

Pursuant to a city ordinance, a particular area was zoned for single-family residences. The ordinance allowed a licensed professional, upon acquiring a permit, to maintain an office within one of the residences for use in meeting with clients and other parties in connection with the pursuit of the individual's profession. A licensed psychiatrist purchased a residence within the area zoned for single-family residences. The psychiatrist properly applied for a permit from the zoning commission and established that she met the conditions for granting the permit, but she cannot prove that the denial of the permit would result in an unnecessary hardship to her.

Can the zoning commission properly deny the psychiatrist a permit?

- A. No, because she has a vested right in maintaining a home office in her residence.
- B. No, because she properly applied for and established her entitlement to the permit.
- C. Yes, because she cannot establish that the denial of the permit would result in an unnecessary hardship to her.
- D. Yes, because the granting of a permit is a matter within the discretion of the zoning commission.

### Explanation:

A **zoning ordinance** is a governmental regulation regarding land use that, for example, limits the use of a particular area to single-family residences. The ordinance may include a **special exception** permitting a **particular future use** of property if a special-use permit is obtained. If a **property owner complies** with the procedures for obtaining a special-use permit and **establishes entitlement** to that permit (as the psychiatrist did here), the responsible government agency **must issue the permit**. Therefore, the zoning commission cannot properly deny the psychiatrist a permit.\*

If the property owner is denied a permit, procedural due process typically gives the owner the right to appeal the denial to a reviewing entity (eg, a board of zoning appeals).

**(Choice A)** A vested right regarding a **nonconforming use** of property exists when, at the time a zoning ordinance takes effect, the property owner is using the property in a manner that violates the ordinance. Here, the psychiatrist did not have a home office when the ordinance was enacted, so she has no vested right in this use.

**(Choice C)** Proof of unnecessary hardship is not needed to obtain a special-use permit. However, such proof is required to obtain a **variance**. Under a variance, a local government (often a zoning board) gives a landowner permission to use his/her property in a manner that is not permitted under the zoning ordinance—eg, the use falls outside of a special exception.

**(Choice D)** The granting of a special-use permit is not subject to the discretion of the zoning commission when, as here, the property owner has established that the conditions for granting the permit have been met.

### Educational objective:

A property owner must be granted a special-use permit if the property owner has complied with the procedures for obtaining the permit and has established entitlement to the permit.

### References

83 Am. Jur. 2d Zoning and Planning § 814 (2020) (discussing special exceptions or uses).