

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

LAWRENCEVILLE UNITED and
LAWRENCEVILLE
CORPORATION,
Appellee,

CIVIL DIVISION

No. SA-13-000846

AMENDED CONSENT ORDER

vs.

Filed on behalf of all parties

CITY OF PITTSBURGH ZONING
BOARD OF ADJUSTMENT,
Appellant,

and

CITY OF PITTSBURGH
Intervenor,

and

LAWRENCEVILLE HOLDINGS
VI, LP
Intervenor.

AMENDED CONSENT ORDER

Lawrenceville United and Lawrenceville Corporation (collectively "Lawrenceville"), the City of Pittsburgh Zoning Board of Adjustment (the "Board"), the City of Pittsburgh (the "City"), and Lawrenceville Holdings VI, LP (the "Partnership"), all collectively referred to as the "Parties," respectfully submit the following Amended Consent Order for entry by the Court:

1. The Partnership submitted an application to the Board requesting approval of several special exceptions and variances for development of property that the Partnership owns at 4021-4029 Butler Street in the Lawrenceville neighborhood of Pittsburgh.

2. The Partnership's application requested, inter alia, a special exception for an expanded use of the Thunderbird Cafe, located at 4023 Butler Street, under the use classification Restaurant (General).

3. The Board approved the Partnership's application in its entirety.

4. Lawrenceville appealed the Board's decision to this Court, and the Court reversed the Board's decision in its entirety.

5. The Partnership thereafter filed an appeal of this Court's decision with the Commonwealth Court of Pennsylvania.

6. During the pendency of the Partnership's appeal in the Commonwealth Court, the Parties mediated the dispute and ultimately reached a settlement, which they incorporated into a settlement agreement, executed on October 14, 2014.

7. As part of their settlement, a Consent Order and a Corrected and Amended Consent Order were entered by the Court.

8. Upon consideration of the Parties' submission, the Court hereby orders as follows:

a. This Court's ruling that the proper use classification for the Partnership's proposed use of the Thunderbird Cafe is Recreation and Entertainment Indoor (General) is vacated. Upon further consideration, and upon consent of the parties, the Court vacates its prior Order and affirms the Board's conclusion that the Partnership's proposed use of the Thunderbird Cafe is properly classified as Restaurant (General).

9. The Court reaffirms its ruling that the Partnership failed to prove entitlement to all other special exceptions and variances requested in its application to the Board.

10. The Partnership's proposed expansion is approved, subject to the following conditions and limitations:

a. Total capacity of the Thunderbird Cafe, including show attendance, restaurant and bar patrons, and any outdoor seating or standing area, shall not exceed 573 persons;

b. The Partnership's development of the other properties at 4021 to 4029 Butler Street shall be limited to retail or food-service uses. The limitations of this subparagraph shall cease to apply in the event the Thunderbird Cafe ceases to operate as a live music venue;

c. The properties owned by the Partnership located at 4021 to 4029 other than the Thunderbird Cafe shall not operate as, or be leased to others for the purpose of operating, a bar, club, dance club or similar venue that offers live music performances; provided, that nothing herein shall be construed to prohibit a full-service restaurant, with or without a liquor license;

d. Parking for at least 10 (ten) vehicles in lots within 1,200 feet of the Thunderbird Cafe shall be provided prior to occupancy of the expanded Thunderbird. In the event that sufficient parking spaces are not available within the prescribed distance (1,200 feet), the Partnership shall submit an alternative proposal to Lawrenceville for approval, which approval shall not be unreasonably withheld;

e. On-street parking shall not be counted toward the 10 parking-space requirement, and the Partnership shall implement reasonable efforts to discourage on-street parking in the vicinity of the Thunderbird Cafe, such as by offering patrons incentives to park in parking lots leased and/or controlled by the Partnership;

f. Thunderbird shall have a survey question on its ticketing page asking how people are getting to the show and shall report the responses quarterly to Lawrenceville;

g. The Partnership shall install a bike corral on 41st & Butler;

h. The Partnership shall offer customers discounted stays at a local hotel;

i. The Partnership shall provide information related to parking various types of vehicles around and transportation to Thunderbird on its website;

j. The Partnership will support efforts to improve multi-modal mobility and parking in the neighborhood, including support of Residential Parking Permits and Mobility Enhancement District legislation.

k. Spaces or doors assigned to loading and unloading functions shall be located on 41st Street and behind the building along Eden Way and the Partnership shall ensure that all loading and unloading occurs only in those locations;

l. “No Idling” signs shall be installed along Eden Way;

m. Tour buses that need electrical power, that the Thunderbird cannot provide, the bus must locate off site;

n. A lock shall be installed on the power source utilized by tour buses;

o. Signs to discourage gathering in the rear parking lot or along Eden Way shall be installed;

p. At least one security guard shall be present for every 100 people in attendance during live shows;

q. No amplified music or sound system shall be permitted on any outdoor, rooftop deck at the Thunderbird Cafe;

r. All furniture on any rooftop deck or similar outside seating or standing area of the Thunderbird Cafe shall be secured in a manner to prevent it from being blown or thrown from the deck;

s. The Thunderbird Cafe shall operate a full kitchen whenever alcohol is served and until an hour before the last show ends or 11pm, whichever is earlier. If possible at a future time, the Thunderbird will seek to offer food prepared solely inside the building.

t. Soundproofing measures that comply with all local and state regulations must be installed and maintained to prevent music or entertainment from being heard outside the Thunderbird Cafe premises, and performers shall be limited to 100db in all future contracts.

u. Outdoor disposal of recyclables or the collection of trash, including recyclables, shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m.;

v. The Thunderbird Cafe shall conduct a litter cleanup, by 7 a.m. the day following a live performance, of Butler Street between Almond Way and 41st Street, 41st Street between Butler Street and Eden Way, and Eden Way between Almond Way and 41st Street.

w. The Thunderbird Café will install portable stanchions on the Butler Street sidewalk to ensure any lines that form do not impair access to the sidewalk for any shows over 250 people sold in advance.

x. The Thunderbird Cafe shall take customer counts for all live music performances at the Thunderbird Cafe and shall provide such customer counts to Lawrenceville on a quarterly basis;

y. Security cameras shall be installed at the front and rear entrances to the Thunderbird Cafe, and shall provide camera footage upon the reasonable written request of Lawrenceville.

z. The Thunderbird Cafe shall regularly publish a calendar of events that identifies the dates and times of scheduled live music performances and indicates when a particular performance is sold out; and

ii. The Partnership shall create a process for community members to file complaints, shall complete an incident report for every community complaint received, and shall provide all such complaints and reports to Lawrenceville quarterly.

For the foregoing reasons, and subject to the foregoing conditions and limitations, the Court vacates that portion of its February 25, 2014 Order that reversed the Board's use classification of Restaurant (General) for the Partnership's proposed expanded use of the Thunderbird Cafe and affirms the

remainder of its February 25, 2014 Order. It is further Ordered that the Partnership may proceed with development of its proposed use as outlined in Paragraph 10 of this Order, and the City, the Board, and Lawrenceville shall faithfully carry out the obligations imposed on them by this Order.

By the Court

_____, J.