



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: July 8, 2021 (Virtual Hearing)

Date of Decision: September 12, 2021

Zone Case: 147 of 2021

Address: 419 Melwood Avenue

Lot and Block: 26-S-135

Zoning District: UI

Ward: 5

Neighborhood: North Oakland

Owner: Famous Management Services LTD

Applicant: Kelley Coey

Request: Construction of ten-story multi-unit apartment building with 146 dwelling units.

Application: DCP-ZDR-2021-02539

Special Exception	Section 904.07.C.4	Additional height above 4 stories, 10 stories proposed
	Section 904.07.C.5	Additional FAR; 8.4:1 FAR proposed.

Appearances:

Applicant: Jonathan Hudson, Alex Lacey, Clifford Levine, Jack Williams

In Favor:

Opposed: Talon Smith, Allyson Knights, Leslie Clague, Suzanne Pace, Eve Picker, Talon Smith, Lars Olander, Leslie Clague

Observing: Katie Reed, Kathi Radock

Findings of Fact:

1. The Subject Property is located at 419 Melwood Avenue in an UI (Urban Industrial) District in North Oakland.
2. The two-story building located on the site fronts onto Melwood Avenue and uses Gold Way, a 30' wide right-of-way, at the rear of the structure for vehicular access.

3. The Applicant proposes to demolish the existing structure to construct a new building on the site, for use for 148 residential units.
4. The Department of City Planning determined that the building would require 105 vehicle parking spaces, 50 bicycle parking spaces, and 2 loading spaces. The required parking and loading would be provided on-site in a parking garage accessed from Gold Way.
5. The height proposed for the new building is 116'/10-stories.
6. The Floor Area Ratio (FAR) of the 130,250 sf building on the approximately 15,000 sf parcel would be 8.4:1.
7. The Subject Property is located approximately 217' from the closest property in a residential district.
8. Apart from the first floor, which would be used as the building's lobby but would be designed so that it could be converted to retail space in the future, the entire building would be used for multi-unit residential.
9. The Applicant presented evidence demonstrating that the height and massing of the building would be consistent with the height and massing of other buildings in the general vicinity in North Oakland, including: the 140' tall Residence Inn, 130' tall Moorhead Tower, 155' tall Royal York, 170' tall One on Centre, and 107' tall Bellefield Dwellings.
10. The Applicant designed the building with vehicle access from Gold Way at the request of the Department of Mobility and Infrastructure (DOMI).
11. At the hearing, Katie Reed, a Senior Planner from DOMI, testified that DOMI had, based on a survey and review of the anticipated traffic associated with the new development, determined that a formal Traffic Impact Study for the Proposed Building was not required because the proposed building would not cause a significant transportation impact. DOMI requested that the Applicant prepare a Transportation Memorandum, which was submitted to the Board following the hearing.
12. Paul A. Supowitz, Vice Chancellor for the Office of Community and Governmental Relations for the University of Pittsburgh, submitted a letter supporting the request.
13. Councilman R. Daniel Lavelle, who represents Oakland, submitted a letter supporting the request.
14. Kathi Radock, representing Oakland Planning and Development Corporation (OPDC), appeared at the hearing to provide information about the Development Activities Meeting held by the registered community organization. OPDC did not take a position on the request.
15. Sean C Luther, Director of InnovatePGH, submitted a letter of support for the request.

Community Concerns and Testimony

16. At the hearing, Eve Picker, the owner of the Luna Lofts property located at 410 N. Craig Street, and Lars Olander, owner of the several properties near the Subject Property on Melwood Avenue and N Craig Street, appeared at the hearing to oppose the Applicant's request and asserted that the height and density of the proposed development would have negative impacts on their properties.
17. Leslie Clague, owner of the property located at 3411 Flavian Street, and several other Polish Hill residents appeared to oppose the Applicant's request and express concerns about transportation impacts of the development on Gold Way and on the Polish Hill neighborhood generally. The objectors presented evidence about the existing conditions of Gold Way, which is used as a route between Polish Hill from Oakland and asserted that the density of the proposed development would create traffic congestion in Polish Hill.
18. The objectors also submitted photographs showing existing conditions on Gold Way, community newsletters with articles about congestion in Polish Hill, and a map showing routes used to access Polish Hill.
19. Several other residents from the surrounding Oakland and Polish Hill neighborhoods submitted written opposition to the proposed development.

Post-Hearing Submissions to The Board

20. Following the hearing, the Applicant submitted a packet of supplemental information.
21. Kyle L. Brown, P.E. of The Gateway Engineers, Inc, submitted a report about the impact of the Proposed Building on traffic in Polish Hill. The report concludes that the proposed redevelopment of 419 Melwood Avenue will have a negligible impact on traffic volumes on Gold Way and in the Polish Hill neighborhood generally.
22. Micheal Albright, P.E. of the Gateway Engineers, Inc, submitted an analysis of the existing road conditions on Gold Way that concludes that the right-of-way is sufficiently wide to accommodate two-way traffic and access to the parking garage. The report also concludes that improvements proposed on Gold Way would create a safer walking route for pedestrians.
23. Architect Jack Williams submitted a study of how shade created by the structure would impact surrounding properties at different times of the year that concludes that the structure would not cast shadows on properties in residential zoning districts.
24. Jack Williams also provided a letter about how demolition and construction will be managed to minimize effects on neighboring properties.
25. Following the hearing, both the Applicant and Leslie Clague, on behalf of the Residents and Stakeholders of Melwood Avenue and the Polish Hill Civic Association, provided proposed findings of fact and conclusions of law for the Board's consideration.

Conclusions of Law:

1. The Applicant proposes a new structure with a maximum height of 74'-6"/6-stories and an 8.4:1 FAR.
2. Code Section 904.07.C provides that the Board may approve, as a special exception in the UI District, additional height and FAR, not to exceed 10:1, subject to the requirements that the property is not located within 200' of a residential district and the additional height would not create a detrimental impact on residential properties as a result of the additional traffic impact from the additional height and density; impacts on views from the affected residential properties; and impacts associated with the bulk of the building on residential properties.
3. Under Pennsylvania law, a special exception, unlike a variance, is a form of a permitted use. A special exception is neither special, nor an exception. A use that is permitted as a special exception "evidences a legislative decision that the particular type of use is consistent with the zoning plan and presumptively consistent with the health, safety and welfare of the community." *Allegheny Tower Assoc's., LLC v. City of Scranton Zoning Hearing Bd.*, 152 A.3d 1118, 1123 (Pa. Commw. Ct. 2017), citing *Greth Dev. Grp., Inc. v. Zoning Hearing Bd. of L. Heidelberg Twp.*, 918 A.2d 181 (Pa. Comm. Ct. 2007) and Robert S. Ryan, *Pennsylvania Zoning Law and Practice*, § 5.1.1; see also *Bray v. Zoning Bd. of Adj.*, 410 A.2d 909 (Pa. Commw. Ct. 1980). 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, subject to the criteria that the governing body has established for the use.
4. In *Allegheny Tower*, the Commonwealth Court reiterated the rules regarding the initial duty to present evidence and the burden of persuasion in special exception cases, as set forth in *Bray*. With respect to the objective requirements for the special exception use, as specifically detailed in the ordinance, the applicant has the duty to present evidence and the burden of persuasion. The applicant has the initial burden to show that its proposal complies with the specific criteria delineated in the ordinance. *Bray*, 410 A.2d at 910.
5. An intent to comply with a special exception requirement can be sufficient to support a determination of compliance with the special exception criteria and approval of a special exception can be conditioned on subsequent completion and compliance with the ordinance provision. See *Broussard v. Zoning Bd. of Adj.*, 907 A.2d 494, 500 (Pa. 2006) (Pennsylvania Supreme Court held an actual, recordable contract for parking spaces was not required at the time of plan submission for a special exception that required parking).
6. If the applicant demonstrates compliance with the ordinance's objective criteria, a presumption arises that the use is consistent with the public health, safety and welfare. 10 *Allegheny Tower*, 152 A.3d at 1121; *Bray*, 410 A.2d at 911; Ryan, *Pennsylvania Zoning Law and Practice*, § 5.2.6. The burden then shifts to any objectors.
7. With respect to any asserted detrimental impacts, the objectors have both the duty of identifying and presenting evidence of a potential impact and the burden of persuasion with respect to that impact. See *Allegheny Tower*, 152 A.3d at 1124, quoting *Bray*, 410

A.2d at 912- 13. As the Court explained, “the applicant has the burden of persuasion only as to specific requirements, while objectors have the burden as to all general detrimental effects.” *Id.*, citing *Marquise Investment, Inc. v. City of Pittsburgh*, 11 A.3d 607 (Pa. Commw. Ct. 2010).

8. To prove a “detrimental impact,” objectors to a proposed special exception cannot simply speculate but must raise specific issues regarding the effect of the proposed use on the public interest and they must show with “a high degree of probability” that the effect of the proposed use will be substantial. *Allegheny Tower*, 152 A.3d at 1123; *Manor Healthcare Corp.*, 590 A.2d at 71 (quoting *Archbishop O’Hara’s Appeal*, 131 A.2d 587, 596 (Pa. 1957)). Opinions, without more substantive evidence, do not satisfy the objectors’ burden of proof. *Appeal of R.C. Maxwell Co.*, 548 A.2d 1300, 1304 (Pa. Commw. Ct. 1988); *Commonwealth of Pennsylvania Bureau of Corrections v. Pittsburgh City Council*, 532 A.2d 12, 14-15 (Pa. 1987); *JoJo Oil Co., Inc. v. Dingman Twp. Zoning Hearing Bd.*, 77 A.3d 679, 688-89 (Pa. Commw. Ct. 2013).
9. The Applicant presented credible evidence demonstrating compliance with the special exception criteria for the additional height and FAR. The Subject Property is not within 200’ of any residential zoning district and the massing of the proposed structure would not significantly impact surrounding residential properties. The height of the proposed building would be generally consistent with other structures in the general vicinity of the Subject Property. Also, the Applicant submitted credible evidence that the traffic generated by the use of the proposed building would not have significant impact on Melwood Avenue and Gold Way, or in surrounding neighborhoods.
10. Here, as addressed in the Board’s findings, the Applicant presented substantial and credible evidence to demonstrate compliance with the Code’s specific criteria for the proposed height and density in an UI District.
11. The Board has considered and appreciates the concerns of the individual residents who appeared at the hearing and who submitted written objections to the proposed new development. However, generalized concerns about the potential impacts of a proposed use are not sufficient to demonstrate “with a high degree of probability” that specific detrimental impacts will result from the use.

Decision: The Applicant’s request for special exceptions pursuant to Sections 904.07.C.4 and 904.07.C.5 to construct a 10 story/116’ tall building with an 8.4:1 FAR is hereby APPROVED.

s/Alice B. Mitinger
Alice B. Mitinger, Chair

s/Lashawn Burton-Faulk
LaShawn Burton-Faulk

s/ John J Richardson
John J. Richardson

Note: Decision issued with electronic signatures, with the Board members’ review and approval.