



**Division of Development Administration and Review**

City of Pittsburgh, Department of City Planning

200 Ross Street, Third Floor

Pittsburgh, Pennsylvania 15219

**ZONING BOARD OF ADJUSTMENT**

**Date of Hearing:** October 15, 2015  
**Date of Decision:** January 14, 2016

**Zone Case:** 218 of 2015  
**Address:** 169 40<sup>th</sup> Street  
**Zoning District:** UI  
**Ward:** 9  
**Neighborhood:** Central Lawrenceville

**Owner:** Desmone Architect  
**Applicant:** Amrapur Hotels-Pittsburgh LP  
**Request:** Renovation of former technical/trade school building into hotel with off-site parking.

<b>Special Exception:</b>	914.07.G.2(a)	Off-site parking is a Special Exception
<b>Special Exception:</b>	916.04.C 916.02.a.5(b) 916.09	Special Exception for waiver of residential compatibility standards: Minimum 15ft street side yard setback required and 6ft requested
<b>Special Exception:</b>	916.04.B 916.09	Special Exception for waiver of residential compatibility standards: Dumpster shall be located a minimum 30ft from any residential property
<b>Variance:</b>	904.07.C.4	Maximum height 60 ft., 78 ft. requested

**Appearances:**

**Applicant:** Josh Aderholt, Eric Booth (Architect), Cynthia Jampole (Transportation Engineer), Alan T. Shuckrow (Attorney)

**In-Favor:** Helen Ewing, Ed Nusser

**Opposed:** Joy Snyder, Samantha Litvak, Natalia Coccia, James A. Fici, Megan Worbs, Richard Hoffmaster

## Findings of Fact:

1. The Subject Property is located at 169 40<sup>th</sup> Street a UI (Urban Industrial) District in the Central Lawrenceville neighborhood. The Subject Property has street frontage on all four sides, 40<sup>th</sup> Street, Foster Street, Almond Way and Eden Way.

2. The Subject Property is the site of the former Vo-Tech High School campus, which included four structures: a 5-story/66-foot building, constructed in 1937, which borders 40<sup>th</sup> Street ("40<sup>th</sup> Street Building"); a 3-story/40-foot building, constructed in 1908, which borders Eden Way ("Eden Way Building"); an interior building originally used as the school's auditorium; and a steel garage auto shop on Almond Way (both the "Secondary Buildings").

3. The Vo-Tech High School was closed in 2006 and the buildings have been vacant and deteriorating since that time.

4. Across Almond Way from the Subject Property are a number of 2 and 3-story attached single-family residences in a R1A-VH (Residential, Single-Unit Attached, Very-High Density) District. Many of the houses are built to the Almond Way property line.

5. The Applicant proposes to extensively renovate the interiors of the 40<sup>th</sup> Street and Eden Way Buildings to convert them for use as a hotel with 107 guest rooms. It intends to maintain the historic nature of the exterior of the buildings, to the extent possible.

6. The Applicant proposes to extend the height of the 66-foot 40<sup>th</sup> Street Building to 78 feet, to allow for the proposed rooftop restaurant. The portion of the 40<sup>th</sup> Street Building that would be extended is located at the intersection of 40<sup>th</sup> and Eden Way. The Applicant also proposes to include a rooftop garden on the roof of the Eden Way Building, where herbs and produce would be grown for the proposed restaurants. Another restaurant would be located on the ground floor of the hotel.

7. The Applicant intends to demolish Secondary Buildings to create on-site parking and loading areas.

8. The front entrance to the Hotel is to be located within the interior of the site, facing Almond Way.

9. Vehicular access to the site is to be limited to 40<sup>th</sup> Street.

10. The Applicant presented two alternative proposals for parking for both the proposed hotel and restaurant: 1) a combination of on-site valet parking spaces and parking spaces located in an off-site lot ("Option A"); and 2) on-site valet parking spaces, using mechanical parking structures ("Option B").

11. Following the hearing, the Applicant submitted additional evidence by affidavit which included revisions to the number of parking spaces available for the parking options originally proposed.

12. For the revised Plan A, the Applicant proposes 40 on-site valet parking spaces and an additional 96 off-site spaces in a lot located at an industrial site on 48<sup>th</sup> Street, approximately 0.6 mile from the Subject Property. The Applicant submitted a lease agreement for the proposed off-site lot property. Only valet employees would have access to the off-site lot. The route to the off-site valet lot was revised to eliminate direct exit onto Almond Way.

13. For the revised Plan B, , the Applicant proposes to provide 99 on-site spaces by making use of two mechanical parking stackers, one located along Almond Way, across from the Almond Way

residences and one located adjacent to 40<sup>th</sup> Street, across the driveway from the 40<sup>th</sup> Street building. Both stackers would have 4 levels and would be 32 feet high. The Applicant proposes to screen the stackers with 35-foot screening walls.

14. The Applicant submitted a sun study to depict how the parking stackers would affect shading of the residences across Almond Way, which demonstrated that the impact of the screened parking structures would be limited.

15. All operations of drop-off, loading, and unloading would take place on the Subject Property. Five spaces, for hotel guest loading and unloading, are to be located adjacent to the hotel entrance.

16. As originally proposed, vehicles were to access the site from 40<sup>th</sup> Street and exit onto Almond Way. At the hearing, however, a number of residents of the immediate vicinity appeared to oppose the proposed development, particularly citing concerns related to the potential impact of the hotel's traffic on Almond Way and Eden Way.

17. The Objectors also cited concerns regarding the potential impact of the proposed hotel and restaurant on on-street parking, noise, and traffic.

18. Following the hearing, in response to the objectors' concerns, the Applicant amended the proposed site-plan to remove the egress from Almond Way and to provide all vehicular access to the hotel on the 40<sup>th</sup> Street frontage of the Subject Property.

19. Consistent with the site plan revisions and the revisions to both parking options, the Applicant submitted a revised traffic study, which concluded that the proposed development would not create detrimental parking or traffic impacts.

20. Based on the removal of the proposed Almond Way egress and restriction of vehicular access to 40<sup>th</sup> Street, a number of objectors withdrew their objections to the plan generally. Some of the objectors remain opposed to the proposed parking Option A.

21. Lawrenceville United and the Lawrenceville Corporation submitted a joint letter in general support of the project, with some concerns expressed mirroring those of the immediate neighbors.

## **Conclusions of Law:**

### **Relevant Provisions of the Zoning Code and Controlling Legal Standards**

1. Pursuant to Section 911.02, hotel/motel (general – 40 or more guest rooms) and restaurant (general) are permitted uses in UI Districts.

2. During the planning department review, it was determined that the combined use requires a total of 82 spaces. With the reduction permitted where bicycle parking is provided, pursuant to Code Section 914.05.E, 70 on-site parking spaces are required.

3. Chapter 922 of the Code authorizes the Board to grant special exception approval of a proposed use, if it determines, based on the evidence presented, that the applicant has demonstrated compliance with the specific requirements of the proposed use as set forth in Code Sections 911.04 and 911.04.A.43. The Board is also to consider the general requirements for special exceptions, as set forth in Code Section 922.07.D.1, including whether the proposed use would create detrimental visual impacts; transportation impacts on vehicular or pedestrian circulation or traffic; operational impacts;

health, safety and welfare impacts (including noise, emissions and vibrations); impact on property values; and impact on future and potential development in the vicinity of the property.

4. Under Pennsylvania law, a special exception is a form of a permitted use. By designating a use as a “special exception,” the governing body has determined that the use is one that is appropriate in the zoning district and is thus presumptively consistent with the promotion of health, safety and general welfare. *Bray v. Zoning Board of Adjustment*, 410 A.2d 909 (Pa. Commw. Ct. 1980); *In re Brickstone Realty Corp.*, 789 A.2d 333 (Pa. Commw. 2001).

5. Pursuant to Section 904.07.C.3, in UI Districts, height is limited to 60 feet and is not to exceed 4 stories and under Section 912.04.E, the height of accessory structures in nonresidential district is not to exceed 20 feet.

6. Pursuant to Section 904.07.C.4, the Board may allow additional height in UI Districts as a special exception where the site is not within 200 feet of property that is zoned residential and if the Board determines that the additional height and density will not create detrimental impacts on the residential property resulting from traffic or would impact views on the residential properties,

7. Under Section 914.07.G.2, the Board may allow off-site parking as a special exception, where the off-site parking is located no more than 1,000 feet from the primary entrance of the use served; is in the same or a less restrictive zoning district than that of the use served; and if the off-site parking area is not under the same ownership as the primary use, a recorded off-site parking agreement. The Board may waive the 1,000-foot requirement if a van or shuttle service is offered.

8. Valet parking is permitted as an Administrator’s Exception if an automobile can be retrieved with the maximum movement of 2 cars and if the valet parking will not interfere with the public use of streets or imperil the public safety.

9. Pursuant to Section 916.09, the Board may waive Chapter 916 residential compatibility standards as a special exception.

10. Section 922.09.E sets forth the general conditions the Board is to consider with respect to variances. The Pennsylvania Supreme Court has summarized the criteria for determining whether to grant a variance as: 1) unique circumstances or conditions of a property would result in an unnecessary hardship; 2) no adverse effect on the public welfare; and that 3) variance proposed is the minimum variance that would afford relief with the least modification possible. *Marshall v. City of Philadelphia and Zoning Bd. of Adj.*, 97 A.3d 323, 329 (Pa. 2014); see also *Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh*, 721 A.2d 43 (Pa. 1998), citing *Allegheny West Civic Council v. Zoning Bd. of Adj. of the City of Pittsburgh*, 689 A.2d 225 (Pa. 1997).

11. A less restrictive standard is appropriate when considering requests for dimensional variances, which require only for a reasonable adjustment of the zoning regulations to accommodate a use that is permitted, though the applicant still bears the burden of presenting evidence demonstrating that a proposed variance is warranted under the applicable standards. See *Hertzberg*, 721 A.2d at 47-48.

### **Special Exception for Parking Option A**

12. The Applicant’s parking Option A involves both on-site and off-site valet parking to meet the 70 parking space requirement. After revising its plan, the Applicant proposes 40 on-site valet parking spaces and an additional 96 off-site spaces in a lot located at on 48<sup>th</sup> Street, approximately 0.6 mile (more than 3,000 feet) from the Subject Property. The Applicant presented sufficient evidence to demonstrate compliance with both the off-site parking and valet parking requirements for this

arrangement. To address the concerns of neighboring residents regarding valet access to the off-site lot, the Applicant revised access to the site to eliminate Almond Way egress and to limit vehicular access to 40<sup>th</sup> Street. The Applicant's traffic study sufficiently supports the assertion that the parking arrangement will not have a significant impact on the area. Because the Applicant intends the off-site lot to be solely for valet purposes, waiver of the 1,000 foot requirement is appropriate.

13. The Board concludes that approval of Parking Option A is appropriate, subject to the conditions that all vehicular access to the site is limited to 40<sup>th</sup> Street and that the parking agreement for the 96 off-site spaces is recorded.

### **Approval of Parking Option B**

14. The Applicant's parking Option B involves 99 on-site valet parking spaces provided with two 4-level mechanical stacking structures at a height of 32 feet. Because the stackers and the 35-foot screening proposed would exceed the height limitation for accessory structures and would be proximate to the residential area, they require both a height variance and a waiver of the residential compatibility standards. A variance from the provision against moving only two vehicles for access is also required for cars parked on the upper levels of the structures.

15. The Board concludes that, as an alternative, the mechanical parking stackers would achieve more than the required number of parking spaces on-site and that the masonry wall, screening walls and landscaping proposed would limit their visibility to the residential area. The height would not exceed the height of the buildings that will remain on the site and will not have a significant impact on shadows cast on the residential properties. The access to vehicles would be on-site and would make use of the efficiencies of the parking structures and thus a variance from the 2 vehicle requirement is also appropriate.

16. The Board thus concludes that approval of parking Option B is appropriate, if Option A is not viable.

17. The Board recognizes that the Applicant seeks flexibility with respect to how the required parking is provided and thus approves both options here. If, however, the Applicant proceeds with one option and it later becomes necessary provide the required parking by the alternative or other means, the revised parking plan must be submitted for the Board's review and consideration,

18. Further, because parking will be intended to serve both the hotel and restaurant uses, the Applicant shall also submit, for incorporation into this decision, an operational plan that addresses how parking for the combined uses will be provided to both hotel guests and restaurant patrons and shall include, *inter alia*, any proposed signage intended to discourage parking in the residential area and how the on-site valet system will be managed to accommodate both uses.

### **Height Variance and Waiver of Residential Compatibility Standards for the 40<sup>th</sup> Street Building**

19. The Applicant seeks to extend the height of the existing 66-foot 40<sup>th</sup> Street Building to accommodate the proposed restaurant. The area for the proposed extension is approximately 130 feet from the residential area. The extension would consist of the indoor restaurant space and is designed to be consistent with the historic nature of the building. The Applicant also submitted substantial evidence to demonstrate that, because of the existing nonconforming height of the building, the impact of the additional extension would not have any significant visual impact on the property or the surrounding area. The Board also concludes that the Applicant has also provide an adequate plan for parking and traffic management for the proposed restaurant use, in addition to the hotel use, subject to the operational plan to be incorporated into this decision.

**Decision:** The Board approves the Applicant's request for a special exception to allow off-site parking as part of Parking Option A; approves a special exception for waiver of the residential compatibility standards should the Applicant opt to proceed with Parking Option B; and approves a height variances to allow the extension of the 40th Street Building for the proposed restaurant. These approvals are subject to the condition that the Applicant provide a recordable lease agreement for the off-site parking area; that any changes in the parking plan shall be subject to the Board's review; and that the Applicant provide an operational plan for parking, as described in Conclusion of Law No. 18.

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**Alice B. Mitinger, *Chair***

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**LaShawn Burton-Faulk**

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**John J. Richardson**