



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

January 14, 2013

189 of 2012

Lauren Byrne
4825 Butler St
Pittsburgh, PA 15201

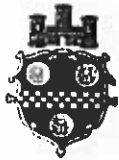
Dear Appellant and/or Hearing Participant:

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 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.

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 11, 2012
Date of Decision: January 10, 2013

Zone Case: 189 of 2012
Address: 250-252-256 44 St
Zoning District: R1A-H
Ward: 9
Neighborhood: Central Lawrenceville
Owner/Applicant: E Properties & Development/LDA Architects INC

Request: Renovation of existing structures as multi-unit residential (57 units) with 88 on-site parking spaces.

Special Exception	921.02.A.4	Change from a one non-conforming use to another is a Special Exception.
Variance	903.03.A.4	Minimum 15ft front setback required for the parking stalls and a deck and 10ft requested.

Appearances:

Applicant: Emeka Omwugbenu
Ellis Schmidlapp

In favor: Patrick Cooper
Jonathan Kamin, Esq.
Ryan Wotus, Esq.
Patricia Louis
Jennifer M Kiley
Fr. John Harley
Lauren Byrne
Catherine Berard
Christine Jankowski
Michael Van Alstine
Susan Van Alstine
Matthew Galluzzo
Ellis Schmidlapp
Carol Peterson
Sandy Cikovic
Diana Jones

Observing: N/A

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

Opposed: Ray Czachowski
Mark Czachowski
Richard Organist
Halee Ranck
David Grzandzeil
Joseph Morgano
David Toal

Findings of Fact:

1. The Subject Property is located at 250-252-256 44th Street in a R1A-H (Residential Single Unit Attached, High Density District) in Lawrenceville.
2. The Subject Property consists of a church, school and parish house. These structures have historically been used as a church, school and parish house and they are known collectively as the Holy Family Roman Catholic Church.
3. According to a Certificate of Occupancy dated April 11, 1986 there was a permitted occupancy for an 8'x9' side extension to an existing rectory building for use as a boiler room.
4. According to a Certificate of Occupancy dated May 6, 1993 there was a permitted occupancy for an existing elementary school.
5. According to the Certificate of Occupancy dated August 5, 2004 indicates that there was a permitted occupancy for a two-story elementary school and child day care for 42 children aged infant through five years old operating from Monday-Friday 6:30a.m.-6:30p.m.
6. Patrick Cooper a professional engineer and professional land surveyor who works for Gateway Engineers testified to the areas on the site which are not in compliance with zoning code. Patrick Cooper testified that in his opinion the existing development on the Subject Property is not in compliance with the zoning code.
 - a. The existing parking lot along 44th Street has a zero foot setback, rather than the necessary 15ft. setback required by the code.
 - b. The parking requirements are nonconforming for the religious assembly use. 170 stalls are required for the existing religious assembly use because there are 850 seats in the church and there needs to be one spot for every five people. Currently the Subject Property has 63 parking stalls on it.
7. The Board accepts the testimony of Patrick Cooper.
8. Applicant is requesting to convert the Subject Property into a 57 unit residential apartment building with 88 on-site parking stalls. There will be a mix of studio, one bedroom and two bedroom residential apartments on the property for rent. The Applicant testified to the proposed development and the Board accepts this testimony.
9. The Applicant testified that no commercial operations will occur on the property with the exception of the possible leasing of parking spaces to people who are not residents of the apartment building. The Board accepts this testimony.
10. The Applicant testified that a one story parking deck will be created. The Board accepts this testimony.

11. The Applicant testified that there will be no additions to the footprint of the existing buildings and that there are no proposed changes to the exterior of the buildings with the exception of replacing the windows. The Board accepts this testimony.
12. The Applicant testified that a maintenance man would be on site during business hours. The Applicant also testified that in his opinion the traffic generated by the residential apartments would be less than the traffic that was generated by the commercial use. The Board accepts this testimony.
13. Ellis Schmidlapp is the architect for the proposed project. Ellis Schmidlapp testified that pursuant to the Institute of Transportation Engineers Manual the proposed residential development would generate approximately 36 trips per peak hour. The religious use of the Subject Property would generate approximately 50 trips per peak hour. Ellis Schmidlapp concluded that there would be a reduction of approximately 14 trips per peak hour from a religious use to a residential use. The Board accepts this testimony.
14. Three local community groups attended the hearing, Lawrenceville United, Lawrenceville Corporation and the Lawrenceville Stakeholders. All three of the community groups testified in support of the Applicants proposed development of 57 residential units and 88 parking spaces.
15. Residents from the Lawrenceville community came to the meeting and expressed concerns over on street parking and general traffic in the area. They testified to the existing traffic and parking problems in the area. The Board accepts the testimony of the Lawrenceville residents.
16. Residents also testified that the church and school use is less intense than the proposed residential use. The Board accepts this testimony.

Conclusion of Law:

I. Special Exception 921.02.A.4

1. The Opposition in this case contends that the three existing uses are permitted on the Subject Property, and therefore they should not be considered non-conforming uses. The Opposition contends that the buildings and prior uses on the Subject Property at all material times were permitted under the applicable zoning codes. The Applicant in this case contends that all three existing uses are legal non-conforming uses and that Special Exception 921.02.A.4 applies.
2. In order to determine to examine the Applicant and the Oppositions claims the Board looked to "Chapter 926: Definitions" of the zoning code and examined the definition of the term "non-conforming use".
 - i. "Non-conforming use means the use of any land, building or structure, other than a sign. Which does not comply with the use regulations of the zoning district in which such use is located, but which complied with the use regulations in effect at the time the use was established."
3. The Board must examine each of the use and determine whether or not it is legally non-conforming in order to decide whether Special Exception 921.02.A.4 applies.
 - A. Child Care Facility
 - i. The Certificate of Occupancy for the child care facility was issued on August 5, 2004. The Application for the Certificate of Occupancy indicates that at that time the Subject Property was in a RM-M (Residential Multi-Unit Moderate Density)

zoning district. Under Section 911.02 a child care facility is permitted by right in a RM-M zoning district. Since Certificate of Occupancy was issued on August 5, 2004 the zoning map of the City of Pittsburgh has changed. The Holy Family Roman Catholic Church is now located in a R1A-H zoning district. Under Section 911.02 a child care facility is not permitted in a R1A-H zoning district.

- ii. The Board finds that the operation of a child care facility is a R1A-H zoning district is a non-conforming use. The use no longer complies with the regulations in the current zoning district R1A-H but it did comply with its previous zoning district RM-M.
4. Based on testimony at the hearing and the Certificates of Occupancy the Subject Property no longer operated as an elementary school or as a place for religious assembly when it was used as child care facility. Whether or not the uses of the Subject Property as an elementary school or as a religious assembly is no longer relevant for the determination as to whether the Subject Property is non-conforming. The Board is focusing on the most recent use of the Subject Property as a child care facility.
5. The Board finds that the use of the Subject Property as a childcare facility in a R1A-H zoning district is non-conforming and Special Exception 921.02.A.4 applies.
6. The Board is specifically empowered by law, Chapter 921 of the Pittsburgh Zoning Code, to decide whether to allow a change from one non-conforming use to another. Pennsylvania appellate courts have consistently held that there is no constitutionally protected right to change from one nonconforming use to another. Drucker v. Zoning Hearing Board, 556 A.2d 955 (1989). The terms of the ordinance govern the change and provide the parameters under which it must be considered. Drucker supra. Section 921.02.A.4 provides that the use is to be no more detrimental to the neighborhood than the prior use.
7. Section 921.02.A.4 provides the specific requirements to be met before authorizing a "Change to another Nonconforming Use. "A nonconforming use may be changed to another nonconforming use, as a special exception, provided that the new use shall be of the same general character or of a character that is more closely conforming than the existing, nonconforming use. The determination of whether a proposed use is a conforming use or is less intense than the existing nonconforming use shall be made by the Zoning Board of Adjustment based on factors including, but not limited to:
 - i. Hours of operation;
 - ii. Number of parking spaces;
 - iii. Number of employees;
 - iv. Physical size of building relative to surrounding buildings;
 - v. Design characteristics of building relative to design features of surrounding buildings; and
 - vi. Traffic generation.
8. Considering the above factors the Board finds the following:
 - i. The use of the Subject Property would be residential and would not maintain any commercial hours of operation.
 - ii. The existing uses for the Subject Property require more parking stalls than the proposed residential use of the subject property. The use of the Subject Property as a religious assembly would require 170 parking stalls. The proposed use of the Subject Property as residential requires 57 parking stalls.
 - iii. The number of employees on-site will be one maintenance worker. One employee on-site is less than what a school, day care, and church would employ.

- iv. The physical size of the site will continue to remain the same. The only changes to the structure will be made to the exterior of the building.
 - v. The design characteristics of the building will remain unchanged from that of the existing structures on the Subject Property.
 - vi. The traffic generated by the proposed residential use will be less than the existing commercial uses on the Subject Property. There would be a reduction of 14 trips per peak hour.
9. In addition, in determining whether a proposed change to another nonconforming use is more or less intensive than the existing use, the Zoning Board shall use the Use Classification System of Sec. 911.02, wherein all residential and mixed use zoning districts are listed in hierarchical order of intensity, with RSD being the least intensive and GI being the most intensive. This hierarchy of zoning districts shall not apply to Special Districts or Downtown districts. Within the Use Classification System, the Zoning Board shall use the following criteria:
10. Any use which is permitted as-of-right in a less intensive zoning district shall be considered less intensive than a use permitted as-of-right within a more intensive zoning district.
11. Within the same zoning district, a use shall be considered more intensive than another use if the approval required for such use is a higher level in the following hierarchy: as-of-right (P), Administrator's Exception (A), Special Exception (S), Conditional Use (C).
12. When two (2) uses cannot be compared according to the above criteria, the Zoning Board shall consider the districts where the uses are permitted, and shall consider the Use Standards of Sec. 911.04 in determining the relative intensity of use.
 - A. The proposed Multi-Unit residential use and the child care use are permitted uses in a Multi-Unit Residential zoning district. The proposed change is the same level of intensity per Section 911.02 of the code.
13. 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.

14. The Board finds the following:

- A. The proposed development will not create and detrimental visual impacts as the Applicant will be maintain the existing structures. The Applicant will not be increasing the footprint of the existing structures.
- B. There are no detrimental impacts that could adversely affect the safety or convenience of vehicular or pedestrian traffic. The parking spaces provided would eliminate the need for the any on street parking by the tenants of the proposed development.
- C. After considering the testimony given by those who objected at the hearing the Board ultimately finds that there would be no detrimental transportation impacts. Much of what was discussed during the hearing was related to the problems of on-street parking. The proposed development would not have an impact on on-street parking. Objectors cited concerns about accessibility of fire trucks and garbage vehicles. The Board understands the concerns of the local residents, but fails to see how off-street parking would adversely affect accessibility. The traffic generated by the proposed development will be less intense than the existing uses as there would be a reduction of 14 peak hour trips.
- D. There will no operational impacts on the surrounding properties.
- E. The proposed development will be residential so there will be no emissions or vibrations associated with its use. The proposed development will be consistent with the residential nature of the surrounding area.
- F. The Subject Property will be rehabilitated and improved. The proposed development will likely benefit the surrounding property values. Three community groups in the area stated that they see the project as being beneficial for the community.

II. Variance 903.03.A.4

1. Under Section 903.03.A.4 the Code requires a minimum front setback of 15ft for uses located within a R1A-H zoning district. The Subject Property has operated with a zero foot front setback. The existing parking lot on the Subject Property abuts the front property lot line along 44th Street.
2. The Applicant proposes to reduce the existing nonconforming front setback by creating a 10ft setback. This reduction is a decrease in the dimensional nonconformity of the Subject Property. Under 921.03.A.1 the maintenance remodeling and repair of a non-conforming structure is permitted without a variance if it does not increase the degree of nonconformity. The Board finds that in this instance the proposed 10ft setback is an attempt to increase the conformity of the Subject Property. The Applicant does not need a variance for the proposed setback.
3. The Applicant is also proposing to increase the height of the dimensional nonconforming structure. The Board looks to Nettleton v. Zoning Board of Adjustments of Pittsburgh, 828 A.2d 1033 (Pa. 2003) where the court dealt with this very issue. In this case the Pennsylvania Supreme Court sought to expand the height of an existing structure would not increase the degree of nonconformity. In this case the Board finds that increasing the height of the Subject Property is permitted under Nettleton.

Decision: The Applicant's Request for Special Exception under Code Section 921.02.A.4 is hereby APPROVED with the following condition.

- 1. The Applicant must submit a plan for site plan review.**



Wrenna L. Watson, Chair



Kirk B. Burkley

S. Manoj Jegasothy

APPROVED
7/1/14