



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

July 19, 2011

043 of 2011

Lauren Byrne
Lawrenceville United
4825 Butler St.
Pittsburgh, PA 15201

Dear Appellant and/or Hearing Participant:

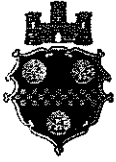
Enclosed is your copy of the decision by the Zoning Board of Adjustment. This is not a permit. If your decision has been approved, you must return to the Zoning office and pick up your paper work so that your permit may be processed. Please Note: if your decision has been approved **with conditions which 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 Brendan Schubert, Zoning Code Administrative Officer, at (412) 255-2231 if you have any questions regarding your Zoning Board decision or 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 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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Division of Development Administration and Review

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200 Ross Street, Third Floor

Pittsburgh, Pennsylvania 15219

ZONING BOARD OF ADJUSTMENT

Date of Hearing: March 10, 2011

Date of Decision: July 14, 2011

Zone Case: 43 of 2011

Address: 4305 Butler St

Zoning District: LNC

Ward: 9

Neighborhood: Lawrenceville

Owner/Applicant: David Vizslay (Applicant)
Sestric & Cichon (Owner)

Request: Use of Restaurant (General)

Special Exception:	911.04.A.57	Restaurant (General) is a special exception in the LNC
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Appearances:

Applicant: David Vizslay
Dwight Ferguson

In favor: Daniell Walker
Timothy Linz

Objectors: Thomas Kuczynski, Becky Thatcher, Lauren Byrne, Brian Mendelssohn, Halee Ranck, Jenny Skrinjar, Maya Henry, Councilman Patrick Dowd, Richard Zavada, Catherine Berard, Susan Englert, Mary Coleman, Matthew Galluzzo, Donald Creed, Adrian Ranck, Dean Reed, Paul Cali, Keith Cochran, Rebecca White, Michael Van Buskirk, Andrew Moss

Observing: Allan M. Cox, A.D.A.
Councilman Bruce A. Kraus

Findings of Fact:

1. Subject Property is located at 4305 in the LNC (Local Neighborhood Commercial) Zoning District in Lawrenceville. It is owned by Sestrich & Cichon ("Owners").
2. David Vizslay ("Applicant") proposes to use the Subject Property as a Restaurant with a liquor license.

The Zoning Board of Adjustment reserves the right to supplement the decision with Findings of Fact and Conclusions of Law in the event of an appeal of the Board's decision.

3. The Subject Property has a gross floor area of 3400 sf. Of the total area, 500 sq. ft. comprises the restaurant's kitchen.
4. Applicant plans to provide 8 parking spaces, 6 spaces directly behind the Subject Property and 2 spaces approximately 40' down the alley behind the building containing the Subject Property. (T. 29-30).
5. Applicant's investment in the property is expected to exceed \$200,000. (T. 38-39).
6. Applicant has met with members of the Lawrenceville community several times to discuss his plans for the Subject Property. (T. 16). Applicant was persuaded by Objectors to apply for a special exception to use the full 3,400 sq. ft. of the property to give the community a voice in the process and allow the Board to impose conditions. Applicant's original plan was to use under 2,400 sq. ft. of the property as a Restaurant with Liquor License (Limited), a use permitted by right. (T. 24-27).
7. Objectors testified that the surrounding area already has parking problems, and that another restaurant would add to the congestion. Objectors were particularly concerned about parking during the proposed use's evening peak hours, stating that congestion caused by the nearby bowling alley and children's hospital was greatest at that time. Objectors are also concerned that the Subject Property will be used primarily as a drinking establishment because of the small kitchen.

Conclusions of Law:

1. Pursuant to Section 911.04.A.57 of the Code, Restaurant (General) uses shall be subject to the following standards in the LNC district:
 - (1) Parking facilities and access shall be designed and located to clearly meet the demand of facility in a way which does not interfere with the parking spaces required for surrounding residential uses;
 - (2) Off-site impacts of the use, which are directly attributed to activities occurring on-site, shall be controlled to avoid conflicts with surrounding residential use; and
 - (3) The proposed use shall be subject to the Site Plan Review procedures of Section 922.04.
2. Section 914.03.C of the Code states that, "unless otherwise stated, all square footage-based off-street parking standards shall be computed on the basis of gross floor area used or intended to be used for service to customers, patrons, clients or patients." The total floor area for the proposed use is 3,400 sq. ft. The gross floor area of the proposed use is approximately 2,900 sq. ft. because the kitchen (500 sq. ft.) is not included in gross floor area.
3. Pursuant to Section 914.02.A of the Code, the minimum number of off-street automobile spaces required for Restaurants is 1 per 125 sq. ft. above the first 2400 sq. ft. The proposed use therefore requires 4 off-street automobile spaces. 8 off-street spaces are provided.
4. Off-site impacts of the use will be controlled by off-street parking and limiting the hours of live entertainment.
5. The Site Plan will be submitted to and reviewed by the Zoning Administrator.
6. 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)

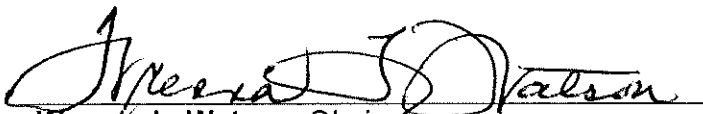
the proposed use is determined to comply with all applicable requirements of this Code and with adopted plans and policies of the City and (2) the following general criteria are met:


- (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.
7. The proposed use will not create any detrimental visual, transportation, operational, or health and safety impact on surrounding properties. Nor will the expansion create a detrimental impact on future development or property values.
 8. Objectors' objections based on alleged incidents and incident reports at Applicants' rental properties and at establishments owned or operated by other members of LVW, LLC in other neighborhoods, are inappropriate and prejudicial, and should be accorded no weight. These objections are not directed to the Property, its proposed use, and its compliance with the Code or law, but instead are based on other properties with other uses, and are unsupported by evidence of Applicant's control over or personal liability for such incidents.
 9. Because Code Section 911.02's definition of "Restaurant with Liquor License (General)" requires only that "the principal business is the sale of food or beverages in a ready to consume state," and specifically includes bars, Objectors testimony regarding the allegedly small size of the proposed kitchen, is irrelevant to the adjudication of Applicant's application.
 10. Objectors' objections based on the alleged saturation of alcohol-serving establishments in the area of the Property, based on four other such establishments is insufficient. Code Section 911.04 actually defines "saturation" in LNC districts (requiring greater than 2,000,000 square feet in the district, and a rate of more than one Restaurant with Liquor License per 50,000 total square feet). Objectors have offered no evidence that the subject LNC is so "saturated."
 11. Objectors' Due Process rights were not violated. Board Member Kirk Burkley informed Objectors, at the outset of the hearing, of their right to an attorney. (T. 15-16). Chairperson Wrenna Watson

explained that cross examination is permitted only by attorneys. (T. 42-43). Objectors neither objected to this process nor requested an opportunity to cross examine the Applicant during the hearing. Objectors were provided full opportunity to present argument and evidence.

Decision: Applicant's request for Special Exception from Section 911.04.A.57 of the Code is hereby **ACCEPTED WITH THE FOLLOWING CONDITIONS** for review and approval of the Zoning Administrator and in accordance with the decision of the Zoning Board of Administrators:

1. The Restaurant will operate as a non-smoking establishment.
2. Applicant will limit hours of live entertainment. No live entertainment shall take place after 10:00 p.m. on weekdays or after 12:00 a.m. on weekends.
3. Applicant will submit a Site Plan to the Zoning Administrator, indicating the placement of dumpsters.


Wrenna L. Watson, Chair


Kirk B. Burkley


S. Manoj Jegasothy