



Division of Zoning & Development Review
City of Pittsburgh, Department of City Planning
200 Ross Street, Third Floor
Pittsburgh, Pennsylvania 15219

June 15, 2017

77 of 2017

Dave Breingan
4839 Butler St
Pittsburgh, PA 15201

Dear Appellant and/or Hearing Participant:

Enclosed is your copy of the decision by the Zoning Board of Adjustment. **Note: This decision is not a zoning voucher or a permit.** Both a zoning voucher and a permit from the Department of Permits, Licenses and Inspections must be obtained prior to the start of work or occupancy.

If the decision has been approved, the applicant must complete the following steps before a zoning voucher can be issued:

1. If the decision has been **approved with conditions**, the appropriate documentation to satisfy those conditions must be submitted to Zoning staff for review.
2. **All other applicable Zoning Code requirements must be completed** (such as Site Plan Review, Planning Commission or environmental reviews).

Once the above are satisfied, contact Svetlana Ipatova, Zoning Case Review Specialist, at 412-255-2214 or email the Zoning staff assigned to the project review to schedule an appointment for the final staff review process.

This decision expires one year after the decision date as shown on the enclosed copy. A permit should be obtained and substantial construction or occupancy should begin within one year of approval. If additional time is needed, the applicant may request a one-year extension by writing the Board within the one-year time period. Include the zone case number and the address of the subject property with a brief explanation, and send it to: Zoning Board of Adjustment, Department of City Planning, 200 Ross Street 3rd Floor, Pittsburgh, PA 15219.

If you or any affected person are dissatisfied with the Board's decision, an appeal may be made to the Court of Common Pleas of Allegheny County within thirty (30) calendar days of the above mailing date. The appeal process is conducted at the Prothonotary's Office located on the main floor of the City County Building. A transcript of this hearing will be required and can be obtained by calling our reporting agency, Network Deposition Services, at (412) 281-7908. Please have the zone case number and the date of the hearing available. We encourage you to consult an attorney if you choose to appeal.



ZONING BOARD OF ADJUSTMENT

Date of Hearing: March 9, 2017
Date of Decision: June 15, 2017

Zone Case: 77 of 2017
Address: 4520 Penn Avenue
Zoning Districts: LNC
Ward: 9
Neighborhood: Bloomfield

Owner: PENAV INC
Applicant: JMAC Architects

Request: New hotel (general) with integral parking, governor's drive, and rear patio.

Special Exception	911.04.A.34	Use as hotel (general) is a Special Exception in LNC District
Special Exception	916.09	Waiver of Residential Compatibility Standards
Variance	916.02.B	Maximum height 40ft/3stories permitted and 44ft/4 stories is requested
Variance	904.02.C	Maximum FAR 2:1 permitted and 4:1 requested

Appearances:

Applicant: Stuart Gaul (Attorney), Michael Kratsas, Robert Smith

In-Favor: Michael Andrewsh, Conor Magee, Pec Sciuillo, Gloria LeDonne, Perry Ladasky

Observing: Dave Breingan, Christina Howell, Jon Vogel

Findings of Fact:

1. The 24,730 sf Subject Property is located at 4520 Penn Avenue in an LNC (Local Neighborhood Commercial) District in the Bloomfield neighborhood and proximate to Garfield and Lawrenceville neighborhoods.

2. Comrie Way is located at the rear of the Subject Property and separates the site from properties on Carroll Street, in an R1A-VH (Residential, Single Unit, Attached, Very High Density) District.
3. A two-story office building and a surface parking lot are located on the Subject Property.
4. The Subject Property slopes significantly down from the front property line to the rear on Comrie Way.
5. The Subject Property is proximate to the 9-story Children's Hospital of Pittsburgh and Allegheny Cemetery is located across Penn Avenue from the site. Residential, commercial and retail uses are located within the immediate vicinity of the site.
6. The Applicant proposes to build a 94,755 sf, four-story/44' hotel with a maximum of 115 rooms on the Subject Property.
7. The proposed Floor to Area Ratio (FAR) for the hotel would be 4:1.
8. The hotel would not include significant event space, but would contain a small restaurant, with limited seating.
9. Guest access to the hotel would be by means of a governor's drive-way, with ingress and egress on Penn Avenue.
10. The Applicant proposes to provide 61 on-site parking spaces, located on the lower level of the building, with access only from Penn Avenue, by means of a ramp from the governor's drive. The ramp would be screened from Penn Avenue. No access to the parking area would be provided from Comrie Way.
11. The Applicant submitted a traffic impact study, prepared by David E. Wooster & Associates, Inc., which concluded that the proposed 61 parking spaces would be sufficient for the 115-room hotel and that the hotel would have a minimal impact on traffic in the surrounding neighborhood. (Ex. A-8).
12. The Applicant submitted a Sun/Shade Study intended to demonstrate that the height proposed for the hotel would not have a significant impact on the circulation of light to adjacent residential properties. (Ex. A-6; Ex. A-9).
13. The Applicant provided credible testimony that any reduction in the size of the hotel would prevent that use from being financially viable on that site because it would limit the number and size of rooms.
14. The Applicant stated that significant changes were made to the proposed development in response to the concerns of the community.
15. Representatives of the Bloomfield Citizens Council and the Bloomfield Business Network testified in support of the proposed development, and submitted a letter detailing proposed conditions of approval, related to construction management and community relations.
16. The Bloomfield Development Corporation and Lawrenceville United submitted a letter to the Board, documenting their support for the development, based on the Applicant's acceptance of certain conditions related to community engagement, construction management, building design, hotel operations, and pedestrian infrastructure.

17. One neighbor of the Subject Property appeared at the hearing to oppose the Applicant's proposal, citing concerns related to the size and location of the proposed hotel.

Conclusions of Law:

1. The Applicant seeks special exception pursuant to Code Section 911.04.A.34, to permit the operation of a Hotel (general) in the LNC District and a waiver from the Code's Residential Compatibility Standards, pursuant to Section 916.09. The Applicant also seeks variances from Sections 916.02.B and 904.02.C, the Code's maximum height and FAR limitations.

2. Chapter 922 of the Code authorizes the Board to grant special exception approval if it determines, based on the evidence presented, that the applicant has demonstrated compliance with the specific requirements of the proposed use. 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.

3. Code Section 911.A.34(a) sets forth specific requirements for the Hotel/motel (general) use in UNC, LNC and NDI Districts, including: 1) design of the structure consistent with the development standards for commercial uses in the UNC Districts; 2) the provision of parking to meet parking needs for both normal and event use and to discourage parking on nearby residential streets; 3) consideration of the potential detrimental impacts on the surrounding properties given probable traffic generation, the physical relationship of the proposed use and structure to surrounding uses and structures, noise and light, and any accessory uses, including restaurants and meeting facilities; and 4) a recommendation from the Planning Director on the planning aspects of the proposed use and structures.

4. Code Section 916.09 states that the Board may approve a special exception waiving the requirements of the Residential Compatibility Standards, subject to the requirements that 1) the waiver will not cause detrimental offsite impacts; 2) the Board may impose alternative conditions such that the development will comply with the intent of standards; 3) building heights may only be waived where there is a taller intervening structure; and 4) setbacks for accessory uses shall only be waived if additional screening is provided.

5. Under Section 922.09 of the Code, the Board may grant a dimensional variance where it finds that 1) unique circumstances or conditions of a property would result in an unnecessary hardship; 2) that the proposed variance would have no adverse effect on the public welfare; and that 3) the proposed variance is the minimum variance that would afford relief with the least modification possible. See also *Marshall v. City of Philadelphia and Zoning Bd. of Adj.*, 97 A.3d 323, 329 (Pa. 2014); *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).

6. In determining whether unnecessary hardship has been established with regard to dimensional variances, the Board may consider multiple factors, including the economic detriment to the applicant if the variance is denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.

7. In *Hertzberg*, the Court explained that 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. *Hertzberg*, 721 A.2d at 47-48.

8. With respect to the special exception for the proposed hotel use, the Board concludes that the Applicant has demonstrated compliance with the criteria set forth in the Code, and approval of the requested special exception will not cause negative impacts on the surrounding neighborhood.

9. With respect to the requested dimensional variances, the Applicant demonstrated the topography of the site is a unique condition that precludes strict compliance with the Code's dimensional standards.

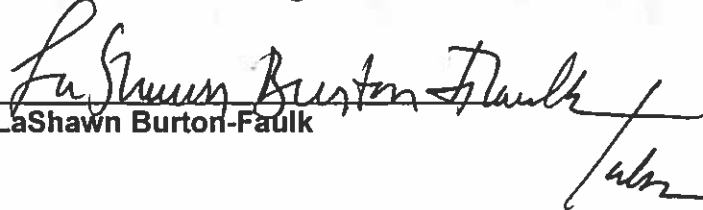
10. The Board concludes that the requested 4' height variance and a variance to allow a 4:1 are the minimum necessary to provide relief.

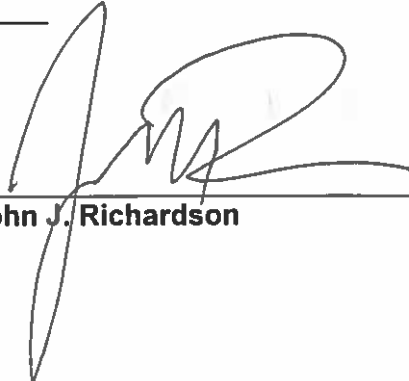
11. In the context of the Subject Property's location proximate to the 9-story Children's Hospital building and across from Allegheny Cemetery, granting the requested height and FAR variance would not cause significant negative impacts on the surrounding neighborhood.

12. Consistent with the evidence and testimony presented and the applicable legal standards governing dimensional variances and special exceptions, the Board concludes that approval of the Applicant's requests is appropriate.

Decision: The Applicant's request for special exceptions pursuant to Sections 911.04.A.34 and 916.09 and dimensional variances from Code Section 903.03.D.s is hereby APPROVED, subject to: 1) the conditions set forth in the March 9, 2017 letter submitted by the Bloomfield Citizens Council; 2) the conditions set forth in the March 29, 2017 letter of Bloomfield Development Corporation, including conditions relating to construction, design, parking and landscaping; and 3) any additional approvals required for signage or other design features.


Alice B. Mitmger, Chair


LaShawn Burton-Faulk


John J. Richardson