

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

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September 25, 2015

*138 of 2015*

Helen Ewing  
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.

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**ZONING BOARD OF ADJUSTMENT**

**Date of Hearing:** June 6, 2015  
**Date of Decision:** September 24, 2015

**Zone Case:** 138 of 2015  
**Address:** 4001 Willow St  
**Zoning District:** UI  
**Ward:** 9  
**Neighborhood:** Central Lawrenceville

**Owner:** Fort Willow Developers LP  
**Applicant:** Rothschild Doyno Collaborative on behalf of Fort Willow Developers LP

**Request:** New 6 story multi-unit residential apartment building with 191 units and 139 on-site parking spaces.

<b>Special Exception</b>	911.04.A.85	Multi-unit residential use is a Special Exception in UI District
<b>Variance</b>	904.07.C	<p>Maximum height 60ft/4 stories permitted and 68ft/6 stories requested</p> <p>Minimum 20ft rear setback required, 18'7" requested</p> <p>Minimum 10ft interior side setback required and 0ft proposed</p>
<b>Variance:</b>	916.02.B	Structures not permitted to exceed 40ft/3 stories or 50ft/4 stories within 100ft of residential, and 68ft/6stories requested

**Appearances:**

**Applicant:** William R. Sittig, Jr. (Attorney), on behalf of the Applicant, Daniel Rothschild

**In-Favor:** Tood Reidbold, Matt Galluzo, Helen Ewing, Cynthia Jampole, Nate Hanson, Steve Sokoloski, Alex Simakas

**Opposing:** Gerald Cygnarowicz, Helene Staniszewski, Malik Czachowski, Roberta Ramski, Christine Cygnarowicz, Ray Czachowski, Lisa Javornick, Robert Casey, Cathy Lafferty, Georgia Sarah Weiss, Gary T. Weiss

**Observing:** Diana Jones

## **Findings of Fact:**

1. The Subject Property is located at 4001 Willow Street, in a UI (Urban Industrial) District in the Central Lawrenceville neighborhood.
2. Located on the Subject Property is the former location of Interlocking Deck Systems International, a steel fabrication business with seven vacant industrial buildings, six of which served as manufacturing bays and one of which was a machine shop.
3. The Subject Property is adjacent to property zoned Residential, Single-Unit Attached.
4. The Subject Property has a total area of approximately four and one-half acres. At this time, the Applicant intends to develop an approximately 2.63 acre portion.
5. The Subject Property is irregularly shaped.
6. The Applicant proposes to demolish all structures on the Subject Property, with the exception of the machine shop building and the steel skeleton of one of the manufacturing bays identified as "bay 4," and to construct a six-story, 182 unit U-shaped multi-unit residential apartment building with 182 parking spaces and 46 bicycle parking spaces.
7. The Floor Area Ratio ("FAR") for the proposed development is 1.74:1 (gross floor area of 199,113 square feet and a lot area of 114,669 square feet).
8. The Applicant stated that in order to address concerns expressed by neighbors, the number of residential units has been reduced to 182 units from an originally proposed original 191 units, resulting from the elimination of the sixth story units along the Willow Street façade thereby reducing the height of the Apartment Building along Willow Street. In order to address additional concerns regarding parking, the Applicant increased the number of proposed parking spaces to 182, providing one for each proposed unit. The Applicant and the objectors submitted the following proposed conditions meant to address the concerns of the neighborhood:
  - a. The Applicant shall not seek or obtain, or permit any of its tenants to seek or obtain, any parking permits for any on-street parking areas designated by the City of Pittsburgh as permit parking areas.
  - b. Issuance of a building permit for the Apartment Building is conditioned upon the approval of an Administrator Exception for the proposed shared parking arrangement with the Ice Factory Limited Partnership;
  - c. Approval of the Transportation Study; and
  - d. Approval of a Construction Management Plan by the Department of Public Works that includes a condition: (i) prohibiting the location of any dumpsters, commex boxes, construction equipment and materials storage, or other trash receptacles on any public street and (ii) prohibiting the parking by construction workers on any public street;
  - e. Bay 4 shall be maintained as open space and, subject to obtaining all required approvals, permits and licenses, may be utilized for public and/or private programming that may involve the installation of temporary structures;

- f. The area within the 25 feet setback along Willow Street shall be maintained as open space as depicted in the Landscape Plan, portions of which may be exclusively utilized by residents of the Apartment Building and, to the extent any such area is enclosed, the enclosure must comply with the requirements of the Zoning Code and fences and walls may not exceed six and one half feet in height.

9. The Apartment Building, with the removal of the sixth story units along the Willow Street facade, will be 59 feet high along Willow Street within 50 feet to 100 feet from the nearest property zoned R1A and it will be 69 feet high thereafter.

10. The Applicant requests a height variance of 69 feet and six (6) stories from the permitted height of 60 feet and four (4) stories and a height variance from the Residential Compatibility Standards of 59 feet and five (5) stories where located 51 feet to 100 feet from the nearest property zoned R1A from the permitted height of 50 feet and four (4) stories.

11. The Applicant proposes to keep the building line back approximately 25 feet from Willow Street in order to provide open space along Willow Street within that setback area, portions of which, not to exceed 25%, may be exclusively utilized by residents of the proposed building.

12. The Applicant proposes to renovate Bay 4 to provide an open promenade extending from 41<sup>st</sup> Street thereby creating an opportunity to reestablish a connection between Lawrenceville and the riverfront as provided in the Allegheny Riverfront Vision Plan and the Allegheny Riverfront Green Boulevard. Bay 4 is located directly on that portion of 41<sup>st</sup> Street that was vacated by the City of Pittsburgh in the 1930s.

13. Fort Willow is requesting a rear setback of 18'7" from the required 20' rear setback for a very small portion of the corner of the proposed building which setback reduction is required due to the irregular shape of the lot but primarily because Fort Willow is donating part of its land to the Allegheny Riverfront Green Boulevard for a bike path.

14. Fort Willow is also requesting an interior side yard setback of zero feet instead of the required 10 feet along the easterly property line in order to provide parking along that property line.

15. The Applicant submitted a Transportation Impact Study, prepared by Trans Associates, asserting that there will be no adverse transportation impacts associated with the proposed apartment building, so long as certain recommendations are followed.

16. The Subject Property is a brownfield site with contaminated subsurface conditions requiring Act 2 clearance and is located within the floodplain.

17. Representatives of Lawrenceville United, Lawrenceville Corporation and City Councilwoman Deborah Gross testified in support of the proposed use.

18. A number of residents appeared at the public hearing in opposition to the proposed development, citing concerns related to parking, traffic, and visual impacts.

19. Following the public hearing, Fort Willow met with certain of those residents and addressed their concerns by making the plan modifications referenced in Findings of Fact #=8-11, and by agreeing to certain conditions of approval.

## Conclusions of Law:

### ***Special Exception 911.04.A.85: Multi-Unit Residential***

1. 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.
2. 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.
3. 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. Cmwlth. 1980); *In re Brickstone Realty Corp.*, 789 A.2d 333 (Pa. Cmwlth. 2001).
4. 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; *White Advertising Metro v. Zoning Hearing Bd. of Susquehanna Tp.*, 453 A.2d 29, 32-33 (Pa. Cmwlth. 1982); *Brickstone Realty*, 789 A.2d at 340.
5. 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).
6. 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.
7. The Board concludes that the Applicant, with its proposal limited by the conditions created in concert with certain objecting parties, has met its burden in demonstrating that the project will not create detrimental impacts on the surrounding neighborhood. Particularly, the Applicant has provided an increased setback area and limited the height of the proposed building along Willow Street face of the proposed building, the portion most proximate to residential uses. The Applicant also proposes a public amenity with the Bay 4 open space area. Further, the Applicant has taken significant steps to reduce the impact on parking in the surrounding area by providing a parking space for all dwelling units.
8. Those objectors not party to the compromise agreement did not provide substantial evidence of potential detrimental impacts. Particularly, they failed to show how the Applicant's proposed multi-unit residential use would have a greater impact than the previous industrial uses on the Subject Property, which could resume as-a-right, were the Applicant's request denied.

9. Consistent with the evidence and testimony presented and the applicable legal standards governing special exceptions, the Board concludes that approval of the proposed multi-unit residential use is appropriate.

**Sections 904.07 and 916.02.B: Dimensional Variance**

10. The Applicant seeks dimensional variances from the site development standards of Section 904.07 and the Residential Compatibility Standards of 916.02.B, the Code's height and setback standards.

11. The Applicant requests a height variance of 69 feet and six (6) stories from the permitted height of 60 feet and four (4) stories and a height variance from the Residential Compatibility Standards of 59 feet and five (5) stories where located 51 feet to 100 feet from the nearest property zoned R1A from the permitted height of 50 feet and four (4) stories.

12. 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. *Marshall v. City of Philadelphia and Zoning Bd. of Adj.*, 97 A.3d 323, 329 (Pa. 2014); see also *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).

13. 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.

14. The Applicant here has submitted evidence of significant hardships associated with the Subject Property, particularly its condition as a brownfield site, location within the floodplain, irregular shape, and unique position as an industrial site immediately adjacent to a residential district. Further, the Applicant has made significant efforts to reduce the impact of the project and minimize the requested height variance by removing a floor from the Willow Street face of the building and providing additional open space along that same street.

15. The Board concludes that, subject to the proposed conditions, the requested height variances will not have a detrimental impact on the surrounding community and are the minimum necessary to afford relief.

16. The requested setback variances are necessary to provide adequate parking and allow for the creation of the Allegheny Green Boulevard. The Board finds that these requests, within the scope of the project, are minimal and will not create detrimental impacts on the surrounding neighborhood.

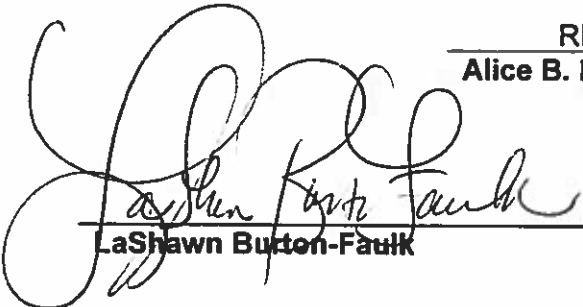
17. Consistent with the evidence and testimony presented and the applicable legal standards governing dimensional variances, the Board concludes that approval of the proposed height variance is appropriate.

**Decision:** The Applicant's request for a special exception pursuant to Code Section 911.04.A.8, permitting multi-unit residential use in the UI, variances from 904.07 and 916.02.B, allowing additional height for the proposed building relief from the Code's setback requirements, is hereby APPROVED, subject to the following conditions:

- a. The Applicant shall not seek or obtain, or permit any of its tenants to seek or obtain, any parking permits for any on-street parking areas designated by the City of Pittsburgh as permit parking areas.
- b. Issuance of a building permit for the Apartment Building is conditioned upon the approval of an Administrator Exception for the proposed shared parking arrangement with the Ice Factory Limited Partnership;
- c. Approval of the Transportation Study; and
- d. Approval of a Construction Management Plan by the Department of Public Works that includes a condition: (i) prohibiting the location of any dumpsters, commex boxes, construction equipment and materials storage, or other trash receptacles on any public street and (ii) prohibiting the parking by construction workers on any public street;
- e. Bay 4 shall be maintained as open space and, subject to obtaining all required approvals, permits and licenses, may be utilized for public and/or private programming that may involve the installation of temporary structures;
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RECUSED

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Alice B. Mitinger, Chair

  
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LaShawn Burton-Faulk

  
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John J. Richardson