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TO THE UPPER DARBY TOWNSHIP COUNCIL

LANDOWNER SUBSTANTIVE CHALLENGE TO UPPER DARBY TOWNSHIP
ZONING MAP UNDER SECTION UNDER Section 909.1 and 916.1 OF THE
PENNSYLVANIA MUNICIPALITIES PLANNING CODE

Benedetto Owen Avenue, LP files this substantive challenge to the Upper Darby Township Zoning Map, and requests that the Upper Darby Township Council adopt a resolution in the form attached, amending the Upper Darby Township Zoning Map, changing the zoning classification of the landowner/applicant’s property by including it within the Corridor Residence-Office Overlay District.

In support of this request, landowner/applicant asserts the following:

1. The landowner/applicant is the owner of the property at 359 Owen Avenue, Upper Darby Township, tax parcel # 16-09-01237-00, having acquired the property by deed of February 9, 2004.

2. That the property is currently zoned R-1.

3. That the property is located on the South side of Garrett Road at the intersection of Garrett Road and Owen Avenue.

4. That the location of the Property on Garrett Road, makes it unsuitable for use as a detached single family residence as required and permitted in the R-1 zoning district.

5. That the properties on the North side of Garrett Road, between Lansdowne Avenue and Windermere Avenue are Zone C-1 and are used for commercial uses.

6. That the properties on the South of Garrett Road, like the landowner/applicant’s property between Lansdowne and Windermere, are primarily used for commercial uses.
7. That Upper Darby Township recognized that circumstances such as this created a situation in which properties zoned for residential use were no longer suited to a residential use, and in response created the Corridor Residence Office Overlay District, where it stated, in Section 702-A:

The intent of the Corridor Residential-Office Overlay District is to permit by Special Exception the conversion to office use of residential dwellings which are located within single family residential zoning districts but which, because of exposure to heavily traveled streets, do not lend themselves exclusively to residential use as the highest and best use. The use regulations and development standards established in this district are intended to minimize the impact of office use upon the residential neighborhoods, thereby recognizing the legitimate property interests of owners of properties and preventing abandonment and associated potential deleterious effects on surrounding neighborhoods.

8. There are 8 properties located on the South side of Garrett Road, between Lansdowne and Windermere, including the landowner/applicants property. Seven of those properties, all save the landowner/applicant’s property, were rezoned and included in the Corridor Residence Office Overlay District. The landowner/applicant’s property, separately, singly and uniquely, continues to be zoned R-1 Residential.

9. As a result, the landowner/applicant’s property is an island, zoned R-1, surrounded on three sides by commercial uses and commercial zoning.

10. Landowner/applicant believes that his property, which shares the same location on a highly traveled commercial road, surrounded by commercial uses, as the other properties on Garrett Road between Lansdowne and Windermere, is improperly spot zoned as Residential.

10. As a result, the landowner/applicant believes that the zoning map, and particularly the zoning classification of landowner/applicant’s property as R-1 Residential is confiscatory and deprives him of the reasonable use of his property.

11. The current use of the property is as a duplex, which use is not in conformity with zoning district, and landowner/applicant was required to obtain a variance to allow this use.

12. Landowner/applicant proposes to convert the existing residential structure located on the property to a medical office, which is a permitted use in the Corridor Residential-Office Overlay District, generally in accordance with the plans submitted with this request.

13. Landowner/applicant requests that Upper Darby Township adopt the attached Ordinance, and amend its zoning map to include the landowner/applicants property as part of the Corridor Residential-Office Overlay District.
Landowner/Applicant requests that Upper Darby Township proceed in accordance Section 609.1 of the Pennsylvania Municipalities Planning Code, including the scheduling of a hearing to consider this application, and after hearing adopt the curative amendment attached.

Date: 7/6/20

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ORDINANCE 20-_____

The zoning map of Upper Darby Township is amended as follows:

The map of the Corridor Residence-Office Overlay District. Is modified to include the property at 359 Owen Avenue, tax parcel # 16-09-01237-00 as part of the Corridor Residence Overlay District.