

IN THE MATTER OF : BEFORE THE
Phillip Young Kim : HOWARD COUNTY
(formerly Young Joo Kim) : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
 : Case No. BA-21- 032C

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DECISION AND ORDER

On March 10, 2022, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure (“Rules”), heard the petition of **Phillip Young Kim**, Petitioner, for a Conditional Use for a for Barber Shop, Hair Salon, and Similar Personal Service Facilities for an acupuncture practice office under Section 131.0.N.7. of the Howard County Zoning Regulations. The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Rules.

The Petitioner was represented by John Shin, Esq. The following people testified in support of the petition:

1. Phillip Young Kim, Petitioner.
2. Susan Cernigliaro, 2426 Walking Janelle Way, Marriottsville, Maryland.
3. Troy Kim, a resident of the State of Texas.

The following people appeared and/or testified in opposition to the petition:

1. Rindhu Punnorath, 3060 Saint Johns Lane.
2. George E Wendal Jr., 3118 Saint Johns Lane.
3. Deependra Shrestha, 3126 Saint Johns Lane.
4. Salauddin Shaik and Shama Pasha, 3134 Saint Johns Lane.

5. Tanudeepa Choudhury and Rohan Nugur, 3148 Saint Johns Lane.
6. Jason Novak, 3172 Saint Johns Lane.
7. Patricia Restivo, 3013 Misty Wood Lane.

FINDINGS OF FACT

Based upon the preponderance of the evidence presented at the hearing and in the record, I find the following facts:

A. **Property.** The subject property, known as 3152 St. John's Lane (the "Property"), comprises exactly one (1) acre and is in the R-20 (Residential – Single) zoning district. The Property is the site of a single-family home at Tax Map 17, Grid 23, Parcel 145. The Property is accessed by, and the acreage includes, a long pipestem driveway with ingress/egress onto St. John's Lane. The Property is relatively flat and descends from an elevation of 420 feet along St. John's Lane to 410 feet in the rear of the Property.

B. **Vicinal properties.** To the north, south and west are R-20 zoned parcels used as residential single-family homes. To the east across St. John's Lane is a large parcel zoned RSI used by a religious facility.

C. **Roads.** Saint John's Lane has two travel lanes and approximately 25 feet of paving. The speed limit is 30 miles per hour. According to State Highway Administration data, no traffic data is available.

D. **Water and Sewer Service.** The Property is within the Planned Service Area for water and sewer.

E. **General Plan.** The Property is designated Established Community on the Designated Place Types Map of the PlanHoward 2030 General Plan. Saint John's Lane is a Minor Collector.

F. **Zoning History.** There is no record of prior zoning authority decisions.

G. **Current Use.** The Property is currently used for a single-family home.

H. **Proposal.** The Petitioner submitted a Revised Conditional Use Petition (with accompanying exhibits) (“Plan”) that proposes an acupuncture office in an existing single-family detached dwelling. The proposed acupuncture office would use 400 SF of the existing detached structure. No modification is proposed to the building. Additionally, the Petitioner proposes a parking area for 4 vehicles in the front of the home on the south boundary of the Property. The Plan shows the 4 parking spaces which directly abut the adjoining property to the south with no setback from the south boundary of the Property. The house includes a two-car garage for the occupants of the home. The business is proposed to operate approximately between 8:00 a.m. and 4:00 p.m. Monday-Friday, and 8:00 a.m. to 2:00 p.m. on Saturdays. In addition to Mr. Kim (owner-operator), one part-time employee is proposed. There would be up to two clients at a time on the Property. Clients are seen by appointment only. There would be about five (5) clients per day.

I. **Technical Staff Report.** The record includes a February 24, 2022, Technical Staff Report prepared by the Howard County Department of Planning and Zoning (“TSR”). Certain factual findings in the TSR will be adopted in this Decision and Order.

J. **Exhibits.** In addition to the documents submitted as part of the record, the following were entered as exhibits at the hearing:

- Opp. Ex. 1 – Google map showing shared border.
- Opp. Ex. 2 – Map showing address of Choudhury and Nugur at 3148 Saint Johns Lane.

K. Relevant Testimony¹.

1. Phillip Young Kim. Dr. Kim is the Petitioner and the owner of the Property. Dr. Kim is a doctor of acupuncture and oriental medicine and the owner of Choice One Oriental Medical Care. He seeks conditional use approval for an acupuncture office within his residential dwelling. Dr. Kim has many years of experience and education as a doctor and seeks to practice acupuncture to help people who cannot be helped by Western medicine. He testified as follows:

“I am proposing the use of 400 square feet, the living room within the existing residential dwelling for an acupuncture office. Patients will be treated by appointment only from 8 a.m. to 4 p.m. Monday to Friday and 8 a.m. to 2 p.m. on Saturdays. Appointment only policy is very important because it will eliminate the possibility of overcrowded parking outside of my house. The office will be closed on Sundays. The maximum number of staff and the clients in the office at one time will be four.”

Dr. Kim testified that he would pave the driveway area in front of his house, as it is currently unpaved. He stated that there is a parking area for 4 cars and that the garage of the home will allow for an additional 2 cars to park.

Dr. Kim testified that he is “open” to adding landscaping to buffer the parking area from the adjacent residences. He stated that he does not plan to have a sign advertising the business on the Property, and that the only indication of the location from Saint Johns Lane will be the street address sign. Dr. Kim testified that the length of an appointment is about one hour and that he will have no more than two (2)

¹ Dr. Kim, Susan Cernigliaro and Troy Kim testified about Dr. Kim’s passion for helping people and his desire to help those with health issues at a lower cost than many other practitioners. While I personally commend Dr. Kim for his passion and service, I cannot base my decision on whether the Petitioner is doing positive work for his clients. I am bound by and limited to consideration of the factors set forth in the Howard County Zoning Regulations and the laws and cases relating to the same.

patients at the Property at one time. He expects to have no more than 5 patients per day.

2. Susan Cernigliaro, 2426 Walking Janelle Way, Marriottsville, Maryland. Ms.

Cernigliaro is a patient of Dr. Kim's and has been for over a year. She testified that she has been to the Property and that she believes it is a better location for his practice than his previous office space. She testified in detail about how Dr. Kim cares for his patients and provides his services at affordable fees. Regarding the Petition, she stated:

“the most [cars] I've ever had at Dr. Kim's property is either my car or one other car. It's usually someone leaving shortly after I arrived, and I have never had anyone in his office more than me and one other person at any given time. When I've gone to see him in the timeframe that I have been visiting him, the neighbors, the neighbors coming and going are going to be more traffic than even if Dr. Kim were full up, which he's not. His neighbors will have more traffic coming and going than he will with his patients. So this issue about traffic and how much it's going to bring to his home based on his structure and what he's trying to do to help people and the numbers and he keeps it low. This is just not an issue.

So somebody made the point about his being on St Johns Lane and his home sitting back. It's actually a blessing that his home sits further back. It makes it easier to get into and exit egress and into the property and out of the property. The road is very busy.

People bought on this road and it's a main thoroughfare street to begin with. I don't think his having this small business in his home is going to do anything to change the trajectory of how that road works or how people come in, in and out of the home. It's less than a neighbor would be.

3. Troy Kim, a resident of the State of Texas. Mr. Kim is the Petitioner's son. Mr.

Kim testified that his father wants to serve the community in a positive way. He stated that his father “had a whole different career before this.” He graduated with a chemical engineering degree and “he's worked using that throughout his whole life

until he decided to become an acupuncturist. And the only reason was that he wanted to help others.”

4. Tanudeepa Choudhury, 3148 Saint Johns Ln. Ms. Choudhury and Rohan Nugur are next door neighbors to the Property where they have lived for the last 8 years. Ms. Choudhury referred to Opp. Exs. 1 and 2 to show their home in reference to the Property. Ms. Choudhury testified in detail that she believes the conditional use if approved will negatively affect their use and enjoyment of their property, their sense of privacy, and their security and safety (as well as the security and safety of their children who play in their backyards in full view of the parking area and the area which would be used for clients to enter and exit their cars and the personal service facility):

So two sides of our house has a shared border. [referring to the maps] All the dotted lines are shared with Mr. Kim's property. And as you can see, there's a whole lot of like it's his property is situated in between like five houses on all sides and it's very set all the way in. It abuts the whole depth of our property and we share two sides. So our major first concern is safety because strangers, people, nice people, I'm sure, but still strangers would be driving along our yard and all the way to the end of our backyard all day. And we find it a huge security risk as our little children and pets are playing outside all the time. It overall destroys our sense of security and comfort in our own backyard. *Secondly, it violates our privacy. [The Property], as you can see, is a flag lot. It is nestled behind our home and surrounded by five other houses. This entire yard of their entire front yard faces our backyard along with the side yard where there is a complete overlap.* Basically that means everyone that is coming into the clinic can see the entirety of our backyard and into the family room as well. . .

Also, this business is going to run six days a week. Also on Saturdays we have family activities, family gatherings, religious observances. On Fridays and Saturdays we will feel really like it is a violation of our privacy and we do not appreciate that on Saturdays as well. The next major reason would be increase in traffic. St John's Lane has evolved into a major traffic artery over the years. Those of us who live here have

learned to be extremely cautious. Entering and exiting our driveways. Visitors to the business will be unprepared for the speed and volume of oncoming cars. . .

People have driven into our driveway mistaking it for 3152's driveway and also into the 3140 driveway. We spoke to the neighbor who lives there also and he says he also saw this all the time. The house numbers are kind of out of order around these few houses. That's how it's been and we are kind of used to it. But new clients will definitely have trouble spotting the correct driveway in high speed traffic. . .

Above all, *we feel that it alters the character of this neighborhood.* It's not desirable to have businesses in a residential area. Already, this neighborhood has been turned into a semi commercial with the steady creep of businesses, up from 40. Over the past few years. There has been this a lot of businesses being set up here. . .

. . . *[t]he buffering of the parking areas with trees will be very difficult. It's like 150 foot long parking like a driveway.* No matter how many trees you put in there, it'll be difficult because our front yard is also not fenced along. We have a very thin wire fence running a little bit in the backyard, but nothing else is fenced off because we already always had a residential neighbor. We never had the necessary necessity to do any kind of fencing or big trees or anything.

(Emphasis supplied.)

Upon questioning by Mr. Shin as to whether Ms. Choudhury was aware that Mr.

Kim is willing to add landscaping, Ms. Choudhury explained:

This is not an area which receives a lot of sun. We have thought of putting in trees, but they wouldn't grow here because there is too many. You know, it's not a sunny spot where trees will grow. But I don't think that will do anything for our privacy concerns either.

She emphasized that in order to address the privacy and security concerns, trees would need to be planted along the entire length of the boundaries between the homes.

5. Rohan Nugur, 3148 Saint Johns Ln. Mr. Nugur testified that "St John's Lane has become very busy with lots of businesses. So and the church adds a lot of traffic.

It if anything, the church and the other businesses are the reason why they should not be more businesses on this street.” *He stated that he believes the petition if granted “violates privacy and creates hazards for children and people in the backyard of either other houses, including ours.”* He stated that the 3152 parking area is not “buffered or screened from our home” and that the ingress and egress to the Property is below the road level, hence it is not clearly visible and often mistaken for other driveways and also because the addresses are out of order.” (Emphasis supplied.)

6. Shama Pasha, 3134 Saint Johns Ln. Ms. Pasha reiterated the concerns stated by the owners of 3148 St. John’s Lane. She stated, “*Our yard has a very clear view from the parking lot and front yard of 3152 St Johns Lane property.*” She stated that “there is always a mistake made and people drive into our driveway. That is more possible now with the location being just next to us. And this really puts our children in a very unsafe situation. . . that is actually causing more security and safety concerns for us as *our yards are not screened or buffered in any way from his from his property.*” (Emphasis supplied.)

7. Jason Novak, 3172 Saint Johns Ln. Mr. Novak agreed with the other witnesses and also stated that he believes there are far too many residential parcels being used for businesses in the area.

8. Patricia Restivo, 3013 Misty Wood Lane. Ms. Restivo is a long-time resident of the area and testified that “there are half a dozen home based businesses within less than a half a mile of St John's Lane” which “adds a negative cumulative effect to our neighborhood signage, increased traffic . . . ” She testified that she does not believe the use is in harmony or compatible with the neighborhood.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

A. General Criteria for Conditional Uses (Section 131.0.B of the Howard County Zoning Regulations).

- 1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.**

While Howard County General Plan policies are not directly related to Conditional Use requests for Personal Services Facilities, the General Plan allows for business uses within residential areas but encourages compatibility with the surrounding residential area.

In this case, the immediately adjacent residential uses are not, and cannot be, screened from the driveway or parking area of the requested business use. So, while in many instances, a business use can co-exist with residential uses, compatibility and harmony are compromised when the business parking and driveway uses cannot be screened from the residential uses.

*While generally properly sited Personal Service Facilities within dwellings where the operator resides are considered compatible with residential areas, I find that the use in this location is **not compatible** with the immediately adjacent residential uses and thus the proposed use is not in harmony with the Howard County General Plan and PlanHoward 2030.*

- 2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.**

A 400 square-foot personal service facility is a low-intensity commercial use. The 1-acre parcel allows an owner operator and one additional employee which does not significantly increase the intensity of the use. The Petitioner states that there will only be two customers at a time at the Property, and that customers will be seen by appointment only.

The Functional Road Classification Map of Plan Howard 2030 designates Saint John's lane as a Minor Collector, which is an appropriate classification for the type and number of vehicles associated with the proposed use. Since there will only be two customers at a time, the effect of the use on traffic along Saint Johns Lane is negligible.

However, and as stated by several residents who live to the north and east of the Property, cars driven by people unfamiliar with the addresses in the immediate area will frequently mistakenly drive into the common driveway for 3126, 3134 and 3148 and then have to turn around and exit back onto Saint Johns Lane. If there are up to 5 cars per day, 6 days per week, visiting the proposed business, the number of people who make that mistake will be materially higher than if the people coming to the Property were primarily residents of the Property. And, while it is true that repeat customers would not likely repeat their mistake if they did drive into the wrong driveway the first time, there will still be a materially higher number of people overall who mistakenly turn into the 3126, 3134 and 3148 common drive. I believe this will contribute to the incompatibility of the proposed use with the surrounding residential uses and will heighten the safety and security concerns of the adjacent residents, resulting in a decrease in their ability to beneficially use and enjoy their properties for residential uses. I believe this effect will be more adverse at this location than at other locations in the zoning district due to the odd configuration of the lots and addresses of the properties in the immediate vicinity. So, while in other locations, the use may be deemed to be no more intense than many homes with several drivers living at the home, in this case there will be up to 35 cars per week visiting the Property which are driven by 35 different people who do not live at the Property.

*Therefore, the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use is **not appropriate** for the site.*

- 3. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will not be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning district.**

The proposed use is a personal services facility operated by one or two people and according to the Petition the applicant would be scheduling one customer at a time (but customers may overlap when coming and going for appointments). There is no evidence of atypical adverse effects such as noise, dust, fumes, odors, vibrations, increased lighting, hazards or other physical conditions that would be greater at the subject site than generally elsewhere.

Therefore, the impact of physical adverse effects will not be greater at the proposed site than it would generally be elsewhere in the R-20 zoning district.

- 4. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.**

The existing building complies with all setbacks/height requirements in the R-20 District and no additional structure is being proposed. The proposed use will be inside the building on the Property. However, neither the long driveway nor the proposed parking area can be adequately buffered or screened from any of the adjacent residential properties, and the parking areas as well as the comings and goings of both vehicles into the Property and clients into the structure will be in full view of all of the adjacent residential properties. Likewise, the adjacent residential properties (including children's play areas) are in full view of the driveway and parking areas of

the Property. Neighbors testified that this would create a lack of privacy and security when they are using their backyards and even when inside their homes leading to a reduction in those families' beneficial use and enjoyment of their properties. While buffering and screening of such uses can be a condition placed upon a conditional use such as this, I find that the driveway and parking areas cannot be adequately screened from the residential uses given the physical layout of the Property vis-à-vis the adjoining residential lots.

Specifically:

- a. The Property is situated in the middle of a grouping of residential lots and directly adjoins 6 residential lots. This is highly unusual, even for pipestem lots in infill areas.
- b. The Plan shows 4 proposed parking spaces which directly abut the adjoining property (3140 Saint Johns Lane) with no setback from the south boundary of the Property and 3140 Saint Johns Lane. Because there is no setback, the proposed parking area cannot be screened or buffered from 3140 Saint Johns Lane except with a fence on the property line which would need to span virtually the entire length of the 3152 driveway.
- c. The proposed parking area is in full view of the backyard of 3126 Saint Johns Lane; the front yard, home and backyard of 3134 Saint Johns Lane; and the home and backyard of 3148 Saint Johns Lane. The only way to adequately screen those residential homes and yards from the proposed business parking area would be to plant dense foliage or install privacy fencing along the north side of the entire length of the Property's driveway

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that abuts 3148 Saint Johns Lane; the entire front boundary of the Property and 3148 Saint Johns Lane; and a portion of the boundary between the Property and 3134 Saint Johns Lane.

- d. I find that the above screening, while not physically impossible, would itself hinder or discourage the development and/or use of adjacent land and structures more so at this location than elsewhere in the same zoning district or other similar zoning district, due to the unusual layout of the Property and the adjoining lots. Installing such screening would disrupt the harmony and compatibility of the residential area by creating a fortress-like condition visible from all of the adjoining and adjacent homes and from Saint Johns Lane.
- e. Regardless of the ability to screen the parking area from the adjoining residential uses, the proposed parking area *is not proposed to be and cannot be screened from Saint Johns Lane.*
- f. The driveway is located on a pipestem that is 269.14 feet in length from Saint Johns Lane. The total area of the pipestem is approximately 13,000 SF which is almost one third of the total area of the Property. This is relevant because of the lot size limitations for this type of use in the R-20 zoning district. Section 131.0.N.7.b states, “[o]n lots less than one acre in size, the use shall be limited to one resident operator, with no other employees.” So, while the Property at issue meets the letter of the regulation because it is exactly one acre and thus would qualify the

business for both an owner operator and one other employee, the fact that the long driveway comprises one third of the Property means that the non-driveway portion of the Property, including the parking area, is located on a relatively smaller and more restricted area than a one acre lot would typically allow (which results in the parking area being closer to adjoining and adjacent residential lots) and thus the importance of screening of the parking area is heightened and is greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning district.

*For all of the above reasons, I find that the location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use **will hinder or discourage the development and/or use of adjacent land and structures** more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.*

- 5. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

A Barber Shop, Hair Salon and Similar Personal Service Facility is required to have a minimum of five parking spaces per 1,000 square-feet. Thus, two (2) parking spaces are required for a 400 square-foot owner operated personal facility. A single-family dwelling is required to have two (2) parking spaces. A total of four (4) parking spaces at the front of the property are proposed. Additionally, two (2) parking spaces in the garage of the Property already exist. Access to the parking area is through a long driveway along the pipestem area of the Property. No

loading area is proposed, and any refuse collection would be via residential trash receptacles and collected by the same collection companies that collect residential trash.

Regarding the screening of parking areas and driveways, they are not screened from either Saint Johns Lane or the adjacent properties. See my comments in A.4.

*The number of parking spaces proposed is appropriate to serve the particular use. However, the parking areas and driveway are **not appropriately located and buffered or screened** from public roads and residential uses to minimize adverse impacts on adjacent properties.*

- 6. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.**

According to the Staff Report, the existing access point on Saint John's Lane has sight distances to the north and south that exceed 300 feet. The Staff Report further states, "[a]ccording to the American Association of State Highway and Transportation Official (AASHTO) guidelines, based on an estimated stopping sight distance of 200 feet for a car going 30 miles per hour, the existing access point on Saint John's Lane appears to provide safe access with adequate stopping sight distance. The proposed site does not have driveway access that is shared with other residential properties.

But, see my comments in A.2 above.

*Thus, I find that this criterion has **not** been met.*

7. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

According to the Staff Report, the closest environmentally sensitive area is a stream located over “300 feet west of the proposed personal service establishment, which exceeds the stream buffer requirement in the Subdivision and Land Development Regulations.”

Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

8. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

The closest historic site is over 4,000 feet to the northwest and is screened by existing vegetation and residences.

Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

B. Evaluation of petition according to Section 131.0.N.7 (*Specific Criteria for Barber Shop, Hair Salon and Similar Personal Service Facilities*):

1. The use shall be located within a residence and conducted by the person or persons residing in said residence.

The proposed facility is within a single-family dwelling used as a residence and the service would be conducted by a person residing in the residence.

Thus, I find that this criterion has been met.

2. **On lots less than one acre in size, the use shall be limited to one resident operator, with no other employees. On lots of one acre or larger, one additional operator or other employee may be permitted.**

The owner and one employee are the only proposed workers.

Thus, I find that this criterion has been met.

3. **The road access to the use shall not be from a local road internal to a cluster subdivision and the driveway access to the use shall not be a shared driveway.**

Access to the property is from Saint John's Lane which is a Minor collector and therefore an appropriate road classification for proposed use. The Property does not share a driveway with another property

Thus, I find that this criterion has been met.

4. **On ALPP purchased or dedicated easement property, the following additional criteria are required:**
 - (1) **The use shall not interfere with farming operations or limit future farming production.**
 - (2) **The use shall operate within the principal dwelling unit. The dwelling and the parking associated with the proposed new facility shall count towards the cumulative use cap of 2% of the easement.**

The property is not subject to an ALPP easement.

Thus, these criteria do not apply.

ORDER

Based upon the foregoing, it is this 14th day of April 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

The petition of Phillip Young Kim, Petitioner, for a Conditional Use for a for Barber Shop, Hair Salon, and Similar Personal Service Facilities for an acupuncture practice office under Section 131.0.N.7. of the Howard County Zoning Regulations, is hereby **DENIED**.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Katherine L. Taylor

Date Mailed: _____

NOTICE: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.