



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

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November 25, 2013

254 of 2013

Becky Thatcher  
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. This is not a permit. If your decision has been approved, you must return to the Zoning office and pick up your paper work so that your permit may be processed. Please note: if your decision has been approved **with conditions which require an amendment to your site plan**, you must also provide us with a new and updated site plan or survey with those conditions notated on the plan. Please contact Svetlana Ipatova, Zoning Case Review Specialist, at (412) 255-2214 if you have any questions regarding your Zoning Board decision or the final staff review process and to schedule an appointment.

This decision expires one year after the decision date as shown on the enclosed copy. A permit should be obtained forthwith, and substantial construction or occupancy should begin within one year of approval. If additional time is needed, you 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 your hearing will be required and can be obtained by calling our reporting agency, Network Deposition Services, at (412) 281-7908. Please have your zone case number and the date of your hearing available. We encourage you to consult an attorney if you choose to appeal.

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**ZONING BOARD OF ADJUSTMENT**

**Date of Hearing:** October 17, 2013  
**Date of Decision:** November 21, 2013

**Zone Case:** 254 of 2013  
**Address:** 260 42<sup>nd</sup> St  
**Zoning District:** R1A-H  
**Ward:** 9  
**Neighborhood:** Central Lawrenceville

**Owner:** Botero Development  
**Applicant:** Cobble House Holdings LP

**Request:** Construct of 1,440 sq ft addition to an existing two-story structure for use as 8 dwelling units

<b>Special Exception</b>	921.02.A.4	Change from one nonconforming use to another is a Special Exception
<b>Variance</b>	921.02.A.1.(a)(1)	Enlargement of nonconforming use shall not exceed 15%, 38% requested
<b>Variance</b>	916.02.A.1	Minimum 15 ft front setback required and 0 requested
<b>Variance</b>	903.03.D.2	Minimum 15 ft side yard setback required and 0 requested
<b>Variance</b>	912.04.A	Accessory structures shall comply with front setbacks
<b>Variance</b>	912.04.C	Accessory structures shall comply with side setbacks

**Appearances:**

**Applicant:** Brian Mendelssohn  
**In favor:** Mathew Diorson (architect)  
Becky Thatcher  
**Observing:** N/A

Opposed: Ray Czachowski

### Findings of Fact:

1. The Subject Property is located at 260 42<sup>nd</sup> Street in an R1A-H (Single-Unit Attached Residential, High-Density) zoning district in the Central Lawrenceville neighborhood.
2. Applicant is requesting the construction of a 1,440 sq ft addition to an existing two-story structure for use as eight dwelling units.
3. Applicant testified that the Subject property was used by the prior owner as a multi-family property for at least eight years, but had not been in good condition or approved by the City.
4. Applicant testified that he met with residents and neighborhood groups to discuss the development, and altered his initial plan to include more open space as a result of these meetings. Several letters were submitted in favor of the proposed use, commending the Applicant's collaboration and efforts to improve the community.
5. Applicant testified that the proposed structure will meet or nearly meet LEED standards and the lot will have five parking spaces and one handicap space, bike parking, and a rooftop deck.
6. Applicant testified that the proposed front setbacks are consistent with those existing in the area. Further, the proposed structure would have a greater setback than most of the other properties on the street.
7. Applicant testified and site plan shows that side setbacks of the proposed structure would align with the side setbacks of the existing structure.
8. Ray Czachowski, who lives near the Subject Property, appeared in opposition. Mr. Czachowski stated that his opposition was due to the lack of a parking agreement.

### Conclusion of Law:

1. The Board is specifically empowered by law, Chapter 922 of the Code, to decide whether a grant of a special exception is appropriate. Pursuant to Section 922.07.D.1 of the Code, the Board is to determine the reasonableness and propriety in each case, prior to the grant of a special exception; however, the Zoning Board of Adjustment shall approve Special Exceptions only if (1) the proposed use is determined to comply with all applicable requirements of this Code and with adopted plans and policies of the City and (2) the following general criteria are met:
  - a. That the development will not create detrimental visual impacts, such that the size and visual bulk of the proposed development is determined to create an incompatible relationship with the surrounding built environment, public streets and open spaces and land use patterns;
  - b. That the development will not create detrimental transportation impacts, such that the proposed development is determined to adversely affect the safety and convenience of residential neighborhoods or of vehicular and pedestrian circulation in the vicinity of the subject tract, including traffic reasonably expected to be generated by the proposed use and other uses in the area given the existing zoning, existing land uses and proposed land uses in the area;
  - c. That the development will not create detrimental transportation impacts, such that the proposed development will result in traffic volumes or circulation patterns that substantially

- exceed the capacity of streets and intersections likely to be used by traffic to and from the proposed development;
- d. That the development will not create detrimental operational impacts, including potential impacts of hours of operation, management of traffic, servicing and loading operations, and any on-site operations associated with the ongoing functions of the use on the site, in consideration of adjacent and surrounding land uses which may have differing sensitivities to such operational impacts;
  - e. That the development will not create detrimental health and safety impacts, including but not limited to potential impacts of noise, emissions, or vibrations from the proposed development, or functions within the proposed site which would otherwise affect the health or safety of others as a direct result of the operation of the proposed use;
  - f. That the development will not create detrimental impacts on the future and potential development of parcels in the vicinity of the proposed site of the development; and
  - g. That the development will not create detrimental impacts on property values.
2. Under Pennsylvania law, a special exception is a permitted use. Once an applicant for special exception has established compliance with the specific objective requirements for that exception as set forth in the ordinance, the objectors to the proposed special exception have the burden of persuasion and the duty to go forward with evidence that the general, nonspecific requirements have not been fulfilled. Bray v. Zoning Board of Adjustment, 410 A.2d 909 (Pa. Cmwlth. 1980).
3. The Board finds the following:
- a. The development will not create detrimental visual impacts. The proposed project will help to improve the neighborhood and the open space design will complement the area.
  - b. The development will not create any transportation impacts, provided the Applicant collaborates with the Zoning Administrator to address remaining parking issues as required in the decision.
  - c. The development will not create any operational impacts.
  - d. The development will not create any detrimental health and safety impacts.
  - e. The development will not create detrimental impacts on the future and potential development of parcels in the vicinity. The development in place of the previously dilapidated structure will help spur development in the area.
  - f. The development will not create any detrimental impacts on property values.
4. The Board is specifically empowered by law, Chapter 922 of the Pittsburgh Zoning Code, to decide whether a grant of a variance is appropriate. Pursuant to Section 922.09.E of the Code, the Board is to determine the reasonableness and propriety in each case, prior to the granting of a variance. However, no variance in the strict application of any provisions of this Zoning Code shall be granted by the Zoning Board of Adjustment unless it finds that all of the following conditions exist:
- a. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to the conditions, and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located;
  - b. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
  - c. That such unnecessary hardship has not been created by the appellant;
  - d. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the

appropriate use or development of adjacent property, nor be detrimental to the public welfare; and

- e. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
5. In granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement to purposes of this act and the zoning ordinance. The applicant shall have the burden of demonstrating that the proposal satisfies the applicable review criteria.
  6. The Pennsylvania Supreme Court has held that a less strict standard will be applied where a dimensional, rather than a use variance is sought, particularly where an existing structure or building is involved. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (Pa. 1998). Dimensional variance requests must establish unnecessary hardship, but are required to meet the lesser standard that the request is for a "reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations." *Id.* 554 Pa. at 257, 727 A.2d at 47 (1998).
  7. The Board finds the following:
    - a. There are unique physical circumstances that create an unnecessary hardship for the Applicant.
    - b. Due to this unnecessary hardship there is no possibility that the property can be developed in strict conformity with the zoning code.
    - c. The Appellant has not created the unnecessary hardship.
    - d. The variance will not alter the essential character of the neighborhood. The proposed setbacks are contextual with those in the immediate vicinity and typical of those in the neighborhood.
    - e. The requested variance represents the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

**Decision:** The Applicant's request for Special Exception under Code Section 921.02.A.4 and Variances under Code Sections 921.02.A.1(a)(1), 916.02.A.1, 903.03.D.2, 912.04.A, and 912.04.C are hereby APPROVED WITH THE FOLLOWING CONDITIONS:

1. In accordance with this decision, Applicant must submit a design proposal to the Zoning Administrator for approval.
2. In accordance with this decision, Applicant must submit to site plan review with the Zoning Administrator for approval.

  
Wrenna L. Watson, Chair

  
Kirk B. Burkley

  
S. Mandi Jegasothy