



June 30, 2017

97 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.

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**ZONING BOARD OF ADJUSTMENT**

Date of Hearing: May 11, 2017  
Date of Decision: June 29, 2017

Zone Case: 97 of 2017  
Address: 4501 Butler Street  
Zoning Districts: LNC  
Ward: 9  
Neighborhood: Central Lawrenceville

Owner: Michael L. Zagas  
Applicant: Morgan's Barbecue

Request: Renovation and addition for the existing building and new accessory building with perimeter fencing and surface parking for use as restaurant

<b>Review</b>	911.03	Use unlisted for the outdoor screen entertainment <b><u>WITHDRAWN</u></b>
<b>Variance</b>	904.02.B.2	Accessory uses within LNC are limited to 25% of gross floor area of the primary use, outdoor amenity area of 3,400 sq. ft., requested for restaurant approximately 2,459 sf. ft.
<b>Special Exception</b>	: 916.09	<b><i>Waiver for Residential Compatibility</i></b>
	916.02.A.02	Minimum 15ft rear setback required; 3ft for additions requested
	916.04.B	Refuse receptacles shall be at least 30ft from residential districts; 23ft requested

**Appearances:**

Applicant: Chris Morgan, Joel Bolden, Gavin Robb (Attorney)  
In-Favor: Alex Yingling, Ashley Brandolph, Rachel Webber, Kento Ohmori, Dave Breingan  
Opposed: Jan Pressman, Ray Czachowski

## Findings of Fact:

1. The Subject Property is located at 4501 Butler Street, at the corner of 45<sup>th</sup> Street, in an LNC (Local Neighborhood Commercial) District in the Central Lawrenceville neighborhood. Eden Way is located at the rear of the Subject Property and separates the property in the LNC District from property in an R1A-VH (Residential, Single Unit Attached, Very High Density) District. Across Eden Way from the Subject Property is the side of a residential property with frontage on 45<sup>th</sup> Street.
2. The one-story building on the property was used for a vehicle repair garage and is built to the Eden Way property line at the rear. An extensive surface parking area extends from the building to the front property line on Butler Street.
3. The Subject Property gradually slopes down from the front property line to the rear and from the building towards 45<sup>th</sup> Street.
4. The Applicant proposes to convert the building for use as a restaurant (limited)., As proposed, the conversion would include a small addition to the existing building, which would be located on the interior side of the building, 3' from the rear property line. With the addition, the total floor area for the restaurant would be 2,459 sf. The Applicant also proposes to use a portion of what is currently the surface parking area in the front for a 3,400 sf outdoor seating area, to be used seasonally.
5. The Applicant proposes to provide a 1,750 sf landscaped buffer on the 45<sup>th</sup> Street side of the property and 630 sf bicycle parking area, for 28 bicycle parking spaces, at the corner of 45<sup>th</sup> Street and Butler Street.
6. The Applicant also proposes to provide 9 parking spaces on a 4,201 sf portion of the surface parking area. A dumpster would be located adjacent to the parking area, 23' from properties in the R1A-VH District.
7. The Applicant testified that, based on the financial projections for the proposed restaurant, the additional the outdoor space is essential to the viability of the restaurant.
8. The Applicant asserted that the sloped condition of the Subject Property and the location of the existing build create significant design challenges for developing the site for a restaurant.
9. The Applicant participated in community meetings regarding the proposed use and made a number of changes to the proposal in response to the concerns expressed, including reducing the size of the outdoor seating area and including an outdoor bocce court.
10. Representatives of Lawrenceville United and Lawrenceville Corporation appeared at the hearing and testified as to the organizations' conditional support for the proposed development. The Applicant and the organizations identified the following proposed conditions of approval for the project: 1) proposed outdoor area not to be expanded beyond seating for 75 persons; 2) no amplified sounds, speakers, projectors, or TV screens to be permitted in the outdoor area; 3) the outdoor area to be closed by 11 p.m. on weekdays and 12 a.m. on weekends; 4) no outdoor bar to be installed; 5) the outdoor smoker must be located away from adjacent residential properties and the Applicant is to make efforts to minimize smoke and odors; 5) the Applicant is to continue to work with the community to address any potential noise issues related to the restaurant; 6) the Applicant is to install security cameras on the site; and 7) the Applicant is to comply with the Residential Compatibility Standards regarding loading and refuse operations and will identify a loading space that will not inhibit traffic on Butler Street.

11. Two residents of the surrounding neighborhood appeared at the hearing to oppose the proposed development, citing concerns related to quality of life, traffic, parking, noise, and odors. They did not specifically address the mitigating effects intended with the proposed conditions.

### Conclusions of Law:

1. The Applicant seeks a variance from Section 904.02.B.2, the Code's requirement that accessory uses shall not be more than 25% the area of the primary use. The Applicant also seeks waivers pursuant to Code Section 916.09 of the Residential Compatibility Standards to permit reduced setbacks for the proposed addition and dumpster.

2. Including both the proposed interior floor area and the outdoor seating area, the Code would require approximately 10 parking spaces. The Applicant intends to comply with the Code's parking requirements by providing 9 on-site automobile parking spaces and 28 bicycle parking spaces.

3. The Pennsylvania Supreme Court has summarized the five general 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 Adj. 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).

4. In *Hertzberg*, the Court recognized that a less restrictive standard is appropriate for dimensional variances, which require only for a reasonable adjustment of the zoning regulations to accommodate a use of property that is permitted. *Hertzberg*, 721 A.2d at 47-48. In determining whether unnecessary hardship has been established for a requested dimensional variance, the Board may consider multiple factors, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary for strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.

5. 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); see also *Broussard v. Zoning Bd. of Adj. of the City of Pittsburgh*, 907 A.2d 494 (Pa. 2006); *Greth Dev. Grp, Inc. v. Zoning Hearing Bd. of L. Heidelberg Twp.*, 918 A.2d 181 (Pa. Commw. Ct. 2007); Robert S. Ryan, *Pennsylvania Zoning Law and Practice*, § 6.1.3 (where the legislative body has delegated authority to the zoning board to grant a special exception, it has determined that the use "will probably be consistent with the zoning district, and should be permitted in the average case.")

6. The Board concludes that the location and size of the existing building and the slope of the Subject Property are unique conditions which preclude development on the site strict compliance with the requirements of the Code.


7. Because of the conditions agreed to by the Applicant, the off-site impacts of the proposed restaurant use will be limited.

8. The Board appreciates the concerns of the neighbors, but notes that the conditions to be imposed will substantially address the concerns raised with respect to the proposed use and should be more limited than the potential impacts of continuing the vehicle repair use, as permitted on the site.

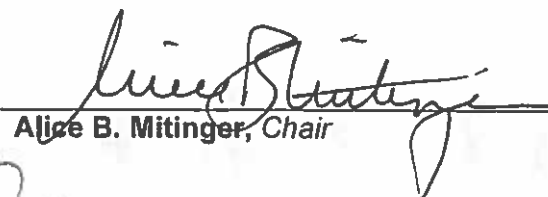
9. Consistent with the evidence and testimony presented and the applicable legal standards governing dimensional variances and special exceptions, the Board concludes that approval of the Applicant's request is appropriate, subject to the conditions described.

**Decision:** The Applicant's request for a variances from Code Section 904.02.B.2 and special exceptions pursuant to Code Section 916.09 is hereby APROVED, subject to the following conditions:

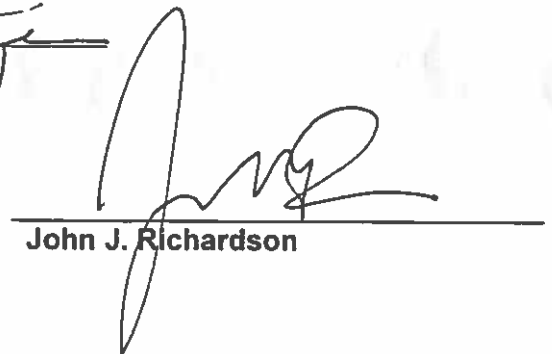
- 1) The proposed outdoor area will not expand beyond seating for 75 persons;
- 2) No amplified sounds, speakers, projectors, or TV screens will be permitted in the outdoor area;
- 3) The outdoor area shall be closed by 11 p.m. on weekdays and 12 a.m. on weekends;
- 4) An outdoor bar will not be installed;
- 5) The outdoor smoker will be located away from adjacent residential properties and the Applicant will minimize smoke and odors;
- 6) The Applicant will continue to work with the community to address issues related to noise from the restaurant;
- 7) The Applicant will install security cameras on the site; and
- 8) The Applicant will comply with the Residential Compatibility Standards regarding loading and refuse operations and will identify a loading space that will not inhibit traffic on Butler Street.



LaShawn Burton-Faulk



Alice B. Mitinger, Chair



John J. Richardson