and diagnostic agents for human or animal consumption are stored, dispensed or compounded, excluding offices or facilities of veterinarians licensed by the State Board of Veterinary Medical Examiners. The term "pharmacy" shall not include the operations of a manufacturer or distributor as defined in "The Controlled Substance, Drug, Device and Cosmetic Act." In an institution, "pharmacy" refers to the organized pharmacy service in the institution under the direct supervision of a licensed pharmacist.

(16) "Drug administration" means the direct introduction of or the application of a drug into or on the body of a patient by injection, inhalation, ingestion or any other means and, where required by law, shall occur only pursuant to a medical order.

State Board of Pharmacy 49 Pa. Code §27.1:

Pharmacy- the place licensed by the Board where the practice of pharmacy is conducted.

Practice of pharmacy--

(i) The provision of health care services by a pharmacist, which includes:

(A) The interpretation, evaluation and implementation of medical orders for the provision of pharmacy services or prescription drug orders.

- (B) The delivery, dispensing or distribution of prescription drugs.
- (C) Participation in drug and device selection.
- (D) Drug administration.
- (E) Drug regimen review.
- (F) Drug or drug-related research.
- (G) Compounding.
- (H) Proper and safe storage of drugs and devices.
- (I) Management of drug therapy under a written collaborative agreement as set forth in section 9.3 of the act or, if in an institutional setting, consistent with the institution's assignment of clinical duties under a written protocol as set forth in section 9.1 of the act.
- (J) Maintaining proper records.
- (K) Patient counseling.
- (L) Acts, services, operations or transactions necessary or incident to the provision of these health care services.
- (M) Drug therapy management, including services provided under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.
- (ii) The term does not include the operations of a manufacturer or distributor as defined in The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101--780.144).

It is clear from the above definitions that no part of Trilogy's practice model as described in the record constitutes the practice of pharmacy, nor does their facility qualify as a pharmacy under Pennsylvania law or regulation. The above definitions also codify the important distinction between dispensing a drug and administering a drug. This is a distinction to which Dr. Dickun testified when she outlined the process wherein a doctor provides a prescription for the Sublocade or Vivitrol prescription to a specialty pharmacy, the pharmacy dispenses it to Trilogy, whose health care providers then administer the injection to the patient. (Transcript p. 19)

This Court finds that the ZHB committed an error of law by applying dictionary definitions of "dispense" and "pharmacy" rather than the definitions contained in state statutes and regulations. Therefore, any findings of fact or conclusions of law predicated on Trilogy operating as a "pharmacy" based on the administration of injections would also be an error of law.

Furthermore, Mr. Currey and the ZHB are inconsistent in their application of the 2012 Ordinance and the 2022 Amendment to Trilogy's operations. The ZHB found (§ 37 of the ZHB Decision) that the "Applicant's use of the Subject Premises would fall under the definition of a Clinic, Medical" (under the 2022 amendment). This was the amendment that Mr. Currey testified was proposed and enacted to address the zoning of addiction treatment facilities, and the amendment which specifically references medication assisted treatment facilities. The definition of "Clinic, Medical" under which the ZHB found that Trilogy's operations fall, also contains an exclusion for "general pharmacy services" with no further definition of such services. The ZHB cannot hold that the administration of injections constitutes a "pharmacy" for the purposes of excluding Trilogy's use as an "Office/Clinic, Medical" under the 2012 Ordinance, while also finding that Trilogy's use qualifies as a "Clinic, Medical" under the 2022 Amendment, when such amendment also excludes general pharmacy services.

### **Enforcement of 2022 Amendment Prior to Enactment**

The determination of violation letter dated March 31st, 2022, finds that Trilogy “is currently using and operating the subject property as a “Clinic, Medical,” and refers to the (then pending but not yet enacted nor effective) 2022 Amendment. The ZHB relies on the pending ordinance doctrine as support for its ability to enforce an ordinance that had not yet been enacted. Under the pending ordinance doctrine, a zoning petition may be refused if an amendment is pending to a zoning ordinance which would prohibit the use of the land for the intended purpose. *Boron Oil Co. v. Kimple*, 284 A.2d 744, 746 (Pa. 1971). In *Boron*, a public meeting on the proposed rezoning was advertised two weeks before the appellant’s application and the proposed ordinance was available for public inspection one week prior to application. *Id.* at 747. *Boron* also contains some important caveats. First, the *Boron* Court specifically states that “our present decision is not to be construed in any sense as granting a license to a municipality to use the pendency of a zoning ordinance as a device to impose either a general or selective moratorium on local land development.” *Id.* “However much a rapidly expanding municipality may wish to declare ‘time out’ and stop all development, such effect, by whatever means achieved, would be constitutionally impermissible.” *Id.* at 748. Second, the *Boron* Court goes on to hold that a petition may only be denied in factual situations such as *Boron* when the municipality acts reasonably and in good faith. *Id.* In *Boron*, there was no evidence or suggestion that the proposed ordinance was directed specifically for or against the proposed use of the property at issue. *Id.* at 747.

In the present case, the Zoning Officer specifically testified that the December resolution was in response to Trilogy’s operations. (Transcript p.61.) This Court also notes that the ZHB found (ZHB Decision, ¶ 10) that once “Applicant” began operating that “Applicant’s” patients overwhelmed a nearby business to the extent that the business erected a gate around its parking lot. However, this matter of the parking gate at the neighboring business involved another addiction treatment facility, *Crossroads*. Though the testimony indicated that some staff left *Crossroads* to work at Trilogy, there was specific and unrefuted testimony that *Crossroads* is not owned by or in any business relationship with *Regard Recovery* or Trilogy. (Transcript p. 48.) Thus, any finding that conflates *Crossroads* with *Regard Recovery* or Trilogy, including ¶ 10, is not supported by the evidence in the record. So not only was the resolution motivated by Trilogy’s operations, it was also partially based on a mistaken belief that Trilogy and *Crossroads* were affiliated.

The line of cases deriving from *Boron* address a municipality’s ability to deny a petition under the pending ordinance doctrine. In *Hill v. Zoning Hearing Board of Chestnuthill Township*, 626 A.2d 510 (Pa. 1993), the Pennsylvania Supreme Court also held that a municipality may deny the status of a legal nonconforming use after the enactment of a zoning ordinance where the use began after the municipality has publicly declared its intent to consider a particular zoning scheme. *Id.* at 512. (emphasis added) But this Court cannot justify extending the pending ordinance doctrine to allow a municipality to take an enforcement action, as they did here, before an ordinance is enacted or effective. Therefore, this Court finds that the ZHB committed an error of law by attempting to enforce an ordinance that was not yet enacted.

### **Lawful Non-Conforming Use**

Though this Court finds that the errors of law addressed *supra* are sufficient to grant Petitioner’s land use appeal, there is conflicting evidence in the record as to whether the

appeal was intended to be based on the enforcement action or a denial of a special exception or variance petition. Thus, the Court will address the matter of whether Trilogy has established a lawful non-conforming use under the 2012 Ordinance, and whether such use predated the period during which the 2022 Amendment would be considered “pending” under the pending ordinance doctrine.

Trilogy contends that they had established a lawful non-conforming use that was permitted under the 2012 Ordinance prior to the adoption of the Resolution on December 21st, 2021. The ZHB found that the dispositive date of the zoning use is the date on which Trilogy first “dispensed” (administered) injections, which was in March of 2022. (ZHB Decision ¶ 18.)

A lawful non-conforming use is one that predates a subsequent prohibitory zoning action. *Pietropaolo v. Zoning Hearing Board of Lower Merion Township*, 979 A.2d 969, 976 (Pa. Cmwlth. 2009). The party proposing the existence of a lawful nonconforming use must establish both its existence and legality before the enactment of the ordinance at issue. *Id.* The manner of use and dates of existence are questions of fact, but the legality of a use is a question of law. *Id.*

The use for which the property is adapted need not be in actual operation at the time of the adoption of the ordinance if the facts and circumstances bear out the conclusion that the owner had a firm intention to use the property for that purpose. *Appeal of Haller Baking Co.*, 145 A. 77, 79 (Pa. 1928) (distinguished on other grounds). “Neither the act, the ordinance, nor the law generally requires the court to speculate as to the number of acts or business transactions necessary to constitute an existing use.” *Id.* Where a property is built for or adapted to a particular use, the question of existing use is determined by ascertaining as near as possible, the intention of the owner. *Id.* Before a nonconforming use may be protected, it must exist somewhere outside the property owner’s mind; only physical evidence in the most tangible and palpable form can bring about the application of nonconforming clauses in a zoning ordinance. *Cook v. Bensalem Township Zoning Board of Adjustment*, 196 A.2d 327 (Pa. 1863).

Under these guidelines, that existing use must be more than just a plan in someone’s mind to use a property for a particular purpose, but less than a requirement that the use be fully operational on the day an ordinance is passed, this Court must then determine whether the record contains sufficient evidence to constitute existing use, and whether such use was established before the pending ordinance doctrine would be triggered.

Trilogy (and its predecessor, Regard Recovery), took occupancy under a commercial lease with the stated intent to operate a clinic for the addiction treatment services (CR at B5.). Trilogy filed the required Business Registration Form with the City of Connellsville in July of 2021 (CR at B6), progressed in a timely manner towards the offering of full clinical services in March of 2022. However, there was no evidence presented that Trilogy obtained an Occupancy Permit as required by § 9-104 of the 2012 Ordinance prior to offering clinical services. {1} Conversely, there is no evidence in the record establishing that Trilogy would not have been entitled to the issuance of an occupancy permit if it had applied.

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{1} Neither the determination of violation letter dated March 31st, 2022, nor the ZHB Decision reference any failure to obtain an occupancy permit. The matter is raised here only to the extent that it has weight in considering whether Trilogy sufficiently established the use of the property as a “Office/Clinic, Medical” under the 2012 Ordinance.

This Court finds that Trilogy (and its predecessor, Regard Recovery), took sufficient actions to establish the use of the Property as an “Office/Clinic, Medical” under the 2012 Ordinance in July of 2021. The Court further finds that the Resolution passed by the City Council of the City of Connellsville on December 21st, 2021, was insufficiently specific to constitute notice of a particular zoning scheme (See Hill, supra.) for the purposes of the pending ordinance doctrine, but the doctrine would apply as of the date the bill was introduced on February 15th, 2022. Therefore, Trilogy (with its predecessor, Regard Recovery) had established a prior, nonconforming use under the 2012 Ordinance prior to the point in time where the City of Connellsville could invoke the pending ordinance doctrine.

**Constitutionality of 2022 Amendment**

At oral argument, Koury raises the issue of whether the 2022 Amendment is de facto and/or de jure exclusionary. Though this Court has already found sufficient grounds to grant Koury’s appeal, supra, and therefore need not address this issue, it is worth noting that zoning ordinance provisions that treat methadone or drug treatment clinics differently from other medical clinics are facially discriminatory under the Americans with Disabilities Act and the Rehabilitation Act of 1973. THW Group, LLC v. Zoning Board of Adjustment, 86 A.3d 330, 342 (Pa. Cmwlth. 2014), citing New Directions Treatment Services v. City of Reading, 490 F.3d 293 (3d Circuit, 2007). Given that the December 21st, 2021, Resolution by the City Council of the City of Connellsville was “To authorize and direct preparation of a zoning amendment and Zoning Ordinance relating to the use of property for suboxone or drug treatment facilities and to refer the same to the City and County Planning Commission,” an analysis under the ADA and the Rehabilitation Act would have been appropriate in this matter if not resolved on other grounds.

WHEREFORE, the Court issues the following Order:

**ORDER**

AND NOW, this 12th day of July, 2023, upon the consideration of the entire record and the oral arguments presented in the matter, the Court finds that the City of Connellsville Zoning Hearing Board abused its discretion and committed errors of law in denying the Appeal of Gertrude L. Koury of its Zoning Enforcement Notice. The Court hereby ORDERS that the Land Use Appeal filed by Appellant, Gertrude Koury, is GRANTED and the Enforcement Notice dated March 31st, 2022 is VACATED, as the Enforcement Notice was based on an Ordinance that had not yet been enacted. Further, Trilogy Wellness’s operations at 202-206 South Arch Street, including the administration of injections, constitute a lawful pre-existing non-conforming use under the City of Connellsville’s Zoning Ordinance #1492 as adopted on August 4th, 2012.

BY THE COURT:  
 STEVE. P. LESKINEN,  
 PRESIDENT JUDGE

ATTEST:  
 PROTHONOTARY

## BENCH BAR CONFERENCE

Fayette County Bar Association Bench Bar Conference  
**Wednesday, October 18, 2023**  
 The Historic Summit Inn

### AGENDA

8:30 **Meet the Sponsors & Breakfast Buffet**

9:00 **How the Courts have Dramatically Re-Shaped College Sports**  
 John P. Gismondi – Gismondi & Associates  
 1.5 Substantive CLE Credit

10:30 Break

10:45 **Succession Planning and Other Issues Relating to Experienced Lawyers**  
 Thomas J. Farrell, Chief Disciplinary Counsel –  
 Disciplinary Board of the Supreme Court of PA  
 1.0 Ethics CLE Credit

11:45 **Fayette County Practice and Procedure Discussion**  
 President Judge Steve P. Leskinen  
 0.5 Substantive CLE Credit

12:30 Lunch Buffet

Fees to Attend

FCBA members - \$85

Non-members of the FCBA - \$135

Attorneys admitted to practice after January 1, 2018 - \$50

RSVP due Wednesday, October 4th  
 to Cindy at 724-437-7994 or [cindy@fcbar.org](mailto:cindy@fcbar.org)

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