



May 16, 2016

104of2016

Lauren Byrne
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 and 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 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.



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: March 3, 2016
Date of Decision: May 12, 2016

Zone Case: 104 of 2016
Address: Butler St/39th St/40th St
Zoning District: UI
Ward: 6
Neighborhood: Lower Lawrenceville

Owner: Arsenal Terminal Warehouse
Applicant: Butler & 40th LLC

Request: New construction of four & five story structures for multi-unit residential with 625 units total, 21,162 sq. ft. retail space, integral and surface parking spaces.

Special Exception	911.04.A.85	Use of multi-unit residential is a special exception in the UI zoning district
Special Exception	904.07.C.4	Additional height above 4 stories shall be allowed in accordance with a Special Exception

Appearances:

Applicant: Kevin McKeegan (Attorney), Cynthia Jampole, Jeremy Stephenson,
In-Favor: Shawn Kichline, Lauren Byrne, Matthew Galluzo, Thomas Madigan, Helen Ewing, Bob Dunger
Opposed: Ray Czachowski

The Zoning Board of Adjustment reserves the right to supplement the decision with Findings of Fact and Conclusions of Law.

Observing: James Wudarczyk, Megan Worbs, S. Reed, Mark Ambtman, Tim Schooley, Alex Simakus, Andy Kubis, Diana N. Jones, Julia Brewer

Findings of Fact:

Description of the Subject Property:

1. The Subject Property is a single parcel with an area of approximately 12.75 acres, located on Butler Street between 40th Street and 39th Street, in the Lower Lawrenceville Neighborhood. The bulk of the property is in a UI (Urban Industrial District), with a small portion in an LNC (Local Neighborhood Commercial) District.

2. The development that the Applicant proposes would be located within the UI District portion of the property. The Applicant does not proposed to change the use or zoning district designation of the LNC portion of the property with this application.

3. The site is generally flat with a gradual downward slope over the entire site from the frontage on Butler Street to the rear, with a change of elevation of almost 20 feet.

4. The single-parcel property was not included in the development of the street grid of the area and no through streets currently cross the property. Foster Street terminates at the western side of 39th Street and resumes at the eastern side of 40th Street. Willow Street terminates at the eastern side of 40th Street. (App. Exs. 2, 5 and 6).

5. An R1A-VH (Residential, Single-Unit, Attached, Very High Density) District is located across 39th Street from the site and an R1A-H (Residential, Single Unit, High Density) District is located across Butler Street.

6. In the 19th Century, the federal government used the property as part of a military arsenal. A building used as quarters for Army officers and a stone wall from that time period remain, adjacent to the 39th Street side of the property. (App. Ex. 4).

7. Currently located on the Subject Property are a number of single-story warehouse structures, which were built in the early 20th Century and which are currently used for truck terminals and similar uses and generate significant truck traffic. (App. Ex. 3).

Proposed Development:

8. The Applicant proposes to demolish the warehouse buildings and to create a mixed use development on the site, which would include up to 625 multi-family residential units and approximately 20,000 sf of retail and restaurant space. (App. Ex. 6). The full development would include four 4-story/46' buildings to be located along 40th Street and Butler Street; three 3-story/48' townhouse structures to be located along 39th Street; and three 5-story/60' buildings within the interior of the parcel. (App. Ex. 6). No part of any of the proposed 5-story buildings would be located within 200' of any area zoned Residential.

9. None of the proposed buildings would exceed 60' in height and no part of the three proposed 5-story/60' buildings would be within 200' of any property zoned Residential. (App. Ex. 6). The 5-story/60' buildings would be located towards the interior of the site, at a lower elevation within the site, with the intended effect of reducing their visual impact.

10. The total floor area ratio ("FAR") of the proposed buildings would be 1.33:1.

11. The areas for the proposed retail and restaurant uses would be concentrated along Butler Street. (App. Ex. 6).

12. The site plan submitted depicts several areas for parking, with a total of 669 automobile parking spaces to be provided, and areas for at least 247 bicycle parking spaces. Many of the parking areas would be located within the buildings, including the ground floor of the 5-story buildings.

13. The Applicant proposes to construct and will assume the costs of extensions of both Foster Street and Willow Street through the site from 39th Street to 40th Street, to City of Pittsburgh specifications. (App. Ex. 6).

14. The Applicant also proposes to construct a pedestrian walkway that would extend from Butler Street through the site to a proposed park/green area at the rear of the property, which would allow for access to other paths and trails, including those along the Allegheny River. (App. Ex. 6).

15. The Applicant intends to preserve the 19th Century stone wall from the original arsenal use of the site and to adapt the officers' quarters building for reuse.

16. The Applicant has developed, and has reviewed with the City of Pittsburgh Department of City Planning, a series of design guidelines ("Design Guidelines"). The Applicant has agreed that the Design Guidelines are to govern and control the project development. (App. Ex. 12).

17. The Applicant intends to develop the project in phases, with the site plan for each phase to be subject to separate site plan review, in accordance with Code Section 922.04.A.2.

Applicant's Traffic Analysis:

18. The Applicant acknowledged the high traffic volumes and truck traffic in the vicinity of the site and that the nearby intersections, particular the 40th Street and Butler Street intersection, are already frequently congested.

19. Butler Street and 40th Street are urban arterial streets and 40th Street leads directly to the 40th Street Bridge, which crosses the Allegheny River to access to State Route 28. Because of this access, Butler Street and 40th Street are both City-designated truck routes.

20. The existing uses of the Subject Property currently generate primarily truck traffic. However, the significant commercial truck traffic and automobile traffic in the area is not solely attributable to the Subject Property.

21. In accordance with the directions of the City Planning Department, Trans Associates prepared a traffic impact study for the Applicant. (App. Ex. 7). The traffic impact study analyzes the anticipated impacts from the proposed development and recommends a number of mitigation measures to address those impacts. (App. Exs. 8 and 9).

22. The Applicant has committed to undertake the mitigation measures, as described in the Trans Associates report.

Community Process:

23. The Applicant engaged in number of meetings with the surrounding community and community groups, including Lawrenceville Corporation and Lawrenceville United.

24. The Applicant has entered a letter of intent with Lawrenceville Corporation and Lawrenceville United, which details a number of conditions that the community ("Community Letter"). (App. Ex. SA-3).

25. Lawrenceville United and Lawrenceville Corporation submitted letters in support of the proposed development, subject to the conditions set forth in the Community Letter. (Ex. SA-1 and 2). The Community Letter includes provisions for "Public Spaces", "Historic Preservation", "Landscape Design" and "Streets and Connectivity" (as those terms are described in the Community Letter).

26. Lawrenceville United and Lawrenceville Corporation join with the Applicant's request for approval, subject to the following requested conditions:

- No Site Plan shall be approved for any phase of the Project unless Applicant establishes that the buildings and portion of the Project depicted on the Site Plan in question are consistent with the Design Guidelines (App. Ex. 12);
- No Site Plan shall be approved for any phase of the Project unless Applicant establishes that the Site Plan in question meets the then applicable terms of the Community Letter relating to "Public Spaces", "Historic Preservation", "Landscape Design" and "Streets and Connectivity" (as defined in the Community Letter); and
- No Site Plan under Code §922.04.A.2 shall be approved for any phase of the Project unless Applicant establishes that the traffic mitigation measures called for in the Traffic Analysis as necessary to mitigate traffic impacts arising from the phase of the Project in question will be installed or constructed by Applicant concurrent with the phase of the Project to be constructed once the particular Site Plan in question is approved.

27. Councilwoman Deborah Gross appeared at the hearing to support the proposed development and cited the long collaborative process with the Applicant and the importance of reconnecting the street grid on the site.

28. Corey Layman, Zoning Administrator for the City of Pittsburgh, appeared on behalf of the Department of City Planning, and requested as conditions of approval that the Planning Commission must review the separate phases of the development and that the Applicant must submit revised traffic studies as the development progresses.

29. A number of neighborhood residents appeared at the hearing to oppose the requested special exceptions and noted their concerns regarding parking, traffic, density, housing affordability, and historic preservation.

30. Ray Czachowski, a resident of 258 44th Street, appeared to oppose the application.

31. Mr. Czachowski submitted a traffic study prepared by Traffic Planning and Design, Inc., which questioned the methodology of the Applicant's traffic study and its conclusions, and asserted that is the Applicant's report is inadequate to determine the potential traffic impact of the proposed development.

32. Mr. Czachowski also submitted a letter which several proposed conditions for approval , including: 1) all parking spaces constructed after QUAD 1 must be in structured parking; 2) No building permits for any Quad 1 structures, except for the two townhouse structures, may be issued until the Zoning Administrator has approved a site plan for the Subject Property that contains no less than 342 structured parking spaces; 3) Notice of approval of a revised site plan shall be provided to all hearing participants; 4) the Mobility Plan shall be modified to address the concerns raised by Traffic Planning and

Design, Inc.; and the Applicant shall not allow its tenants to seek parking permits for any on-street permit parking areas.

33. The Applicant responded to Mr. Czachowski's concerns, referencing the intended phased development and indicated that tenants would not be permitted to seek parking permits within any nearby on-street permit parking area.

Conclusions of Law:

Relevant Provisions Of The Zoning Code And Controlling Legal Standards:

1. Pursuant to Sections 911.02 and 911.04.A.85, multi-unit residential uses are permitted in UI Districts, subject only to the condition that residential units should not be located on the ground floor where ground floor residences are not desirable.

2. Section 904.07.C sets forth the site development standards for UI Districts, including maximum FAR of 3:1 and maximum height of 60'4 stories. The site development standards do not include a maximum lot coverage, minimum front setback or minimum rear setback (when adjacent to a way) and do not include a minimum lot size per unit.

3. Section 904.07.C.4 allows for a special exception for additional height above 4 stories in UI Districts, where the site is not located within 200' of any property zoned residential and where the additional height will not create detrimental impact through additional traffic impacts caused by the additional height and density; the impacts on views from any affected residential properties; or any impacts on residential properties from the building's bulk. It does not include a specific limitation to an increase in height above 60'4 stories.

4. Pursuant to Chapter 914, for the proposed mixed-use development, 535 automobile parking spaces and 247 bicycle parking spaces would be required.

Applicant's Request for Special Exception Approval for Multi-Unit Residential Use and for Additional Height in a UI District:

5. With the application before the Board, the Applicant seeks a special exception pursuant to Code Section 911.04.A.85 to allow a multi-unit residential building in the UI District; and a special exception pursuant to Code Section 904.07.C.4 to permit three buildings, each with 5 stories, but with heights not to exceed 60'.

6. 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 Section 911.04. 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.

7. 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. Ct. 2001).

8. The applicant for special exception approval has the initial burden to show that its proposal complies with the specific criteria delineated in the ordinance. *Bray*, 410 A.2d at 910; *Brickstone Realty*, 789 A.2d at 340. By showing compliance with the specific criteria, the applicant establishes that the proposal is presumptively consistent with the promotion of public health, safety and welfare. *Bray*, 410 A.2d at 911; *Brickstone Realty*, 789 A.2d at 340.

9. Objectors to a use that is permitted as a special exception must establish, with substantial evidence, that the impact from the proposed use would be greater than normally expected from that type of use and would abnormally affect the public interest. *Accelerated Enterprises, Inc. v. Hazle Twp. Zoning Hearing Bd.*, 773 A.2d 824, 826 (Pa. Commw. Ct. 2001); *Brickstone Realty*, 789 A.2d at 341; see also *Manor Healthcare Corp v. Lower Moreland Twp. Zoning Hearing Bd.*, 590 A.2d 65, 71 (Pa. Commw. Ct. 1991).

10. To prove a "detrimental impact," objectors must identify specific issues regarding the effect of the proposed use on the public interest and must show with a high degree of probability that the effect of proposed use will be substantial. *Manor Healthcare Corp.*, 590 A.2d at 71 (quoting *Archbishop O'Hara's Appeal*, 131 A.2d 587, 596 (Pa. 1957); *Accelerated Enterprises, Inc.*, 773 A.2d at 826.

11. Given the magnitude of the project proposed, the issues before the Board are limited.

12. For a special exception to allow multi-unit residential in a UI District, the sole criterion is consideration of ground floor residential units, which the Applicant here does not propose, instead proposing to use the ground floor for parking.

13. For a special exception for additional height in a UI District, the Applicant must demonstrate that the site of the development is not within 200' of any property that is zoned Residential and the property must be sufficiently separated from any residential property so that the additional height would not create any detrimental impacts resulting from traffic or views.

14. Here, the Applicant demonstrated that the location of the three 5-story buildings proposed would be separated by at least 200' from the proximate R Districts and that, even with an additional story above the 4 stories permitted as of right, the height of the proposed buildings would not exceed the permitted 60'. The proposed buildings, as located at a lower elevation, within the interior of the site will have limited more visual impact than 4-story buildings.

15. The Applicant presented a traffic study to address the significant concerns regarding the traffic impact of the proposed development on what the Applicant, community and City agree to be a congested area, along City-designated truck routes. The Applicant has committed to construct and implement the traffic mitigation measures set forth in the Trans Associates Traffic Impact Study. In reaching agreement with the Lawrenceville community groups, the Applicant also agreed to address traffic impacts as each site plan for the phased development is approved. Under these circumstances, the Board concludes that the Applicant has addressed the potential detrimental impact from traffic from the proposed development and that the traffic impacts will be consistently monitored and addressed throughout the phased development.

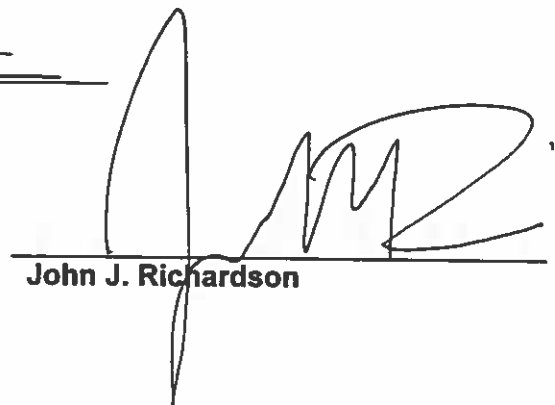
3. Consistent with the evidence and testimony presented and the applicable legal standards governing special exception approval, the Board concludes that approval of the requested special exceptions is appropriate, subject to compliance with the Design Guidelines established with the Planning Department, the conditions set forth in the Community Letter and as summarized in the Board's Decision and including the requirement of submitting revised traffic studies as the development progresses.

Decision: The Applicant's request for special exceptions under Code Sections 911.04.A.85 and 904.07.C.4 is hereby APPROVED, subject to appropriate site plan approval for the phased development, compliance with the Design Guidelines, submission of revised traffic studies as the development processes and in accordance with following conditions, as set forth in the Community Letter, which is incorporated here:

1. No Site Plan shall be approved for any phase of the Project unless Applicant establishes that the buildings and portion of the Project depicted on the Site Plan in question are consistent with the Design Guidelines (App. Ex. 12);
2. No Site Plan shall be approved for any phase of the Project unless Applicant establishes that the Site Plan in question meets the then applicable terms of the Community Letter relating to "Public Spaces", "Historic Preservation", "Landscape Design" and "Streets and Connectivity" (as defined in the Community Letter); and
3. No Site Plan under Code §922.04.A.2 shall be approved for any phase of the Project unless Applicant establishes that the traffic mitigation measures called for in the Traffic Analysis as necessary to mitigate traffic impacts arising from the phase of the Project in question will be installed or constructed by Applicant concurrent with the phase of the Project to be constructed once the particular Site Plan in question is approved.


Alice B. Mitinger, Chair


LaShawn Burton-Faulk


John J. Richardson