

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Allegheny

County

For Prothonotary Use Only:

Docket No:

TIME STAMP

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SECTION A

Commencement of Action:

- ☐ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

Bloomfield Bridge Associates, LLC

Lead Defendant's Name:

City of Pittsburgh Zoning Board of Adjustment

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits
(check one) ☐ outside arbitration limits

Is this a Class Action Suit? ☐ Yes ☒ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Kevin McKeegan, Esquire

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute:
Discrimination
☐ Employment Dispute: Other

☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

☒ Zoning Board
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
Restraining Order
☐ Quo Warranto
☐ Replevin
☐ Other:

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BLOOMFIELD BRIDGE ASSOCIATES,
LLC,

CIVIL DIVISION

Appellant,

No.

vs.

THE CITY OF PITTSBURGH ZONING
BOARD OF ADJUSTMENT,

Appellee.

NOTICE OF LAND USE APPEAL

Filed on Behalf of:
BLOOMFIELD BRIDGE ASSOCIATES, LLC

Counsel of Record for this Party:

Kevin M. McKeegan, Esquire
Pa. I.D. #36642

Brittany M. Bloam, Esquire
Pa. I.D. # 311541

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Pittsburgh, PA 15222-2315
(412) 456-2800

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BLOOMFIELD BRIDGE ASSOCIATES, CIVIL DIVISION
LLC,

Appellant,

No.

vs.

THE CITY OF PITTSBURGH ZONING
BOARD OF ADJUSTMENT,

Appellee.

NOTICE OF LAND USE APPEAL

Appellant, Bloomfield Bridge Associates LLC (“Bloomfield Bridge”), files this Notice of Zoning Appeal (the “Appeal”), appealing, in part, the decision described below of the City of Pittsburgh Zoning Board of Adjustment (the “ZBA”) in Zoning Case 112 of 2023, and in support thereof states:

Background

1. Bloomfield Bridge is a Pennsylvania limited liability company and the owner of the properties that are the subject of this appeal.
2. The ZBA is charged under the City of Pittsburgh Zoning Code (the “Code”) with hearing and deciding cases involving requests for variances from the terms of the Code and to authorize special exceptions as authorized by the Code. Code §923.02.B.
3. The properties that are the subject of this appeal are four lots at 4401 Liberty Avenue, Pittsburgh, in the Bloomfield neighborhood of the City of Pittsburgh (the “City”). These parcels total 1.97 acres in size and are designated for real estate tax purposes as Block and Lots 49-S-106, 49-S-125, 49-S-128, 49-S-136 (the “Property”).
4. Bloomfield Bridge is the owner of the Property.

5. The Property is in a Local Neighborhood Commercial Zoning District (“LNC”) as provided for in the Code.

6. LNC allows, by right, for “mixed-use” projects containing multi-family residential and retail components. Grocery stores over 3,000 square feet are permitted in an LNC zone as a special exception (“Grocery Store (General)”). Code § 911.02.

7. The stated maximum floor area ratio (“FAR”) in an LNC District is 2:1. *Id.* at § 904.02.C.

8. The stated maximum building height in an LNC District is 45’, 3-stories. *Id.* at § 904.02.C.

9. In addition, under the Code, so-called “Residential Compatibility” height standards apply to portions of the Property, further restricting and limiting the height in parts of the Property to 40’/3-stories. *Id.* at § 916.02.B.

10. The Property is also subject to the Inclusionary Housing Overlay District (“IZ-O”) provisions of the Code. The IZ-O requires at least 10% of the residential rental units in multi-family buildings that contain more than twenty (20) units to meet certain affordability requirements. *Id.* at § 907.04.A.6.

11. Bloomfield Bridge proposes to demolish the existing structures on the Property, and construct a six-story mixed-use building, including an approximately 28,000 square feet ground floor grocery store, roughly 10,000 square feet of ancillary retail/restaurant space, 248 residential rental units, and 318 underground parking spaces. Twenty-five (25) of the rental units will be “affordable” as defined by the IZ-O (the “Project”).

12. The gross floor area for the proposed building is expected to be 266,400 square feet, or a 3.1:1 Floor Area Ratio (“FAR”).

13. The height of the proposed structure will vary across the site, but at its maximum along Liberty Avenue would be 75', 6 stories tall; the structure will comply with the LNC's 45-foot height limit where it adjoins Gangwish Street and nearby homes.

Special Exception and Variance Requests

14. Appellant filed a Zoning Development Review Application at DCP-ZDR-2023-06302 seeking the following relief:

- a. A special exception for a Grocery Store (General) in the LNC. Code § 911.02.
- b. A variance from the 2:1 Maximum Floor Area Ratio (FAR) in Code § 904.02.C to allow a FAR of 3.1:1 ("FAR Variance Request").
- c. A variance from the 45'/3-stories maximum building height in Code § 904.02.C to allow a height of 75'/6-stories ("Height Request").
- d. A variance from the residential compatibility height standards in Code § 916.02.B ("Residential Compatibility Request"). The Height Request and the Residential Compatibility Request are collectively called the "Height Variance Requests".

The Hearing and ZBA Decision

15. A hearing was held by the ZBA on August 10, 2023 (the "Hearing"). A transcript of the Hearing is attached as Exhibit A. The exhibits presented by Bloomfield Bridge at the Hearing are attached as Exhibit B.

16. Bloomfield Bridge submitted to the ZBA proposed Findings of Fact and Conclusions of Law on September 20, 2023. Bloomfield Bridge's Findings of Fact and Conclusions of Law are attached as Exhibit C.

17. On November 6, 2023, the ZBA issued its decision ("Decision") regarding the Application. A copy of the Decision is attached as Exhibit D.

18. The ZBA granted Bloomfield Bridge's request for a special exception for the Grocery Store (General) use, subject to certain requirements. Decision, (Conclusions of Law), ¶34.

19. The ZBA denied Bloomfield Bridge's FAR Variance Request and Height Variance Requests. *Id.* (Conclusions of Law), ¶¶ 21-33.

20. The ZBA found that Bloomfield Bridge was not entitled to the FAR Variance Request or Height Variance Requests because it reasoned, *inter alia*, that the asserted hardship was related more to the magnitude of the development than the unique conditions of the Property. *Id.* (Conclusions of Law), ¶¶ 25-26.

21. The ZBA concluded that Bloomfield Bridge did not present sufficient evidence supporting the variance standards for the FAR Variance Request and Height Variance Requests. *Id.* (Conclusions of Law), ¶ 29.

22. The ZBA found that Bloomfield Bridge did not meet its burden to demonstrate that the height proposed would be consistent with the essential character of the neighborhood. *Id.* (Conclusions of Law), ¶ 30.

23. The ZBA found that FAR Variance Request and Height Variance Requests were not the minimum that would afford relief. *Id.* (Conclusions of Law), ¶ 31.

Grounds for Appeal

24. The Decision regarding the FAR Variance Request and Height Variance Requests should be reversed because it is arbitrary, capricious, an abuse of discretion, not supported by substantial evidence, and contrary to law.

25. The ZBA erred in finding that Bloomfield Bridge failed to sustain its burden to present sufficient evidence supporting the elements of a variance.

26. In seeking a variance, an applicant must demonstrate that its proposal satisfies the review criteria found in Code § 922.09.E.

27. Pennsylvania law recognizes a distinction between so-called “use” variances and “dimensional” variances. In a dimensional variance case, the applicant is held to lesser quantum of proof (as compared with a “use” variance request) and a zoning hearing board such as the ZBA may consider multiple factors not traditionally considered in the analysis for use variances, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to strictly comply with the zoning requirements and the characteristics of the surrounding neighborhood. See generally, *Hertzberg v. Zoning Bd. of Adjustment*, 721 A.2d 43, 50 (Pa. 1998); *In re Appeal of Towamencin Twp.*, 42 A.3d 366, 370 (Pa. Cmwlth. 2012).

28. The FAR Variance Request and Height Variance Requests are dimensional in nature.

29. Bloomfield Bridge presented sufficient, credible, and compelling evidence supporting the FAR Variance Request and Height Variance Requests:

- a. Bloomfield Bridge presented credible and unrefuted evidence establishing unique circumstances and conditions from topography and adverse subsurface conditions, which add materially higher costs to any redevelopment of the Property.
- b. Bloomfield Bridge presented credible and unrefuted evidence that because of topographic and subsurface conditions at the Property, the Code’s height limitations create construction and cost challenges unique to the Property.
- c. Bloomfield Bridge presented credible and unrefuted evidence that the Property cannot be developed strictly in accordance with the Code’s requirements, due to the unusually high construction costs that would be incurred to address the Property’s unique topographic and subsurface conditions.

- d. Bloomfield Bridge did not create the subsurface and topographic conditions of the Property.
 - e. Bloomfield Bridge presented credible and unrefuted evidence that the additional height and density proposed under the FAR Variance Request and Height Variance Requests were the minimum that would allow for the economically feasible development of the Property, due to the additional and extraordinary construction costs necessary to address the unique topographic and subsurface conditions at the Property.
 - f. The financial hardship created by the work necessary to address the Property's topographic and subsurface conditions is aggravated by the Code's requirement that the Project comply with the IZ-O.
 - g. Bloomfield Bridge presented credible and unrefuted evidence that the FAR Variance Request and Height Variance Requests will not adversely affect the essential character of the neighborhood or the public welfare. The Project will not result in adverse traffic impacts and sufficient parking will be available onsite. Bloomfield Bridge also presented evidence that the building design follows the surrounding built environment, and comports with the neighborhood's expressed desires and plans for development of this gateway to Bloomfield.
30. The ZBA erred in concluding that:
- a. Bloomfield Bridge's FAR Variance Request and Height Variance Requests were not dimensional in nature. Decision, (Conclusions of Law), ¶ 22.
 - b. Bloomfield Bridge did not present sufficient, substantial, and/or credible evidence to meet its burden regarding all standards for dimensional variances. *Id.* (Conclusions of Law), ¶ 23.
 - c. Bloomfield Bridge's asserted hardship and costs were related to the magnitude of the development, and not the unique conditions of the Property. *Id.* (Conclusions of Law), ¶ 25.
 - d. The IZ-O requirements could not be taken into account in considering the financial hardships that Bloomfield Bridge would incur in redeveloping the Property. *Id.* (Conclusions of Law), ¶ 26.
 - e. Bloomfield Bridge did not present sufficient evidence regarding the variance standards for the FAR Variance Request and Height Variance Requests. *Id.* (Conclusions of Law), ¶ 29.

- f. Bloomfield Bridge did not meet its burden to demonstrate that the height proposed in the Height Variance Requests would be consistent with the essential character of the neighborhood. *Id.* (Conclusions of Law), ¶ 30.
- g. The FAR Variance Request and Height Variance Requests requested were not the minimum that would afford relief. *Id.* (Conclusions of Law), ¶ 31.

31. The ZBA further erred by applying legal standards to Bloomfield Bridge's FAR Variance Request and Height Variance Requests that are different from those applied by the ZBA to dimensional variances requests for development projects similar to the Project.

32. Bloomfield Bridge reserves the right to supplement and amend this Appeal to raise at or before any hearing of this appeal other factual and legal grounds to challenge the denial of the variance requests.

WHEREFORE, Appellant, Bloomfield Bridge Associates LLC, respectfully requests this Honorable Court reverse the Decision of the City of Pittsburgh Zoning Board of Adjustment to deny the FAR Variance Request and Height Variance Requests and issue an Order directing that the Project be approved as depicted in the plans and exhibits, and any other relief as the Court deems just.

Respectfully submitted,

MEYER, UNKOVIC & SCOTT LLP

/s/ **Brittany M. Bloam**

Kevin M. McKeegan, Esquire

Brittany M. Bloam, Esquire

*ATTORNEYS FOR BLOOMFIELD BRIDGE
ASSOCIATES, LLC*

EXHIBIT A

1 BEFORE THE CITY OF PITTSBURGH
2 ZONING BOARD OF ADJUSTMENT

3 - - -

4 IN RE: Zone Case No. 112 of 2023 -
5 4401 Liberty Avenue

6 - - -

7

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9 ZONING BOARD:

10 Alice Mitinger, Chairwoman
11 Lashawn Burton-Faulk, Board Member
12 John J. Richardson, Board Member
13 Daniel Scheppke, Zoning Case Administrative
14 Officer

15

16 The within meeting of the City of Pittsburgh
17 Zoning Board of Adjustment, Reported by
18 Dylan C. DiRenna, a Notary Public in and for the
19 Commonwealth of Pennsylvania, was convened via
20 Zoom teleconference, on Thursday, August 10th,
21 2023, commencing at 10:07 a.m.

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 - - -
 NETWORK DEPOSITION SERVICES
 SUITE 1101, GULF TOWER
 PITTSBURGH, PENNSYLVANIA 15219
 412-281-7908
 - - -

1 COUNSEL PRESENT:

2 On behalf of the Applicant:

3 Meyer Unkovic & Scott
4 Kevin F. McKeegan, Esquire
5 535 Smithfield Street
6 1300 Henry W. Oliver Building
7 Pittsburgh, Pennsylvania 15222

8

9 - - -

10

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1 PROCEEDINGS

2 (Witnesses sworn en masse.)

3 MR. SCHEPPKE: This is Case 112 of
4 2023 for 4401 Liberty Avenue. The
5 application is for the construction of a six
6 story mixed-use building, including a ground
7 floor grocery story and 248 residential
8 units. They are requesting a special
9 exception pursuant to 911.02, to allow
10 grocery store general in the LNC district.
11 Variances from 904.02.C, which limits the
12 maximum floor area ratio to 2:1 and 3.25:1
13 FAR is requested, 45 foot three story maximum
14 building height and 75 foot six stories is
15 requested. Special exceptions pursuant to
16 Section 916.02.B, the maximum building height
17 is 40 foot three stories within 50 feet of R
18 district and 50 feet four stories within 100
19 feet of R1A district.

20 MS. MITINGER: Mr. McKeegan, are there
21 any corrections that you would like to make
22 to the request for relief that has been
23 identified?

1 MR. MCKEEGAN: Yes, thank you for
2 noting that.

3 Since the agenda was prepared, we went
4 back and took a second look at the FAR
5 request. It's actually not quite as big a
6 request as was presented. It will be 3.1:1,
7 not 3.25:1. In the interest of being candid
8 with the tribunal regarding the stated
9 special exception for the residential
10 compatibility standards, as the Board is
11 aware, one of the standards that has to be
12 shown is that there are taller intervening
13 structures. There are none here. This
14 really needs to be treated as a dimensional
15 variance, not as a special exception.

16 MS. MITINGER: Had you not been
17 candid, Mr. McKeegan, I would have pointed
18 that out to you. Thank you for recognizing
19 that that is in fact a variance request.

20 You said you had adjusted the FAR, but
21 the proposed height is still 75, 6?

22 MR. MCKEEGAN: The nominal height.
23 The heights as stated are still what is

1 listed in the agenda.

2 MS. MITINGER: The LNC district
3 doesn't allow for additional height by
4 special exception. So that's also a
5 variance.

6 MR. MCKEEGAN: That's correct, it's
7 also a dimensional variance. Thank you.

8 MS. MITINGER: All right. Carry on.
9 We have your materials up. We will hear your
10 evidence.

11 MR. MCKEEGAN: Thank you. For the
12 Board's information -- we won't display this
13 in the interest of time -- we did include at
14 the end of this presentation the posting
15 photographs. Those were submitted earlier in
16 July.

17 Daniel, if you could, please go to the
18 next slide.

19 This is a rather high visible,
20 notorious site in Bloomfield. The property
21 is located at the intersections of the
22 Bloomfield Bridge, Liberty Avenue and Main
23 Street. It's depicted in blue on this

1 graphic. You can see off to the left-hand
2 side with the Number 5 the location of
3 Children's Hospital. Off to the right-hand
4 side of the screen with the Number 7 is West
5 Penn Hospital. This hopefully gives the
6 Board context for where this property is and
7 other conditions of the area. If we could,
8 go to the next slide, please, Daniel.

9 As I am sure members of the Board may
10 be aware, this site has been the location of
11 a grocery store, I hesitate to say since the
12 memory of man runneth not to the contrary,
13 but for quite a long time, at least going
14 back to the 1960s. It's a standalone grocery
15 store roughly 36,000 square feet in area.
16 It's surrounded by the proverbial sea of
17 asphalt. There's little to no urban
18 presence. At one time people may remember it
19 as a Kroger. It evolved into a ShurSave.
20 Now it's a Community Market. This slide and
21 the next slide depict conditions in and
22 around the site. If we could, quickly go to
23 the next slide, Daniel. Thank you.

1 The site also includes, in addition to
2 the grocery store, the site also includes a
3 now closed VFW hall and an old, unused vacant
4 residence. Bloomfield Bridge Associates, our
5 client, which I am going to refer to
6 throughout these proceedings as Echo because
7 it's an Echo Realty entity, acquired the site
8 January of 2020. That date is important
9 because the site was acquired before March of
10 2020. We all know what happened then, the
11 COVID pandemic, before the inflationary
12 pressures that we have encountered since then
13 and before the City extended inclusionary
14 zoning requirements to the Bloomfield
15 neighborhood. I want to state very clearly
16 upfront -- Mr. Bishop will also confirm this
17 later -- that Echo is not contesting the
18 inclusionary zoning requirements. They are
19 actually very supportive of that. It is a
20 factor in terms of developing the site. If
21 we could, go to the next slide, please.

22 There has been a significant community
23 outreach effort to get to where we are today,

1 going back really to shortly after Echo
2 acquired the site. We set out here the list
3 of community meetings, the list of meetings
4 with Bloomfield Development Corporation staff
5 going back to 2020. There has been really
6 three development activities meetings leading
7 up to today. One has was held back in 2002
8 when a zone change for a small portion of the
9 property was adopted. More recently we
10 actually had two in July. Bloomfield asked
11 us to hold two so everybody could learn about
12 the project. So there has been significant
13 community engagement here. I think we will
14 hear from Bloomfield Development Corporation
15 later that they are supportive of the
16 project. We have a letter to that effect
17 later on in the presentation. If we could,
18 go to the next slide, please, Daniel.

19 One important thing that Echo learned
20 as it went through the community process is
21 that, in response to a proposal to develop
22 this project property that failed in the
23 2017/2018 time period, the community sat down

1 and, to its credit, without having the
2 pressure of an immediate development project
3 on the table, came up with a list of
4 community goals and aspirations for the site.
5 We have included this community goals slide
6 in the presentation because it sets out what
7 Bloomfield really wants to see for this
8 property. I'm not going to go through each
9 of the points. To summarize them, they want
10 to see housing options. They would like to
11 see a green gateway or plaza as kind of an
12 entranceway, as a gateway into Bloomfield.
13 They would like to have a mix of housing in
14 the Bloomfield neighborhood. They would like
15 buildings to be taller along the Liberty
16 Avenue front and not as tall as you go back
17 into the residential district. They do not
18 think that development should be limited to
19 two or three stories, but it has to be
20 contextual. Very importantly, they do want
21 to see a grocery store maintained at the
22 site. Echo took a look at these community
23 goals and --

1 MS. MITINGER: There are community
2 goals and then there are zoning requirements.
3 Let's kind of stick with the zoning
4 requirements.

5 MR. MCKEEGAN: I appreciate that.
6 Just so you know where we got to where we
7 are.

8 If we could, go to the next slide,
9 please.

10 As I mentioned, the great bulk of the
11 site has historically been zoned LNC. In
12 January of 2022 the small parcel on which the
13 vacant house was located was also changed to
14 the LNC zone. Everything is zoned LNC. The
15 proposed project includes multifamily
16 residential, which is a permitted use in the
17 LNC zone. It includes about 10,000 square
18 feet of retail or restaurant space, which is
19 also a permitted use in the LNC zone, a
20 grocery store of about 26,000 square feet.
21 Because that's over 3,000 square feet,
22 although grocery stores are permitted, it
23 needs to be approved as a special exception.

1 The number of multifamily units proposed is
2 248. 25 of those will be compliant with the
3 IZ, inclusionary zoning ordinance. We are
4 also going to be providing 318 parking
5 spaces.

6 As the agenda indicates, we need a
7 number of variances, dimensional variances
8 relating to height, FAR and the like. We
9 also need a special exception for the grocery
10 store.

11 Just to outline the testimony, we are
12 going to begin with Phillip Wilkinson, who is
13 the architect of record for the project. He
14 is going to talk about the project and some
15 of the details of it more specifically. We
16 are then going to move to Philip Bishop from
17 Echo to discuss some of the difficult, some
18 hardships that need to be overcome to make
19 the project work. We are going to conclude
20 with Chris Droznik, who will discuss traffic
21 conditions of the area.

22 Unless there are questions of me, with
23 that out of the way, let's go to this next

1 slide.

2 MS. MITINGER: Let's move on. Thank
3 you.

4 MR. MCKEEGAN: Thank you.

5 PHILIP WILKINSON,

6 Called as a witness, having been
7 previously duly sworn, as hereinafter
8 certified, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. MCKEEGAN:

12 Q Phil Wilkinson, for the record, could
13 you identify yourself, give your name and address
14 and state your role with the project.

15 A Sure. Philip Wilkinson, I'm a
16 principal with AE7 architects. I live at 1505
17 King David Drive, Pittsburgh, PA.

18 Q Philip, we have up on the screen now
19 the two dimensional site plan for the project.
20 Could you quickly walk the Board around the site
21 plan and explain some of the details that are
22 depicted on it.

23 A Thank you. The primary use we talked

1 about, the grocery store you'll see in red,
2 putting that at the corner of Liberty, which is
3 really a prominent corner. In grey next to the
4 grocery store is an enclosed loading area for the
5 grocery store, so that is not exposed to the
6 surrounding neighborhood. The orange is showing
7 the retail or F&B use at the corner of Ella and
8 Liberty. That is framing the civic plaza, which
9 increases the amount of open space on the project
10 above the 10 percent. We are above 20 percent
11 open space on the project, aligning with some of
12 the goals -- we understand it's not zoning
13 required -- goals with the community in connecting
14 Stack Way and separating the buildings.

15 You see in green here on the right
16 side of Ella, that is our primary entry for the
17 residential units, 248. You come in off Ella and
18 then up into the project. The large green dark
19 area is showing parking for the grocery store.
20 Above that we would have the residential units.
21 Off of Howley we have an entry that would go down
22 into parking to two levels of retail and grocery
23 parking, which would be on Levels 1 and Levels

1 kind of 1.5, like mezzanine parking aligning with
2 the grocery store height. The grocery store is
3 kind of a double height volume. Off the east side
4 off of Ella we have a dedicated parking entry
5 which goes below grade. We have an entire level
6 of below grade parking across the site, as
7 requested as part of the desire from the
8 Bloomfield Development Corporation and the
9 community to remove parking, not have kind of
10 exposed parking to the surrounding community.
11 This separates the building into kind of two
12 elements, kind of L shape and then square shape.
13 We are also preserving and enhancing the mobility
14 areas of the project, highlighted by the bus
15 station and stops on the east side and west side
16 of the site. We are increasing the sidewalk,
17 increasing the trees in the public realm in
18 response to the site, considering it's a very
19 dense.

20 The site does have fair amount of
21 constraints because it slopes around 17 feet. We
22 have an additional slide show that. What you see
23 on here a series of ramps and steps across the

1 site to try to increase the amount of mobility
2 across the site for universal accessibility on all
3 levels in and around the site, even though it
4 slopes about 17 feet between --

5 MS. MITINGER: When you say the site
6 "slopes," is it front to back, up Liberty?
7 What are you talking about?

8 THE WITNESS: We have an additional
9 slide. We will show that as we go forward.
10 I wanted to mention that we do have --

11 MR. MCKEEGAN: In the interest of
12 moving on very quickly, there will be two
13 entrances to the garage separating the
14 commercial parking, so to speak, from the
15 residential parking. We are also providing
16 for pedestrian movements both north and south
17 and east and west across the site, a plaza
18 and then the location of the principal uses.

19 Very quickly, if we could, go to the
20 next slide, please.

21 I don't want to belabor this. I do
22 want point out for the Board how this
23 proposal meets the community goals I

1 mentioned earlier.

2 MR. SCHEPPKE: Quite frankly, I would
3 like to focus on the zoning issues. Briefly,
4 Mr. McKeegan.

5 MR. MCKEEGAN: I'm sure you would. We
6 are going to move along.

7 If we could, go to the next series of
8 slides.

9 BY MR. MCKEEGAN:

10 Q Philip, if you could, walk the Board
11 again quickly through these slides, the
12 perspective views of how this project will fit
13 into the neighborhood.

14 A Sure. We have a couple slides we will
15 quickly go through. The building heights do
16 respond contextually to the streets that they are
17 facing. This is a view down Liberty. Liberty
18 slopes as it gets toward the Strip District. The
19 buildings are varying in their responsive height
20 to echo the sort of character and design response
21 to Liberty street.

22 MS. MITINGER: Wait a minute. Are any
23 of the buildings that you're depicting as

1 existing structures on Liberty six stories or
2 75 feet?

3 MR. MCKEEGAN: What we are trying to
4 show here -- I want to respond to that
5 quickly -- is that because of the -- we do
6 have another slide on this later on --
7 because of the sloped conditions on liberty
8 doing downhill basically from the center
9 going downhill on this shot, that the
10 buildings are not dramatically different, not
11 out of context with what's already in the
12 neighborhood.

13 MS. MITINGER: I'm looking at three
14 story buildings. There are no --

15 MR. MCKEEGAN: We are not debating
16 that point. We are just trying to establish
17 some context.

18 MS. MITINGER: Okay. Thank you.

19 MR. MCKEEGAN: If we could, move on to
20 the next slide, the next two slides, please.

21 BY MR. MCKEEGAN:

22 Q Philip, if you could, discuss these.

23 I would like you to pay particular attention to

1 the grocery store on the corner.

2 A This is a view coming up Liberty up
3 into the neighborhood. The grocery store is high
4 volume on the first floor, which increases the
5 overall height of the building. This is showing
6 the higher volume at the corner of Liberty and
7 Howley on the site.

8 Q If you would, go to the next slide,
9 please, Daniel.

10 A This is coming down from the Liberty
11 Bridge, seeing the building in context. It is a
12 gateway site for the neighborhood, with the
13 grocery store located on the corner and then
14 residential units looking out from the building.
15 Then it steps down as it goes towards and up
16 Liberty Avenue.

17 Q With respect to the grocery store,
18 Philip, are there any special considerations that
19 need to be taken into account when you're
20 including a grocery store in a multistory
21 building?

22 A Yeah, considerable. A grocery store
23 typically is a higher volume than a standard

1 retail store. That would increase the building by
2 almost a half story, 6 to 8 feet increase in
3 height. We also have to accommodate transferring
4 plumbing and mechanical between the residential
5 units and the grocery store as part of Allegheny
6 code requirements. That essentially pushes the
7 building height volume up in order to get a modern
8 grocery store serving the community at the ground
9 level.

10 Q That's roughly a half story, 7 to 8
11 feet?

12 A Yes, increasing over a standard retail
13 store height.

14 Q If we could, go to -- we'll go through
15 these quickly, more perspective views.

16 What is this depicting, Philip?

17 Could you discuss in particular how
18 this relates to Gangwish Street.

19 A As a response to Gangwish Street and
20 the residential compatibility and offset, we are
21 stepping the building down from the corner of
22 Liberty as it goes all the way back to Gangwish.
23 So the building is compliant for the residential

1 compatibility standards on Gangwish. That's three
2 levels. Then it continues to step in and around
3 the project. It responds to that street in a way
4 that makes the building feel more residential as
5 it moves around. That's also visible in the next
6 slide if you move one slide forward.

7 The existing building -- the existing
8 residences are on the left side of this view. Our
9 proposed building is on the right side. This is
10 showing the residential compatibility meeting the
11 requirements of zoning on this street and pushing
12 the building volume away from Gangwish Street.
13 Next slide, please.

14 This is again coming around. We are
15 at the corner of Gangwish and Ella, moving back
16 toward Liberty. This is we have our residential
17 entry. It's established. This is establishing
18 the overall elevations throughout the building
19 since we have four different streets that we are
20 responding to. That shows the residential entry
21 in the middle of the project.

22 Q If we could, go to the next slide.

23 We in now have some elevation views of

1 the building. I want to focus for a moment on
2 Ella Street. This building obviously has a number
3 of facades. To measure height you have to have a
4 beginning point, so to speak.

5 Philip, could you explain the
6 importance of the Ella Street elevation in terms
7 of measuring the height of this building.

8 A This is the entry to the residential
9 building. It's essentially setting the address
10 for the 248 units. In discussions with City
11 Planning, they determined that this was the
12 location to set the base elevation of the building
13 at. All datum relate to Ella Street, as it's the
14 main entry to the residential, which is the
15 largest use on the site.

16 Q I'm sorry, go ahead. I apologize.

17 A The rest of the elevations we will go
18 through here. You can see Gangwish Street. The
19 elevations here on the bottom of the page are
20 compatible with the residential requirements for
21 setting back the building. This side of the
22 elevation, side of the project meets the intention
23 of the zoning requirements for the project.

1 MR. MCKEEGAN: Then we have the next
2 page is two other elevation views, again
3 giving some data for the Board. I want to
4 make sure the Board understood where the
5 beginning point for these elevations was.

6 Let's go to topography next.

7 THE WITNESS: Hold on. I would like
8 to make a big point. I think Alice was
9 asking this.

10 You can see here on this elevation of
11 Liberty how much Liberty is sloping. When
12 you look at the height of the buildings, it's
13 all relative to the elevation of the project.
14 Even though we are looking at 75 feet on the
15 left side of Liberty elevation, the building
16 has already dropped considerably at that
17 point from the corner. Relative elevations
18 are in relationship to the rest of the
19 street.

20 Howley, you can see an elevation. You
21 can see that residential compatibility drop.
22 Kind of Gangwish goes into the page. You can
23 see how we are stepping down to respond to

1 the zoning requirements.

2 MR. MCKEEGAN: We are going to spend a
3 few minutes talking about topography.

4 If we could, go to the next slide,
5 please.

6 This is a topographic survey of the
7 site.

8 BY MR. MCKEEGAN:

9 Q Philip, could you explain what this is
10 showing for us.

11 A This shows about 17 the foot elevation
12 change. The highest point of the site is at the
13 northeast corner. The lowest is at the southwest
14 corner, which is the corner of Howley and Liberty
15 Avenue. One of the challenges we have with the
16 elevation change is creating universally
17 accessibility to the plazas and sidewalks
18 throughout the site. We'll have multiple ground
19 floor elevations, as they need to respond to the
20 street they go in on. There's multiple stepping
21 that results in kind of responding to the
22 topography change. That's part of kind of the
23 challenge of creating a ground plane.

1 Q All of those factors obviously
2 increase the cost of the project; correct?

3 A Yes, they would considerably, all of
4 the stepping, the ramping, how we set the
5 buildings as they are basically two different
6 building volumes meeting two different streets on
7 each corner. It's a very complicated, challenging
8 site, especially given the below grade parking
9 below all of this and how we are coming down in.
10 It's very challenging to get the ground plane to
11 work well.

12 MR. MCKEEGAN: Thank you. If we
13 could, go to the next slide.

14 We are not going belabor this one
15 either. I think we discussed context enough
16 for the moment. What this shows is that the
17 zero point, so to speak, is outlined in red
18 on Ella Street. Then we got heights relative
19 to that going back up Liberty and across the
20 project site.

21 Phil, I don't know if you want to add
22 anything to that.

23 MS. MITINGER: I'm not quite sure I

1 understand what you're trying to depict here
2 with the different boxes and the height. Is
3 that an elevation and then a difference
4 between the site? What are you showing us
5 here?

6 BY MR. MCKEEGAN:

7 Q Phil, could you explain that.

8 A If you just look at the bottom right
9 one which is in green, which is showing 76 feet
10 and elevation of 105. So 76 feet is the relative
11 height of the building. 105 is the height above
12 sea level so you can relate it to one another. If
13 you look at the green boxes as you're going from
14 bottom right to top left, you have 76, 59. 53, 50,
15 48 and to our site 64 and 74. You're seeing the
16 relative height of the buildings as they relate to
17 kind of sea level as well, to kind of give a blank
18 datum across the site. The zero point is showing
19 our front door and elevation above sea level. You
20 see here, Liberty climbs 35 feet basically between
21 our site and the right of the page. When we are
22 looking at the buildings, we are basically
23 dropping and responding to that overall height

1 contextually as best as possible. The blue boxes
2 just show the street elevation in and around the
3 site.

4 MS. MITINGER: The height limitation
5 is the height limitation. The height
6 limitation doesn't say if you have a lower
7 site, you get to go as high as the highest
8 elevation up --

9 MR. MCKEEGAN: All we are trying to do
10 here is just establish that we not doing
11 anything that is out of scale, out of
12 context, out of bounds relative to --

13 MS. MITINGER: You're proposing a
14 building that's twice the height that's
15 permitted.

16 MR. MCKEEGAN: We are going to get to
17 the rationale for that shortly.

18 MS. MITINGER: Let's move on.

19 MR. MCKEEGAN: Okay. Thank you.

20 If we can, go to the next slide,
21 please.

22 BY MR. MCKEEGAN:

23 Q Philip, we are including this slide

1 kind of just to summarize the variance requests.
2 We have laid those out on the right-hand side of
3 the page for the Board to study. If you could,
4 just quickly explain what the various colorations
5 on this plan depict and why that's important for
6 the Board to understand.

7 A Sure. Because of the multiple
8 setbacks and constraints of the site, you know,
9 three dimensionally it's easier to understand the
10 project. The orange is showing the area of the
11 project that exceeds the residential compatibility
12 height. The yellow exceeds kind of -- orange is
13 the base building height. You can see how the
14 volume is stepping back from the residences as
15 best as possible along Gangwish. That's meeting
16 the requirement for the 50 foot height. The base
17 elevation you can see in the back there in orange
18 that faces Gangwish is about 90 feet away. It's
19 almost within 100 feet. It's very close to it.
20 The goal is trying to work as best as possible
21 with that in the project. Then we show the
22 different number of stories as the buildings steps
23 to respond to surrounding context between 3, 5 and

1 6 Levels.

2 Q So we have a three story building
3 facing Gangwish that within the 50 foot setback is
4 40 feet tall. It then increases. When you get to
5 the 100 foot limit, there are some portions of the
6 building that exceed the allowance for residential
7 compatibility. And then the overall height is
8 basically shown in yellow, the yellow block.
9 Correct?

10 A Correct.

11 MR. MCKEEGAN: Thank you.

12 I have no other questions for
13 Mr. Wilkinson. I don't know if the Board has
14 any at this time.

15 MS. MITINGER: We may as we go on.

16 Let's carry on here.

17 PHIL BISHOP,

18 Called as a witness, having been
19 previously duly sworn, as hereinafter
20 certified, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. MCKEEGAN:

1 Q Phil Bishop, are you here on at this
2 point?

3 A I'm here, yes. Good morning.

4 Q Could you give your name, address, a
5 little bit about your qualification and your role
6 with the project.

7 A Good morning, Madam Chair, members of
8 the Zoning Board. My name is Phil Bishop. I work
9 for Echo Realty. Our address is 560 Epsilon
10 Drive, Pittsburgh, Pennsylvania. I am a senior
11 vice specialty president possible for design and
12 development with Echo. Echo, briefly, is a
13 Pittsburgh based company specializing in grocery
14 anchored centers up and down the east coast. I am
15 also a registered professional engineer in the
16 State of Pennsylvania as well as Ohio.

17 Q You have been involved for a number of
18 years with developing and determining whether
19 projects are viable; correct?

20 A I have been in the commercial real
21 estate arena for over 30 years.

22 Q When we refer to viability, what are
23 we talking about with that? Could you briefly

1 explain what that term means.

2 A A number of things are considered.

3 First, you want to make sure it's a good fit
4 basically with our business plan. We are looking
5 for a grocery use. We think that we are an
6 integral part of the community. When we are
7 identifying properties, we want to make sure that
8 it first and foremost can provide the grocery use
9 to the neighborhood. The second thing, obviously
10 with all projects, you look at the economic
11 viability. When I say that, obviously we have
12 investors, our investors are looking for a single
13 digit return in today's investment world. We
14 start to look at various points to make sure that
15 it is economically viable as well. Thirdly, as
16 Mr. Wilkinson pointed out, we dive into the
17 ordinance and see what's allowable relative to the
18 zoning classifications. Finally, which you
19 mentioned briefly, it's refreshing here that there
20 is a community organization that has established
21 guidelines. You sit down and see what the
22 community is and hearing saying, understanding
23 this may not necessarily be a point for today.

1 That's the square of the process we go through
2 relative to planning a project.

3 Q If you're not able to achieve those
4 single digit returns once you've balanced all
5 those costs and expenses and the other items you
6 mentioned, is that project financeable? Is that
7 project one that can go forward?

8 A No. Certainly when we are out looking
9 for a construction loan, lenders obviously want to
10 make sure you have a viable project as well. If
11 it's not, then we would we would not be able to
12 get construction financing.

13 Q Going back in history a little bit,
14 why did Echo acquire this property? What were
15 your purposes at that point?

16 A As most people know, we have an
17 alliance, so to speak -- albeit we are separate
18 corporations -- with Giant Eagle. Both us and
19 Giant Eagle identified this as a strategic
20 location for a grocery store. Even though there
21 is one currently operating there and there was one
22 prior to us purchasing it, we believe we can
23 update the grocery experience for the customers in

1 Bloomfield. So we decided to acquire it in
2 January of 2020, as you mentioned.

3 Q Either at the time you acquired it or
4 since then, have you made any determinations as to
5 whether the existing buildings on the site are
6 reusable or worth redeveloping?

7 A Yes, through our due diligence, you
8 mentioned previously, mosy of the buildings were
9 built in the 1960s. They're deteriorating. We
10 actually have done some emergency repairs. There
11 was some brick falling off adjacent buildings.
12 There was a couple feet of water in the VFW
13 building because of a leaky roof. The efficiency
14 of the grocery layout, grocery store design has
15 modernized itself, so to speak. So we looked at
16 that and determined that the existing buildings
17 were not viable for reuse.

18 Q Effectively, as the saying goes, the
19 site would have to be scraped. That being the
20 case, did you consider other uses for the property
21 than the mixed use one that we're presenting
22 today?

23 A Yes, early on we looked at a retail

1 use only, your conventional shopping center,
2 albeit the size of the property, two acres, the
3 topography that Mr. Wilkinson mentioned, did not
4 allow that design to proceed much further. We did
5 some preliminary sketch, schematic design showing
6 a grocery store and some small retail use only.
7 Then it became evident, especially for the parking
8 requirements, that a retail only component was not
9 viable for a design here.

10 Q Were you able to do any geotechnical
11 analysis before the property was purchased?

12 A Not before, but we did a geotechnical
13 investigation after we purchased it.

14 MR. MCKEEGAN: If we could, go to the
15 next slide please, Daniel.

16 For the Board's understanding, there
17 is a rather thick geotechnical report for the
18 site. We have included in this presentation
19 package the more pertinent pages. The
20 complete report was submitted separately to
21 Daniel and is available to the Board should
22 it care to thumb through the whole thing.

23 Q In summary, Phil, what did the

1 geotechnical report reveal to you, and are there
2 any problems or issues that the geotechnical
3 report highlights?

4 A Yes, in January of 2021, we completed
5 a geotechnical investigation. Civil &
6 environmental Consultants drilled a number of
7 boring holes across the site. We encountered
8 alluvial material, which is clay, silty material,
9 which the report recommends excavating out. If
10 you were to try build on that, the buildings would
11 sink into the ground. In addition, all of the
12 borings were advanced to approximately 50 feet
13 below grade. At anywhere from 30 to 50 feet below
14 grade we found bedrock, which is a good thing but
15 not so good thing because of alluvial material and
16 the inability to build on that alluvial material.
17 You have to advance caissons, as the report
18 recommends, all the way down that 30 to 50 feet in
19 order to support any building above it.

20 Q In layman's terms if you can explain
21 it this way, what does this mean for the
22 foundation designs for this building?

23 MS. MITINGER: Can I go back to the

1 question.

2 When you say that you would have to
3 have caissons for any building, is it any
4 building that you want to build to a certain
5 height or any building at all?

6 THE WITNESS: For a grocery retail
7 single story, yes, the recommendations would
8 be caissons. Not necessarily for a
9 residential single family dwelling because
10 the loads are not as significant as a retail
11 use. When you start into the retail design
12 for grocery stores, as I mentioned one of the
13 first plans we looked at, with the
14 understanding that bedrock is 30 to 50 feet
15 deep, yes, you would need caissons to support
16 that kind of construction.

17 MS. MITINGER: Thank you.

18 BY MR. MCKEEGAN:

19 Q Let me go back again and ask the
20 question I was proposing.

21 In layman's terms what does this mean
22 in terms of the foundation design? Can you use a
23 conventional or standard foundation design for

1 this building?

2 MS. MITINGER: Again, I'm going to go
3 back to, Mr. McKeegan, you're specifically
4 asking about this building. I'm curious
5 about any building. I think you need to be
6 specific with the question you're asking.

7 MR. MCKEEGAN: Let's flip ahead a
8 couple of pages and we'll get this directly.
9 If you could, Daniel, go to the slide
10 labeled conformance scheme. This is a plan
11 depicting a project that would be as of right
12 per the Zoning Code.

13 BY MR. MCKEEGAN:

14 Q Philip, could this building be
15 constructed without using the caisson foundation
16 system described in the geotechnical report?

17 A No

18 Q This building would also need the
19 unconventional, more sophisticated foundation
20 system that's called for in the geotechnical
21 report?

22 A That is correct.

23 Q All right. If we could, go to the

1 next slide, please.

2 Philip, could you describe what this
3 letter is and what it tells you.

4 A Understanding, as I mentioned, to meet
5 the economic goals that we established, obviously
6 everything is relative to price. We brought Rycon
7 Construction, a local Pittsburgh firm, in last
8 fall to start pricing out some of the options we
9 are looking at. They also priced out the caisson
10 construction, which is above and beyond what would
11 be normally required for a building of this type
12 if not for the depth to bedrock.

13 I know it's hard to read this slide.
14 What this slide is telling us in the first
15 paragraphs as requested by us of Rycon, was to
16 describe and price out the premium costs for the
17 caisson construction. They did that on our
18 behalf. They had the expertise. They have done a
19 number of these mixed use projects in and around
20 the Pittsburgh area. They determined, because of
21 the depth to bedrock and the type of foundations
22 and the need for caissons to support the building
23 proposed, whether it's the by right plan or the

1 proposed plan we are seeking the variance for,
2 that would be an additional premium cost above
3 normal construction costs of approximately \$1.1
4 million.

5 Q To be clear on this. If we could, go
6 back a slide, Daniel. This conformance scheme
7 also included underground parking; correct?

8 A Yes, that's correct.

9 Q The reason for that is if you try to
10 provide parking for the retail and the apartments,
11 you've only got two places to put it, above ground
12 or below ground. If you put it above ground,
13 you're increasing the building height; correct?

14 A Correct. Approximately 15 feet
15 because the underground parking garage is anywhere
16 from 12 to 15 feet in depth. So that would
17 increase the height approximately 15 feet.

18 Q Those are all site conditions that
19 need to be overcome whether you're building a
20 conformance scheme or the one that's proposed
21 here; correct?

22 A That is correct.

23 MR. MCKEEGAN: Let's advance the

1 slides, please, Daniel. Next slide, please.

2 THE WITNESS: Can we stay there.

3 Talking about the parking garage, I think
4 it's to be noted that, in addition, to keep
5 the variance as minimal as possible, as you
6 mentioned, we did propose to put the majority
7 of parking underground. However, with that,
8 that comes at a premium cost. We asked
9 Rycon -- it's stated in this letter, what
10 that premium cost would be. In today's
11 construction dollars, there's obviously three
12 ways to park a site. There's ground level,
13 your typical shopping center with parking out
14 front. That's anywhere from 12 to \$15,000 a
15 space. There is conventional garage, which
16 do not go underground. Those are
17 approximately \$31,000 per space. Then,
18 because of the our site, the type of soils,
19 the type of structure needed to go that 15
20 feet below grade to provide parking, it's
21 approximately \$66,000 per space.

22 Again, I know it's hard to read here.

23 That cost comes at a premium to build that

1 underground parking of approximately \$6.2
2 million in order to keep variance at the
3 minimum request we are requesting here today.
4 That is above and beyond, extraordinary costs
5 that we did not anticipate when he started
6 this development process.

7 BY MR. MCKEEGAN:

8 Q Let's talk a little bit -- we focused
9 on cost for a minute. I also want to talk briefly
10 about the other side of the equation. If we
11 could, go to the next slide, please, Daniel.

12 In terms of discussing viability, you
13 also have to look at what rents might be achieved
14 for the project. Could you walk the Board through
15 this slide and the next one in terms of your
16 analysis of the market and rents that the project
17 might bear This is a market study map. The
18 yellow balloons are comparable apartment
19 developments in and around the area. You'll
20 notice the gap, so to speak, in the Bloomfield
21 neighborhood. There aren't any other than Albion
22 at Morrow Place down at the far end of Liberty
23 Avenue. Obviously, we saw the need to pursue a

1 mixed use property with both retail and apartments
2 on top. If you would, advance to the next slide.

3 We also took a snapshot of comparable
4 market rents. Again, I would mention that this
5 is, this differs from project to project because
6 of land cost, because of construction cost. At
7 the end of the day, the market sort of establishes
8 the rent based upon what people can afford to pay.
9 This slide shows nine comparable apartments in and
10 around the area of Bloomfield, ranging anywhere on
11 average 18 to \$1,900 of rent per month up to 27,
12 \$2,800 of rent per month. I would also mention
13 that that's market rent, not any affordable rent
14 calculation?

15 Q Turning back to cost for a moment.
16 Once you factor in all of the costs, is there a
17 target that you're trying to hit in terms of
18 determining whether a project is viable?

19 A As I mentioned before, we are looking
20 to have a single digit return on our investment.
21 That is sort of the target we look at, as well as
22 in the apartment world there is a cost per unit
23 that is a metric that we use to make sure that we

1 are not overspending and/or the project would be
2 viable if the cost per unit is higher than what
3 the norm is in the industry today.

4 Q If we could, go to the next slide,
5 please, Daniel.

6 Phil, could you tell the Board what
7 this slide is depicting. What are we explaining
8 to the Board with this slide?

9 A What this slide depicts is what we are
10 seeing as a premium above and beyond the by right
11 plan or cost to make the project viable. Because
12 of those sunken extraordinary costs of \$7.3
13 million, that being the cost for the caissons and
14 the cost for the underground parking which I
15 mentioned earlier, we apply that both to the by
16 right plan and the proposed plan. The cost for
17 the by right plan comes in at \$62 million, the
18 gross square foot shown there. Then you apply
19 those same costs to the proposed plan. It's
20 coming in at a cost of \$84 million.

21 The metric that we use and other use
22 as a good goal in developing apartments is
23 approximately \$300,000 per unit in cost. What

1 this slide depicts is, in order to build the by
2 right plan, it would come in at 20 percent
3 increase in cost and put the per unit cost at
4 approximately \$361,000, which would not make the
5 by right plan viable in today's residential
6 market.

7 Q Okay. It should also be pointed out
8 that the development cost, whether for the by
9 right or the proposed plan -- it's difficult to
10 quantify this -- those also take into account the
11 topographic conditions that Mr. Wilkinson
12 described; correct?

13 A Correct. Rycon's letter didn't spell
14 that out, but they provided us with a detailed
15 cost and estimate. The topographic challenges
16 require step footings, various access points, et
17 cetera, which increases the total cost which is
18 shown here of 84 million and 61 million, which is
19 in both of those estimates.

20 Q Okay. Depending on when this project
21 gets started, it might also be the case that these
22 estimates are low if inflation continues; correct?

23 A That's correct.

1 Q Let's go to the next slide, please,
2 Daniel.

3 Now, we are -- Phil, I would like you
4 to first confirm Echo is not challenging and is
5 supportive of the inclusionary zoning
6 requirements; correct?

7 A Absolutely, we are supportive of the
8 requirements.

9 Q In order to do that per the terms of
10 the ordinance, 10 percent of units, the apartment
11 units in the project need to be set aside for
12 upwards of 35 years and rented at affordable
13 rents; correct?

14 A Yeah, we're actually a little over 10
15 percent as the ordinance reads. For each type of
16 unit provided the calculation is done. Here we're
17 showing 25 units will be affordable and 223 units
18 will be market rate.

19 Q How does that affect the analysis of
20 the viability of the project? How do you have to
21 accommodate for that?

22 A As I mentioned before, with the market
23 study we did and the product we are offering,

1 we're sort of in the middle relative to what we
2 think we can charge per rent. The top portion
3 shows average monthly rents for the studios up
4 through two bedrooms. It averages out to
5 approximately the \$2,250 per month for market
6 rent.

7 As you know, Kevin and others, the
8 affordable rents are based upon a 50 percent AMI.
9 That number is established by HUD relative to what
10 the means as far as earnings per year for single
11 family, two people family, three people family, et
12 cetera. You take out consideration for utility
13 payments. We are coming up again for each of the
14 units proposed of \$823 on average per month rent
15 that we will be able to charge for the affordable
16 units.

17 What this slide goes on to show is
18 that is really a delta in revenue which equates to
19 approximately \$428,000 a year, which requires us,
20 based upon current market rate, enterprise value,
21 of a loss. It's not a loss. Again, we are
22 willing to do this. We think that affordable
23 housing is important, especially for the

1 Bloomfield market. It comes at a cost to us.
2 That cost is \$8,000,564. In order to support that
3 lost income, we needed to build into our design
4 approximately 28 more units, thus increasing the
5 height, thus asking for the variance that we're
6 asking for today to offset the affordability
7 requirement that was imposed upon the property
8 after we bought the property in January of 2020.

9 Q To sum all of this up, this is not a
10 case of asking for profit, this is a case of
11 determining whether a project can even proceed;
12 correct?

13 A Yeah. I don't know if Mr. Wilkinson
14 mentioned it or not. The plan that we show here
15 today is one of many that we started with. As I
16 mentioned, we started with a retail only project.
17 Then we went to the by right mixed use project.
18 Then there were dozens of iterations back and
19 forth between us, the architects, input from
20 Bloomfield Development Corporation. We nipped, we
21 tucked, we cut, we shaved. We got to where we are
22 today not just to increase our bottom line. That
23 was not the point. It was to make sure that we

1 were basically getting what we could within the
2 constraints that I defined previously.

3 Q Put another way, given land costs,
4 topography, geotechnical conditions, compliance
5 with the inclusionary zoning requirements, is a
6 smaller project viable for this site?

7 A No, it is not.

8 Q I want to move briefly -- or maybe
9 not, depending on the Board's desires -- to a
10 discussion of the grocery store.

11 Philip, the plan is to replace the
12 existing Community Market with a store that's
13 slightly smaller; correct?

14 A Yes, but I mentioned earlier with the
15 efficiencies of the modern grocery store, that
16 size is sort of irrelevant because of the way
17 merchandise is managed, inventory. It's
18 approximately 26,000 square feet to 28,000 square
19 feet of grocery store, which will have the same
20 offerings, the same type of offerings that the
21 current store has.

22 Q Okay. If we were inclined to flip
23 back to the neighborhood condition photographs

1 which are one of the first two slides, what do the
2 folks living on Gangwish Street look at when they
3 are looking at the back of the grocery store now?

4 A Right now that's sort of the back of
5 the house, fenced in, not so attractive area of
6 the current site. Mechanical equipment is stored
7 out there. Some deliveries take place out there.
8 It's the back of the existing site. It's not very
9 sightly.

10 Q Will those conditions continue with
11 the new grocery store?

12 A No. Everything will be enclosed the
13 within walls of the grocery store and/or placed on
14 the roof of the residential above it.

15 Q Will all parking for the grocery store
16 be accommodated within the garage?

17 A Yes. There will be no street parking,
18 no surface parking with large, bright parking lot
19 lights. Everything will be enclosed in the
20 garage.

21 Q The Board needs to consider how
22 deliveries will occur. Can you discuss how that
23 will happen.

1 A Yes, deliveries will occur in a fully
2 enclosed delivery zone off to the side of the
3 site. Those delivery hours will be controlled.
4 We will be able to allow deliveries at off peak
5 times relative to adjacent traffic movements. It
6 will be totally enclosed in the garage.

7 Q How will trash and odors be handled
8 from the grocery stores?

9 A The same way, there's Dumpsters
10 adjacent to the loading docks which will be
11 enclosed in the confines of the grocery store.

12 Q Last, how will the outdoor lighting
13 for the store be handled?

14 A All outdoor lighting will be enclosed.
15 There is no, as I mentioned, no surface parking.
16 So there will be no large parking lot lights.
17 There may be some safety lights, pedestrian lights
18 along the sidewalk. Other than that, no large
19 lights on the site.

20 Q Okay. Lastly for Philip, so the Board
21 understands we have included in the package --
22 it's later on -- a copy of letter of support from
23 Bloomfield Development Corporation.

1 Phil, Echo is agreeable with all of
2 the conditions that are stated in BDC's letter?

3 A Yes, we, as I mentioned numerous times
4 with BDC --

5 MS. MITINGER: We can take account for
6 the letter and if there's maybe somebody from
7 Bloomfield who would like to speak to that.
8 I would rather hear from the community
9 groups.

10 THE WITNESS: Other than, Madam Chair,
11 they requested of us that there are
12 conditions for this --

13 MS. MITINGER: I appreciate that. My
14 point is that some of the conditions
15 described in the letter may not be zoning
16 conditions. I appreciate that you are
17 willing to work with the community. The
18 Board is not able to impose some of the
19 conditions.

20 THE WITNESS: I was going to mention
21 that as well. This is not the purview today.
22 When we get to the Planning Commission, I'm
23 assuming that there may be similar conditions

1 that could be imposed by the Planning
2 Commission, not necessarily under today's
3 hearing.

4 MR. MCKEEGAN: If I could, I just want
5 to make these two points very briefly. These
6 may or may not be zoning conditions.

7 With respect to the inclusionary
8 zoning requirements, Echo is amenable to the
9 Housing Choice Voucher Program being part of
10 this project. Also -- we are going to get
11 some testimony from Chris Droznick on this
12 later -- there is a neighborhood concern
13 regarding pedestrian safety at the Howley
14 Street, particularly the Howley Street
15 intersection here. Echo is committed to
16 addressing those conditions with input and
17 guidance from the Department of Mobility and
18 infrastructure.

19 I think it's important that those
20 points be part of the public record.

21 Phil, I have no other questions for
22 you unless the Board has questions.

23 MS. MITINGER: I don't have any other

1 questions.

2 Ms. Burton-Faulk or Mr. Richardson,
3 any questions for Mr. Bishop.

4 MS. BURTON-FAULK: No additional
5 questions at this time.

6 MR. RICHARDSON: Not at this time.
7 Thank you.

8 MR. MCKEEGAN: The last witness we are
9 going to hear from in terms of direct
10 testimony, Chris Droznick.

11 CHRIS DROZNICK,
12 Called as a witness, having been
13 previously duly sworn, as hereinafter
14 certified, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. MCKEEGAN:

18 Q Chris, could you give your name,
19 address and your relationship to the project,
20 please.

21 A My name is Chris Droznick. I am a
22 traffic engineer with Civil & Environmental
23 Consultants. Our address is 700 Cherrington

1 Parkway. Our company prepared the traffic impact
2 study for the development.

3 Q When was that traffic impact study
4 first -- that's an important -- first prepared?

5 A The traffic impact study was prepared
6 in February of 2022.

7 Q Was that study guided by requirements
8 from the Department of Mobility and
9 Infrastructure?

10 A Yes, the scope of study was developed
11 with the Department of Mobility back in July 2021.

12 Q If we could, go to the next slide,
13 please, Daniel.

14 On the left-hand side, Chris, that
15 identifies the street intersections that were
16 studied as part of the traffic impact study;
17 correct?

18 A That's correct.

19 Q In the analysis used in the traffic
20 impact study -- Mr. Bishop has explained that
21 things have evolved over time -- did that study,
22 was that study using the same number of apartments
23 as are currently proposed?

1 A No. That study was done with a
2 slightly lesser number of apartments than we
3 currently have proposed. It was approximately 196
4 units in this study versus the current 248.

5 Q Okay. Have you updated the traffic
6 impact study to account for those additional
7 units?

8 A We have prepared an update to the
9 study in letter format which we can send off.
10 That letter indicates the expected change in site
11 generated trips and parking requirements for the
12 development with the proposed changes in use.

13 MR. MCKEEGAN: Daniel, if you could,
14 flip ahead three slides or so, please.

15 MS. MITINGER: Can I ask why the
16 original study was done for 196 and now we're
17 at 248.

18 MR. BISHOP: That goes to my testimony
19 earlier. We were looking at the impacts of
20 increasing construction costs, making various
21 changes relative to the site. That was part
22 of the process in a snapshot in time when we
23 took a look at the traffic back at that date.

1 MS. MITINGER: Okay. Thank you.

2 MR. MCKEEGAN: Let me catch my
3 thoughts for a moment.

4 You have updated the study by reason
5 of this August 7, 2023 letter.

6 I want the Board to understand that,
7 much as with the geotechnical report, the
8 complete traffic impact study plus this
9 letter is actually several hundred pages
10 long. We have submitted that separately to
11 Daniel. The complete report is available for
12 the Board's use.

13 BY MR. MCKEEGAN:

14 Q Between the original traffic impact
15 study and the one you just updated, Chris, did you
16 receive any updated instructions from DOMI as to
17 how you were to perform your analysis?

18 A Yes, last month DOMI provided
19 correspondence that indicated that they would like
20 to update the multimodal split for the development
21 based upon more recent data available.

22 Q When you use the phrase multimodal,
23 could you put that in layman's language. What are

1 we studying with that?

2 A Sure. We are just talking about the
3 mode choice that a person would choose to use to
4 visit the site, whether or not they drive an
5 automobile, ride transit, ride a bicycle or just
6 simply walk.

7 Q So the updated letter reflects both
8 the proposed project as well as the updated modal
9 splits that DOMI asked you to use; correct?

10 A That's correct.

11 Q Could you describe for the Board what
12 conclusions or recommendations your study as
13 updated now contains?

14 A As compared to the TIS that was
15 prepared in February of 2022, the changes in
16 residential units and modal split are not
17 anticipated to cause a significant change in the
18 number of vehicular trips for the site.

19 Q Are you anticipating any, with respect
20 to vehicles, are you anticipating any particular
21 negative impacts on the streets in and around the
22 project site?

23 A No. The change in trip generation is

1 still consistent with the results of the original
2 study, which indicated that the intersections are
3 going to operate as similar conditions as no
4 build.

5 Q Mr. Bishop also testified to this. In
6 your experience in terms of addressing pedestrian
7 safety issues, that's something that you and DOMI
8 will be coordinating on in terms of coming up with
9 a plan to do that; correct?

10 A That's correct.

11 Q Lastly, Daniel, if you could, just
12 flip on the traffic impact study. If you could,
13 go to the next slide, please.

14 Again, I apologize that it's difficult
15 to make.

16 The bottom table here, Chris, could
17 you tell the Board --

18 MS. MITINGER: That's not just
19 difficult. It's really kind of impossible to
20 see. We will have to review later. Could
21 you summarize what you are intending to show
22 with this exhibit.

23 BY MR. MCKEEGAN:

1 Q Chris, could you summarize this
2 exhibit, please.

3 A Yes, I can. That table is showing the
4 calculations based upon the City of Pittsburgh
5 Zoning Code for the proposed land uses, so per the
6 grocery store, the retail and the residential
7 units. It shows the total number of parking
8 spaces required. In this case here 288 spaces
9 would be required for the development.

10 Q Okay. We are providing 318?

11 A 318 spaces plus 120 onsite bicycles,
12 which will satisfy the code requirement.

13 MR. MCKEEGAN: Thank you.

14 I have no other questions for
15 Mr. Droznick. I will ask the Board id they
16 have any questions. Then I will try to
17 summarize quickly.

18 MS. MITINGER: Mr. McKeegan, we are
19 going to let you summarize later. Given the
20 nature of the case, we are going to expect
21 proposed findings of fact and conclusions of
22 law. If you do not have any other direct
23 witness and if the Board does not have any

1 questions of your witnesses, I would like to
2 turn to other questions and comments from
3 other participants.

4 MR. MCKEEGAN: That is fine. I would
5 like to make the Board aware that we do have
6 included in the package a copy of BDC's
7 letter of support. We also have a summary
8 page regarding the hardships and development
9 constraints here.

10 MS. MITINGER: Again you can make
11 legal argument based on the evidence
12 presented today. We will accept that
13 following the hearing. We will establish
14 timing for that. I would like to turn to
15 representatives from the community who would
16 like to testify in this matter.

17 Mr. Richardson or Ms. Burton-Faulk,
18 any questions for the Applicant before we
19 turn to others who would like to participate?

20 MS. BURTON-FAULK: No questions, Madam
21 Chair.

22 MR. RICHARDSON: No questions. Thank
23 you.

1 MS. MITINGER: We do have a few hands
2 raised. I would like to turn to -- is there
3 anybody from the RCO who is planning to
4 testify? Or are we simply accepting the
5 exhibit as part of the record, the letter?

6 Could you put your hands down unless
7 you're here from a community group. Then we
8 will turn to everybody who wants to testify.

9 MR. MCKEEGAN: If I can, help with
10 that briefly. I believe Christina Howell is
11 the executive director of --

12 MS. MITINGER: We have Jack Howell,
13 and we have Dave Breingan. We are going to
14 hear from both. Thank you for that.

15 I am going to turn to Jack, who I
16 think is Christina Howell, first.

17 MS. HOWELL: Hello, yes, this is
18 Christina Howell. Apologies for the
19 confusion.

20 (Witness sworn.)

21 MS. MITINGER: Could you identify
22 yourself for the court reporter, please.

23 MS. HOWELL: Yes, my name is Christina

1 Howell. I am the executive director of the
2 Bloomfield Development Corporation. We are
3 at 4900 Friendship Avenue, ZIP Code 15224.

4 MS. MITINGER: Could you explain your
5 position with respect to this project.

6 MS. HOWELL: Yes. I won't repeat
7 everything that Mr. McKeegan said. After
8 extensive community outreach and planning, we
9 are supporting this with conditions, which
10 again Echo has accepted. We do commend them
11 for being willing to take Housing Choice
12 Vouchers. I don't have a whole lot to say.
13 I don't want to take up too much time, other
14 than we appreciate the intense amount of
15 engagement and that we have been working on
16 this for about two or three years, two and a
17 half years with them. They have consistently
18 moved towards a community reflective project.

19 I think that's it.

20 MS. MITINGER: Thank you for your
21 testimony. We do have the letter that has
22 been made part of the record.

23 MS. HOWELL: Yes. I didn't want to --

1 MS. MITINGER: Thank you. You know
2 that I appreciate not reading the letter into
3 the record. We will accept the letter from
4 the Bloomfield Development Corporation as
5 part of the record. Thank you for being here
6 this morning and identifying yourself.

7 We do have Dave Breingan from
8 Lawrenceville, I believe. Could you identify
9 yourself for the record, please.

10 MR. BREINGAN: Yes, good morning.
11 This is Dave Breingan, executive director at
12 Lawrenceville United.

13 MS. MITINGER: Could you explain the
14 position of your organization with respect to
15 this application.

16 MR. BREINGAN: Yes, at the risk of
17 being duplicative, we are in the same
18 position as Bloomfield Development
19 Corporation. We support all of the
20 conditions that they wrote into their letter,
21 along with our sister organization,
22 Lawrenceville Corporation. We are supportive
23 of the zoning relief being sought today.

1 MS. MITINGER: To clarify, the project
2 is within the Bloomfield RCO territory and
3 not Lawrenceville?

4 A Absolutely. Our colleagues at
5 Bloomfield Development Corporation, because it is
6 pretty much right on the Lawrenceville border and
7 obviously a grocery store is very impactful to our
8 community as well, very kindly included us in
9 their entire community process. We have been
10 involved in this process pretty much from the get
11 go.

12 MS. MITINGER: Did you say "get go"?
13 You didn't; did you?

14 MR. BREINGAN: Pun intended. We are
15 supportive of this project. I think some of
16 the conditions that Bloomfield put into their
17 letter reflect a lot of our priorities as a
18 community, including accepting Housing Choice
19 Vouchers and the improvements at the
20 intersection of Howley. We are supportive of
21 this project overall.

22 MS. MITINGER: For anybody who is
23 listening, I did not mean to be flippant.

1 This is not a proposal for a Get Go or a gas
2 station of any kind, is that correct,
3 Mr. McKeegan? This is a proposal that's
4 being supported for a grocery store, but not
5 including any other type of --

6 MR. MCKEEGAN: Absolutely, positively
7 100 percent. This is not a gasoline station.

8 If I could, very quickly.

9 Mr. Breingan and the Lawrenceville
10 organization did submit a letter last night.
11 That also should be made part of the record.

12 MS. MITINGER: We will look for that
13 and make that part of the record as well.
14 Again, I wanted to be clear, after an hour or
15 so of testimony, we might be getting a little
16 punchy. It's not reflective of any other use
17 that's being proposed.

18 MR. MCKEEGAN: Understood. Correct
19 know.

20 MS. MITINGER: Now I would like to
21 turn to anybody who would like to comment
22 with respect to this application. We will
23 take comments and testimony in the order that

1 the hands are being raised. I will ask
2 everybody who is testifying, we will
3 certainly listen. We would ask if you have
4 comments similar to other comments that are
5 being made, you do not need to repeat them.
6 You can say you agree.

7 With that, the first person with a
8 hand raised is Ryan with no last name.

9 Ryan, could you unmute yourself.

10 MR. LEVEREGT: Yes, I believe I am
11 unmuted now.

12 MS. MITINGER: You are.

13 (Witness sworn.)

14 MS. MITINGER: Could you give us your
15 full name for the record, please.

16 MR. LEVEREGT: My full name is Ryan
17 Leveregt. That's spelled L-E, V like Victor,
18 E-R-E-G-T.

19 MS. MITINGER: Could you give us an
20 idea of where you live in relation to the
21 proposed project.

22 MR. LEVEREGT: Sure. My current
23 address, I live on the 52 block of Coral

1 Street. So I'm just a few blocks away from
2 the proposed site. I think it's important to
3 note that previously I lived at 4525
4 Friendship Avenue, which is about a block
5 away from the site.

6 MS. MITINGER: Could you explain what
7 your position is with respect to the project.

8 MR. LEVEREGT: My position is I am in
9 support of it. I would have been in support
10 of it had I continued to live at 4525
11 Friendship. I think the conditions of the
12 grocery store, the current state of the
13 grocery store is somewhat self-evident. It
14 needs updated.

15 I found that the developers were
16 responsive to community questions. I
17 attended one of the community meetings. I
18 feel as though they are as much as possible
19 operating in good faith with respect to
20 gathering community input and considering
21 community input.

22 I am speaking in support of the
23 project.

1 MS. MITINGER: Thank you very much
2 assuming. Assuming you don't want to repeat
3 evidence that the Applicant has already
4 submitted, we will move on to the next person
5 with a hand raised. Thank you for being here
6 this morning.

7 The next hand raised is Alan Gunther.
8 Mr. Gunther, could you unmute yourself
9 so we can hear you please.

10 MR. GUNTHER: Yes, can you hear me?

11 MS. MITINGER: We can.

12 (Witness sworn.)

13 MS. MITINGER: Could you tell us where
14 you live and what your position is with
15 respect to this project.

16 MR. GUNTHER: I live at 223 Ella
17 Street, about two blocks away from the
18 proposed project. My position is that I
19 oppose the request for the variance,
20 especially the height variance.

21 MS. MITINGER: Okay. Are you simply
22 noting your opposition? Or is there any
23 other information you would like to provide

1 to the Board?

2 MR. GUNTHER: I would like very much
3 to provide some information. I did send in
4 testimony by e-mail. So you should have
5 that.

6 My position is that this project -- we
7 all agree that something needs to be done
8 there. We are grateful that Giant Eagle is
9 coming. I think the major concern from the
10 community when the community came out in an
11 uproar some five years ago when the Millhouse
12 project was basically driven out of town,
13 they wanted to provide no grocery and no
14 affordable housing. The main point I want to
15 make is we don't want to overburden the
16 streets in this neighborhood and create
17 competition between people who are going to
18 be living in the apartments where there is
19 inadequate parking and the parking permits
20 that are available to people who live in the
21 area.

22 Very importantly, this project can be
23 built with no variance whatsoever. This is

1 not in my letter because I didn't realize
2 that this was going to be presented until
3 today. This is new information that I want
4 to point out. The geotech report that was
5 discussed in great detail was available to
6 Echo and Giant Eagle in January of 2021. In
7 November of 2021 this project was presented
8 to the community in a DAM at 191 units with
9 no variance for height required. All of the
10 discussions about slopes and about the
11 topography and the difficulty with the soil
12 and the like they've had this information
13 when they said the project could be built at
14 191 units.

15 I understand that, from our
16 understanding is that Giant Eagle stands to
17 make an additional roughly \$2 million in
18 rents if they are granted the additional 50
19 units. We think that this project should be
20 weed whacked back, so that it doesn't
21 overburden the narrow spindly streets in this
22 area. Gangwish is a tiny street. Ella is
23 hardly any bigger. All of the other streets

1 in this area Rosina, Corday way, Howley are
2 not designed to absorb a high level of new
3 traffic.

4 I haven't seen the letter from the
5 Bloomfield Development Corporation. I have
6 requested it. It was not provided to me. We
7 would like very much for you to consider that
8 there are real difficulties here. One of the
9 things that we would like to have considered
10 in the future -- I don't know how this
11 affects zoning law or not -- but this project
12 can be redesigned and renegotiated to better
13 serve the community with more affordable
14 housing. They are proposing the bare minimum
15 of 10 percent. Just two miles away in their
16 Meridian project, which is also an Echo
17 project, they have agreed in Shadyside to
18 provide 15 percent affordable housing. Why
19 are we only getting 10 percent in Bloomfield,
20 which is a much poorer neighborhood?

21 I think the other concerns that I have
22 are outlined in my letter. It's nice, for
23 example, that the project would be moved back

1 from Gangwish Street with some greenery.
2 However, we think that the developer should
3 work with the City in making Gangwish Street
4 able to handle the traffic. It is an excuse
5 me street now, where there is parking on both
6 sides of the street. If one person is
7 driving down the street, the other person has
8 to pull over to the side to let somebody
9 pass. This is proposed now to handle the
10 traffic coming out on Howley and making a
11 right on Gangwish and then coming down Ella
12 Street. I don't see how Gangwish can handle
13 the traffic from 248 units. Certainly they
14 have the right to build something to build
15 something here. I think that a more modest
16 premium would not have such a serious impact
17 on the traffic and safety of the community.

18 The other thing is the description of
19 how the trucks would enter the development at
20 this point. We were discussing this at the
21 most recent DAM meeting. We were told that
22 the trucks would essentially make a K-turn,
23 block Howley and then back up into the

1 grocery store. I don't know if that has been
2 updated. My understanding is it has not.
3 Every time there is a delivery to the grocery
4 store, Howley would be blocked. Howley is
5 the street that takes traffic from the
6 Bloomfield Bridge. They come very quickly
7 through that area. To say that there is a
8 down period, I'm not sure what time that
9 would be.

10 MS. MITINGER: Mr. Gunther, I'm going
11 to interrupt you just a little bit. I know
12 Mr. McKeegan will ask you the question of
13 whether you are a traffic engineer.

14 Are you a traffic engineer?

15 MR. GUNTHER: No. I live here.

16 MS. MITINGER: So your testimony is
17 being provided based on your experience with
18 the surrounding streets?

19 MR. GUNTHER: That is correct.

20 MS. MITINGER: Okay.

21 MR. GUNTHER: I know, when I look out
22 my house now at about 4:00 or 5:00 o'clock,
23 the cars back all the way up for blocks

1 trying to get onto Liberty Avenue, which is a
2 logjam. They cannot make that right turn.
3 Now you're going to dump traffic from -- it's
4 an open question about how many parking
5 spaces, you know, would be needed and how
6 many cars would be provided, how many cars
7 will drive on these streets. A lot of these
8 apartments are one bedroom and two bedroom
9 apartments. I think people who pay the
10 higher rent may have cars. What we're afraid
11 of in this community is that the people who
12 are moving into Echo -- I'm sorry, Bloomfield
13 Square -- we are afraid that they are going
14 to compete for the available parking permits
15 for people who live here.

16 MS. MITINGER: I believe one of the
17 conditions -- again, we might be corrected --
18 I think one of the conditions that Bloomfield
19 Development Corporation requested was that
20 the residents of this building not be
21 eligible for residential permit parking.

22 Is that correct?

23 MR. MCKEEGAN: That's correct. Again,

1 we are amenable to that condition.

2 MR. GUNTHER: Okay. That's good to
3 hear. It would have been nice if the
4 Bloomfield Development Corporation had made
5 the letter available to the public that it
6 serves.

7 MS. MITINGER: I understand you have a
8 written statement. We will take that as part
9 of the record.

10 MR. GUNTHER: I appreciate that. I
11 just wanted to say thank you for very much.
12 We are looking to simply weed whack this
13 project down so that it reduces the impact on
14 the community. All of the geotech problems
15 cited, the slope and all of that, that was in
16 the study in January of 2021. We are ten
17 months later. They said they said they could
18 build a 191 unit apartment. We think -- we
19 appreciate the zeal with which Giant Eagle is
20 pursuing a higher profit level.

21 MS. MITINGER: We're going to move on.

22 MR. GUNTHER: Thank you very much.

23 MS. MITINGER: Mr. McKeegan please do

1 not talk over me.

2 Mr. Gunther, please do not talk over
3 me. We are going to accept your statement as
4 part of the record. Mr. McKeegan, you're
5 going to have a chance to respond generally.
6 Do you have a limited cross examination
7 question for Mr. Gunther?

8 MR. MCKEEGAN: No. I think you've
9 asked the question I was going to ask
10 regarding the traffic.

11 MS. MITINGER: Thank you. We are
12 going to move on because there are others who
13 would like to participate. We thank you for
14 being here this morning.

15 MR. GUNTHER: Thank you.

16 MS. MITINGER: The next hand raised is
17 Jody Lincoln.

18 MS. LINCOLN: Can you hear me?

19 MS. MITINGER: We can.

20 (Witness sworn.)

21 MS. LINCOLN: Thank you for the time
22 to speak today. My name is Jody Lincoln. I
23 am a board member of the Bloomfield

1 Development Corporation and a resident of
2 Bloomfield. I live at 4741 Larkin Street,
3 less than a half mile from the site and
4 previously lived on Gangwish Street adjacent
5 to the site. For full disclosure, I am not
6 testifying as an expert. I am a real estate
7 developer in my professional job.

8 I am speaking today in favor of the
9 variances requested by Echo Realty. We
10 encourage the Zoning Board to seriously
11 consider the conditions proposed by BDC as
12 part of their position.

13 To speak to the specific variances,
14 the grocery store is a no-brainer. That site
15 has operated as a grocery store in the LNC
16 for a significant period of time and is an
17 important community asset. Seeing the site
18 as a grocery store is a core part of the
19 community vision of the site. We see it as
20 part of the community. After developers have
21 previously proposed projects that did not
22 include a grocery store component, it's
23 exciting that this development is committed

1 to a grocery store.

2 The other four variances related to
3 height and density, we heard the project was
4 intended to be built by right without zoning
5 variances other than one for specific R1A
6 lots as a resident of Bloomfield --

7 MS. MITINGER: Ms. Lincoln, if you are
8 reading to us, you can submit your statement.
9 I would just ask if you're --

10 MS. LINCOLN: I got two more
11 sentences.

12 MS. MITINGER: I'm just going to ask
13 you is there anything that you are adding
14 that the Applicant has not addressed since
15 you are supporting the project.

16 MS. LINCOLN: No. I guess I'm just
17 trying to say that it's important hold the
18 developer accountable for those two pieces of
19 the LNC Zoning Code relate to quality of life
20 and reducing adverse impacts. I think that
21 the BDC conditions speak to these pieces to
22 ensure that the project has a positive impact
23 on the neighborhood and the residents.

1 MS. MITINGER: Again, if you would
2 like to submit your written statement, we
3 will accept the written statement as part of
4 the record. We really do prefer that you
5 don't read to us. Thank you. We will accept
6 the exhibit as part of the record.

7 We do have another hand raised from am
8 Amy Burress.

9 Ms. Burress?

10 MS. BURRESS: Yes, hello.

11 (Witness sworn.)

12 MS. MITINGER: Could you explain your
13 position with respect to the project.

14 MS. BURRESS: Yes, I am a resident of
15 Bloomfield. I live, in fact, almost inside
16 the project. I live on Gangwish Street on
17 the same side as the project will take place.
18 I think I'm the only house on this side of
19 Gangwish Street.

20 MS. MITINGER: What is your position
21 with respect to the project?

22 MS. BURRESS: Well, I think it might
23 be obvious. I do not support the sought

1 after height variance and density variances.
2 I will be literally surrounded by brick walls
3 in my house. That's my personal interest.

4 I think that, for the community
5 itself, the height is quite exceptional.
6 There are no other buildings on all of
7 Bloomfield Liberty Avenue that meet that
8 height. The highest building around is
9 Children's Hospital, which is quite an
10 exception. I believe that your zoning rules
11 are there for a reason. I think that they
12 ought to be respected in this case.

13 Let's see. The other thing that I
14 would like to address is the traffic, which I
15 think has already been stated very nicely by
16 Mr. Gunther. Gangwish Street functions as a
17 two way street though it is no wider than
18 Ella or Howley, both of which are one way
19 streets. Taking on an additional 248 we are
20 speaking units, it would strange if those
21 units in some cases didn't have more than one
22 car. We are looking at possibly 300 more
23 cars using these tiny streets.

1 I guess, finally, I would like to say
2 that we think a development on that spot is a
3 fine idea. We think that this height of
4 development and this dense of a development
5 is not appropriate for the neighborhood.

6 MS. MITINGER: Mr. Burress, were you
7 able to take part in any of the community
8 meetings that were held with respect to the
9 project?

10 MS. BURRESS: I was. Not I was out of
11 town when the local one was.

12 MS. MITINGER: Thank you. No harm, no
13 foul. I was just curious whether you had
14 been able to participate?

15 MS. BURRESS: We listened online.

16 MS. MITINGER: Thank you.

17 Ms. Burress was the last person with a
18 hand raised. There are still a number of
19 people who are listed as attendees. If there
20 are others who would like to actually
21 testify, now is your chance. If there are no
22 others, we will turn back to the Applicant
23 for a brief response to the comments made.

1 I am seeing no other hands raised. Do
2 you have -- wait, we got one more.

3 Jordan Botta.

4 MR. BOTTA: Yes, Madam Chair.

5 (Witness sworn.)

6 MS. MITINGER: Could you explain your
7 position with respect to the project.

8 MR. BOTTA: Yes, I am a resident of
9 Bloomfield. I currently live on 39th Street.
10 Previously I was on South Winebiddle. Before
11 that I was on South Matilda.

12 MS. MITINGER: You on 39th now. Past
13 history is past history. Could you explain
14 what your position is from where you are now.

15 MR. BOTTA: Yes, I, like Mr. Gunther,
16 am opposed to the project as it is proposed
17 right now. I think that the variance of six
18 stories is just a little bit unreasonable for
19 the neighborhood. The reasons are -- I have
20 submitted some testimony in writing.

21 From my current understanding, the
22 increase in revenue from the additional two
23 floors which were, the additional floors that

1 were proposed from the original proposal was
2 approximately 33 percent. I could be cross
3 examined. I believe it went from 6 million
4 to approximately 8 million. The presence of
5 a grocery store in the area is pivotal to
6 people who have disabilities, lower income
7 residents as well as elderly residents rely
8 on this grocery store. With the lack of any
9 food resources in the area, it would put them
10 out significantly for approximately 18 months
11 is my understanding, possibly longer
12 depending on development.

13 Additionally, I think Bloomfield has
14 been somewhat insulated from the rising rents
15 that we've seen in other areas, particularly
16 Lawrenceville. I'm afraid that by allowing
17 this project to proceed in its current form.
18 That it will be akin to throwing gasoline on
19 fire.

20 I have no professional opinion, not
21 being an engineer or a traffic expert. As a
22 resident, I think that there should be
23 development. I think the original proposal

1 was perhaps a lot more reasonable. In its
2 current form I do not believe that it should
3 be approved. The variances should be
4 temporarily rejected until such time that
5 it's brought to a more reasonable height. I
6 think that the project should be put on hold.

7 MS. MITINGER: I think you said you
8 had submitted a written statement. We will
9 make the part of the record as well.

10 MR. BOTTA: Thank you so much.

11 MS. MITINGER: Thank you for being the
12 last person to raise your hand. I'm assuming
13 you're the person to raise your hand. I am
14 seeing no other hands raised. Again, we will
15 go back to Mr. McKeegan.

16 Mr. McKeegan, as I had said
17 previously, this is your opportunity to
18 respond to testimony and evidence, not to
19 make legal argument. We will allow for the
20 submission of proposed findings of fact and
21 conclusions of law.

22 With that caution, any response?

23 MR. MCKEEGAN: Yes, I'll try to keep

1 this very brief I appreciate we have taken a
2 fair amount of the Board's time already.

3 First of all, with respect to parking
4 conditions on Gangwish Street, in fact
5 parking is allowed on only one side of the
6 street. That's an enforcement issue for the
7 City and clearly something DOMI will have to
8 address and the City will have to address as
9 this project moves forward.

10 Regarding the discussion of an earlier
11 plan that was represented to the Board as
12 being conforming, that was a conceptual plan
13 that was discussed with the neighborhood in
14 the context of the development activities
15 meeting for the zone change that I mentioned
16 earlier. That plan did not have the benefit
17 of the geotechnical, the cost -- I want to be
18 clear on that -- the benefit of the bidding
19 and the cost that Mr. Bishop described
20 regarding addressing geotechnical conditions
21 of the site. That was not known.

22 As well, it should be pointed out that
23 the inclusionary zoning ordinance was not

1 applied to Bloomfield until April of 2022.
2 Those two facts alone kind change the
3 analysis of that earlier conceptual plan.
4 That plan, as things evolved, changed to what
5 you have before you today.

6 Regarding parking, you already
7 correctly pointed out, Madam Chair, that this
8 site will not be eligible for neighborhood
9 parking permits. We only mentioned this very
10 briefly. It should be noted by the Board
11 that that this site is very well served by
12 public transit. There are two significant
13 bus stops located on the perimeters of the
14 property. I think it was noted in the
15 traffic impact study that in fact there were
16 upwards of five bus routes that serve this
17 site. That goes to the multimodal split that
18 DOMI asked us to consider as well.

19 Lastly -- we will verify this -- with
20 respect to Ms. Burress' testimony, I
21 appreciate respect very much her position
22 that she is going to be surrounded by the
23 site. With regard to the residential

1 compatibility within 50 feet of her property,
2 the project will be compliant. I wanted to
3 note that for the record as well.

4 Lastly, if I could, make a request of
5 either the Board or staff. To the extent
6 folks have submitted written materials, I
7 would ask that those be sent to me. I have
8 not had a chance to review them.

9 Other than that, we will address
10 everything in our findings.

11 MS. MITINGER: Mr. McKeegan, you could
12 certainly coordinate with Mr. Scheppke to get
13 copies of the information that has submitted.

14 Mr. Gunther has his hand raised again.

15 We've heard from you and have accepted
16 your testimony, Mr. Gunther. We will hear
17 from you briefly if you want to make one more
18 comment.

19 MR. GUNTHER: Yes, I wanted to
20 complain that the 10 percent affordable
21 housing requirement is being presented as a
22 new cost. In fact, at the DAM in November of
23 2021, since it was being discussed as a

1 requirement, Echo at that time did commit to
2 providing 10 percent affordable housing.
3 That is not a new cost and shouldn't be a
4 factor in the Board's decision.

5 Thank you.

6 MS. MITINGER: Thank you for the
7 comment.

8 We have a lot of exhibits. We have a
9 lot of submissions. We are going to allow
10 the Applicant to submit to the Board what we
11 call proposed findings of fact and
12 conclusions of law. No other legal counsel
13 has identified themselves in this hearing.

14 Mr. McKeegan, we recognize that you
15 might want the benefit of a transcript.
16 Based on our timing, we are going to ask you
17 to have your submission within four weeks.
18 If you need longer, you can take longer.

19 Does that make sense to you?

20 MR. MCKEEGAN: Absolutely. I was
21 actually, assuming the transcript could be
22 done, I was going to say by the end of month.
23 Four weeks is more than fair.

1 MS. MITINGER: We can hear from our
2 court reporter. There was an extensive
3 transcript ahead of you from last week. It
4 might be a while before you get the
5 transcript for this week. Keeping that in
6 mind, if more time is required, we will let
7 you have for more time. The record will
8 close on the submission, that posthearing
9 submission. We will assume that it's four
10 weeks from today. If it's more or less, we
11 will consider that.

12 MR. MCKEEGAN: Okay.

13 (Discussion off the record.)

14 MS. MITINGER: We are now hearing from
15 court reporter. With that, we are going to
16 close the hearing for today. Thank you,
17 everybody, for participating.

18 (At 11:43 a.m., the hearing
19 concluded.)

20 - - -

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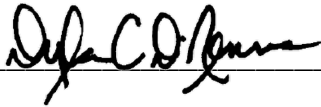
23

1 REPORTER'S CERTIFICATE

2 I, Dylan C. DiRenna, the undersigned, do
3 hereby certify that the foregoing eighty-
4 eight (88) pages are a true and correct
5 transcript of my stenotypy notes taken of the
6 proceedings held via Zoom teleconference,
7 Pittsburgh, Pennsylvania 15219, on Thursday,
8 August 10, 2023.

9

10



11

Dylan C. DiRenna, Notary Public in

12

and for the Commonwealth of Pennsylvania

13

My Commission Expires October 7, 2025.

14

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23

EXHIBIT B

BLOOMFIELD SQUARE

4401 LIBERTY AVENUE
PITTSBURGH, PA 15224

ZONING VARIANCE APPLICATION EXHIBITS

Hearing: August 10, 2023
Issued: August 8, 2023



Exhibit	Table of Contents	Pp
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03	Community Engagement	5
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Applicant / Appellant

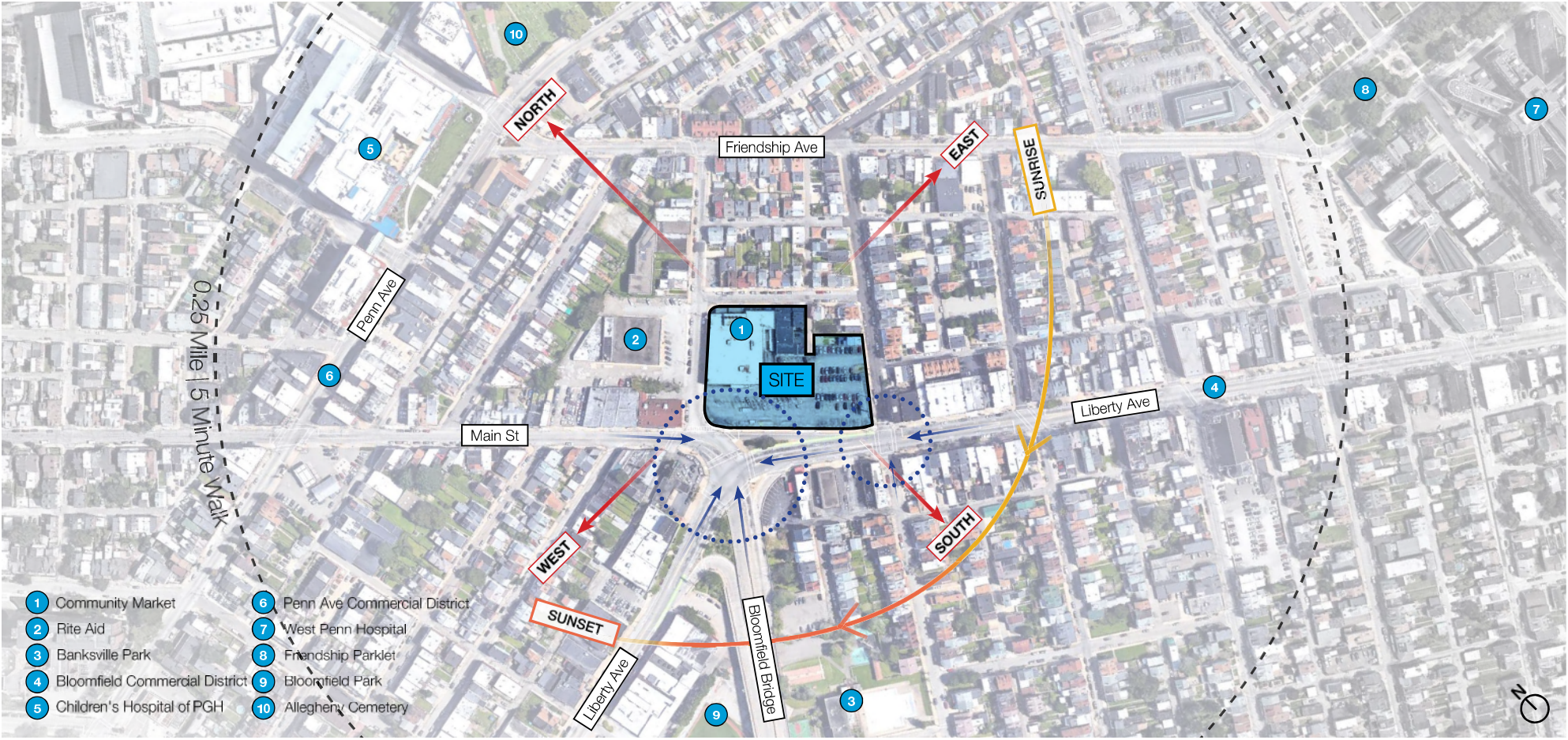
Phil Bishop
Bloomfield Bridge Associates, LLC

Architect

AE7

Site & Context

Location



Current Conditions

Photos of Existing



Current Conditions

Photos of Existing



View Northeast along Howley St



View Southwest along Howley St



View Southeast along Gangwish St



Aerial view from North



View Northwest along Gangwish St



View Northeast along Stack Way



View Southwest along Ella St



View Southwest along Ella St

Community Engagement

Public Outreach Meeting Record

- **2/7/20:** Bloomfield Development Corporation meeting with staff– Introduced ECHO
- **6/22/20:** Bloomfield Development Corporation staff -Updated staff on store status
- **7/7/20:** Bloomfield Development Corporation Conversation staff -Updated staff on Community Market opening
- **3/23/21:** Bloomfield Development Corporation staff -Informal presentation to staff of project goals and concepts.
- **4/29/21:** Bloomfield Development Corporation staff -Reviewed preliminary plans based on input from 3/23/21 meeting and the BDC Development Guidelines
- **5/13/21:** Bloomfield Development Corporation Property & Planning Committee, Councilperson Deb Gross, Lawrenceville United, Friendship Community Group – Presentation of preliminary plans and concepts
- **5/27/21:** Bloomfield Development Corporation staff - Reviewed comments received at 5/13/21 mtg with staff and discussed modifications to plan.
- **7/1/21:** Pre-Application Meeting with City of Pittsburgh Planning Department staff
- **7/30/21:** Pittsburgh Department of Mobility and Infrastructure Scoping Meeting for Traffic Impact Study
- **8/27/21:** Bloomfield Development Corporation staff-Meeting with staff to update on scope for traffic study and discuss options related to zoning/use issues raised at Planning Dept mtg.
- **11/1/21:** Bloomfield Development Corporation Development Activities Meeting (zone change) – Zoom meeting attended by over 85 participants; included discussion of mixed-use project
- **1/25/22:** Pittsburgh City Planning Commission Public Hearing for zone change
- **2/24/22:** Briefing meeting with Councilwoman Gross and Chief of Staff
- **3/23/22:** Pittsburgh City Council Public Hearing for zone change
- **5/11/22:** Bloomfield Development Corporation staff - Reviewed plans, discussed density, height along Gangwish St, increasing cost with staff and discussed modifications to plan.
- **2/13/23:** Bloomfield Development Corporation staff - Reviewed & discussed plans, parking requirements, increasing costs & interest rates, proposed additional height along Liberty Avenue and needed variance requests.
- **4/17/23:** Bloomfield Development Corporation Board - Reviewed & discussed plans, parking requirements, increasing costs & interest rates, proposed additional height along Liberty Avenue and needed variance requests.
- **6/21/23:** Pre-Application Meeting with City of Pittsburgh Planning Department staff discussing proposed development plans.
- **7/17/23 & 7/15/23:** Bloomfield Development Corporation Development Activities Meeting – In-person and Facebook broadcast meeting attended by over 200 participants.

Community Goals

Neighborhood Wishlist

Bloomfield Central Gateway Development Guidelines

June 2019



Prepared for:
Bloomfield Development Commission
ACTION HOUSING

Prepared by:
studio for spatial practice

COMMUNITY + CULTURE

The people, character and quality of life of Bloomfield.

- Reflect a welcoming and safe neighborhood. ^{69%*}
- Provide housing options / programs to prevent the displacement of existing residents. Accommodate a range of household sizes and types. ^{68%*}
- Protect and preserve age and income diversity. ^{57%*}
- Celebrate food: an important part of Bloomfield's identity and culture. ^{46%*}
- Keep Bloomfield unique: document and celebrate local history and culture. ^{42%*}
- "We don't want things too fancy." Create new development that "feels like home." ^{23%*}



BEAUTIFICATION + GATEWAY IDENTITY

The buildings, outdoor spaces and built environment of Bloomfield.

- Manage a clean and litter-free public realm. ^{59%*}
- Provide trees, flowers, plantings, parklets, gardens and benches at the gateway and throughout the district. ^{57%*}
- Improve street and storefront lighting, and bring back festive seasonal lighting. ^{42%*}
- Integrate public art into public space: more murals, etc. ^{38%*}
- Maintain a "Welcome to Bloomfield" sign. ^{31%*}
- Create a green gateway "piazza", a town square with a water feature, a monument, a fountain, or other central element. ^{25%*}



CONNECTIVITY + ACCESSIBILITY

How people move in, around and through Bloomfield.

- Create a people-oriented intersection serving pedestrians, cyclists, transit riders and all abilities of people. ^{66%*}
- Support multi-modal transportation options with streets accommodating bikes, cars, public transit and pedestrians. ^{58%*}
- Better connect existing amenities that are already here but are hard to access - the playground, ball field and swimming pool. ^{47%*}
- Provide way-finding signs including local destination and adjacent neighborhoods. ^{23%*}



* Percentage of survey respondents who "STRONGLY AGREED" with a statement.
** The Architectural Character category, created after the online-survey had been conducted, includes issues raised at public workshops or as part of survey responses. Additionally, "childcare facilities" was added to the list of Community Uses after survey respondents requested that it be included. Because these items were not part of the on-line survey, no % value is attributed.

GATEWAY BUILDINGS + PUBLIC SPACE

The size, scale and character of new development and open space in Bloomfield.

- Provide more green space that is open to the public. Create something beautiful: a place to spend time and eat outside. ^{53%*}
- Attract a mix of uses: housing over shops and commercial spaces. Build flexible, multipurpose spaces. ^{51%*}
- Innovate w/ renewable and shared green energy to lower energy costs and minimize environmental impacts. ^{47%*}
- Match the scale and character of the surrounding built context. Do not create housing towers. ^{43%*}
- Front buildings on to Liberty Avenue, continuing the urban street corridor. ^{31%*}
- Preserve views to nearby landmarks: hospitals, Polish Hill. ^{28%*}



ARCHITECTURAL CHARACTER**

The materials, details, building construction and overall feel of the Bloomfield business district.

- DESIGN QUALITY**
Design should inspire! No bland, boxy buildings.
- GREEN DESIGN STANDARDS**
Use modern green building and site design and construction standards such as LEED®, Passive House® and others.
- ACTIVE OPEN GROUND FLOOR**
People should be able to see into ground floor uses and publicly-accessible spaces. Locate parking behind, below or within buildings.
- BUILDING HEIGHT**
New development should fit the context but should not be limited to 2-3 stories.



DESIRED USES

Uses that would enhance life in Bloomfield.

- FOOD** ^{62%*}
Retain an affordable supermarket in Bloomfield to ensure food access.
- HOUSING** ^{51%*}
Provide affordable rental and for-sale housing for a mix of income, ages, abilities, household sizes, etc.
- COMMUNITY USES**
Create spaces to support community life, health and culture, such as:
• community /senior center ^{41%*}
• affordable gym ^{38%*}
• small art / music venues ^{38%*}
• childcare facilities**
- GENERAL** ^{44%*}
Balance retail offerings. Create a diverse mix of family- and senior-friendly retail "to bring people of all kinds."
Attract an inclusive mix of uses and users, not only nightlife and bars.
- RETAIL / COMMERCIAL** ^{29%*}
Develop a mix of uses that complement the existing business district. Create a monthly market / fair showcasing local businesses.
- PARKING** ^{21%*}
Incorporate parking solutions for the larger business district. Designate some parking at the perimeter / edges of the development site [not along Liberty Ave.].

Building Program

Project Statistics

Programmatic Intent

- Grocery Store 28,000 sf +/- (Incl. Loading)
- Ancillary Retail 10,000 sf +/-
- Residential Apartments 248 Units
- Associated Parking Structure

Apartment Count:

- Studio = 56 (5 affordable)
- 1 BR = 127 (12 affordable)
- 2 BR = 65 (8 affordable)

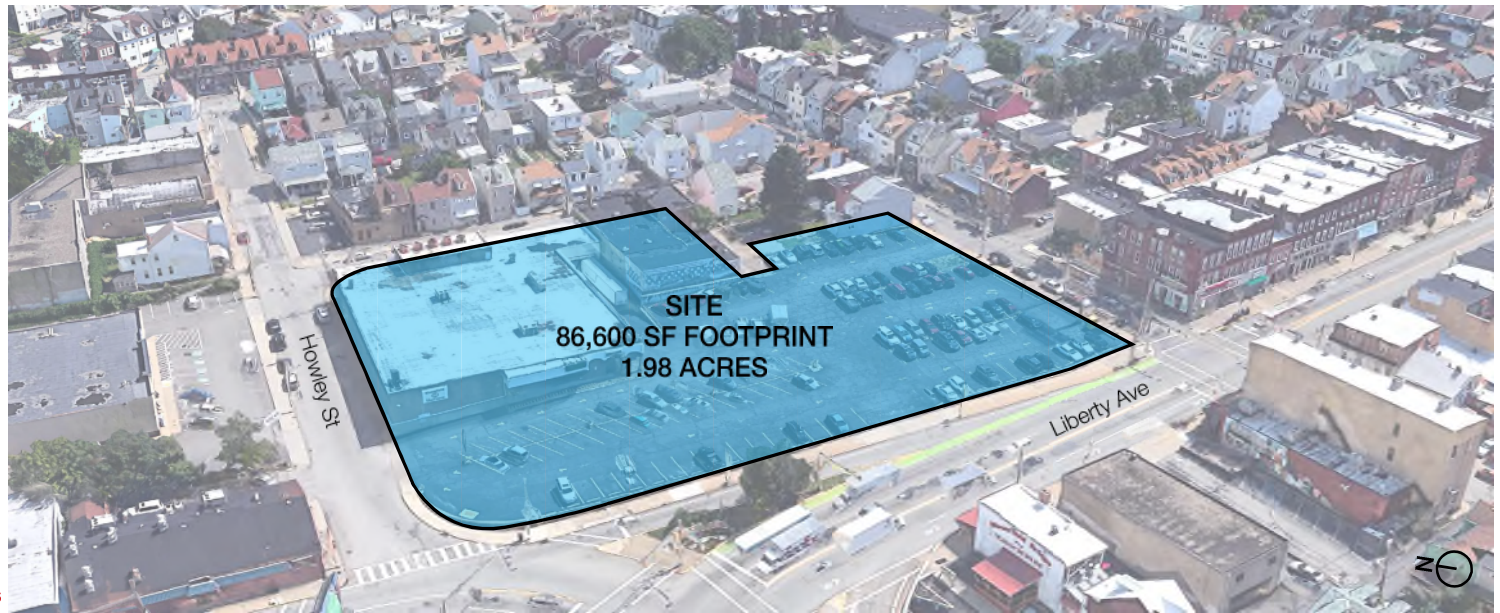
Total Market Rate Apartment Count = **223**

Total Affordable Apartment Count = **25**

Total Apartment Count = **248**

Estimated Retail Parking Count = **119 Spaces**

Estimated Apartment Parking Count = **199 Spaces**



Site Plan

Site/Ground Floor Plan (1)

Ground Floor Area Totals:

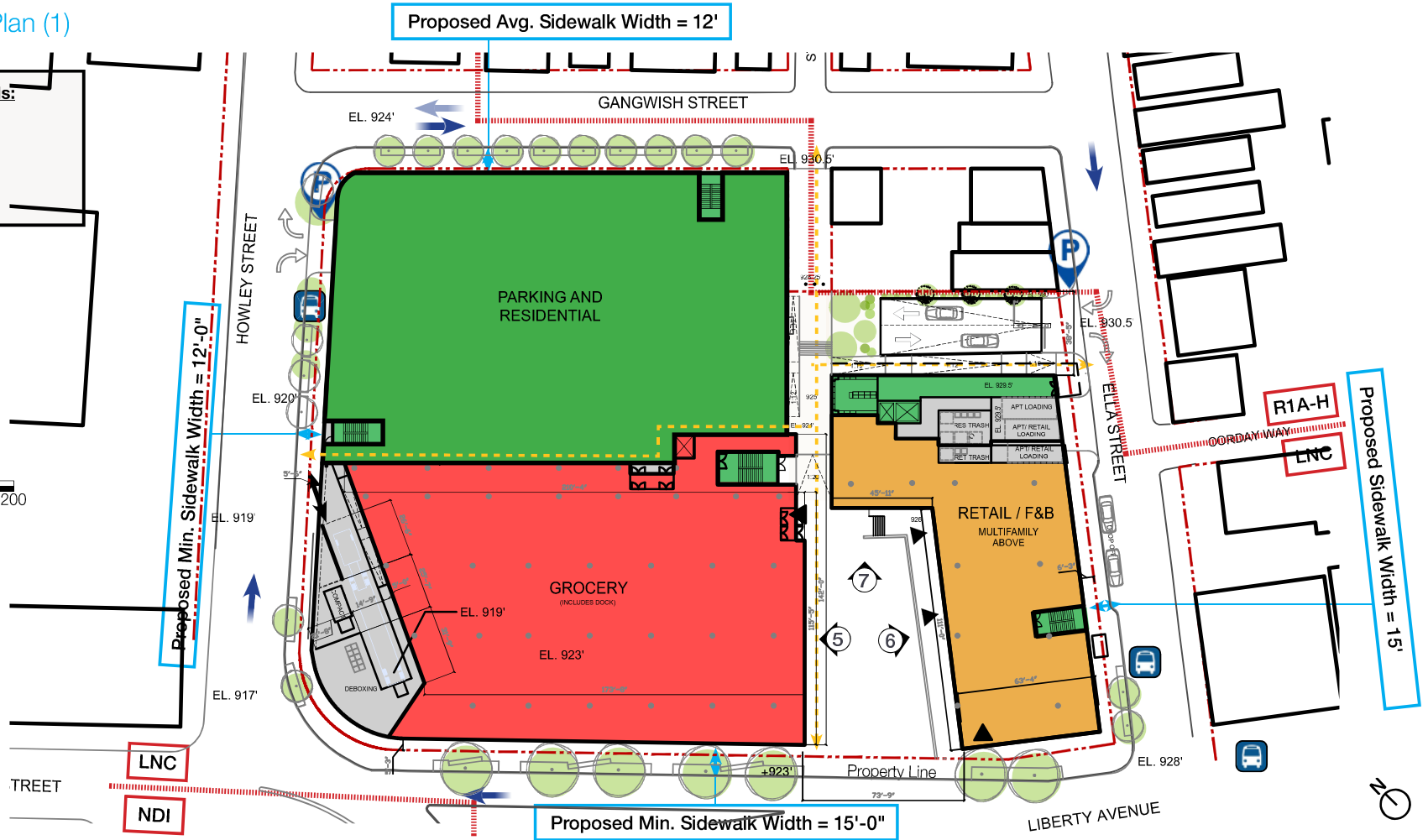
Grocery
28,007 GSF

Retail / F&B
10,082 GSF

SCALE : 1" = 50'

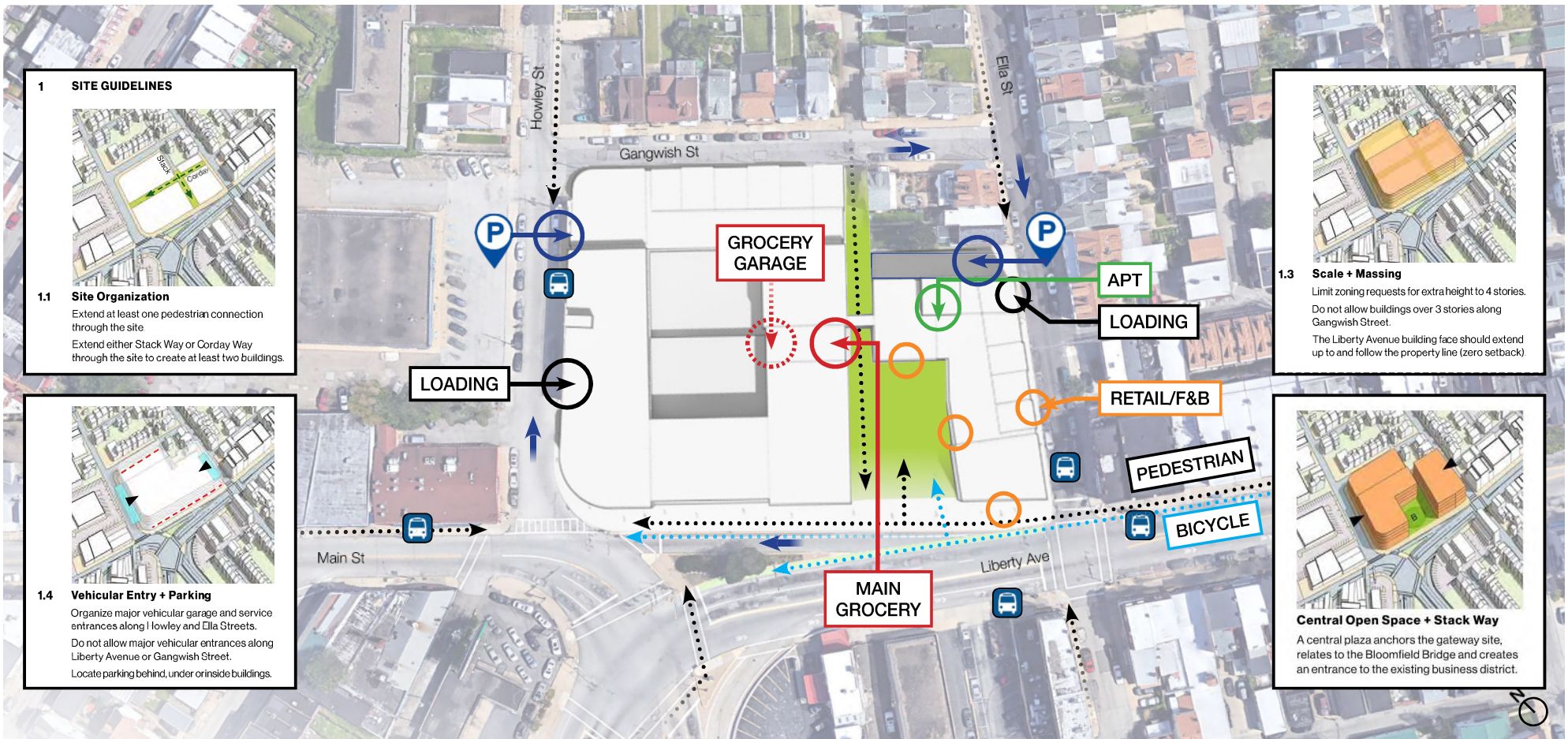


- Pedestrian Circulation
- Vehicular Circulation
- Parking Circulation
- Loading Access
- ▷ Building Entry
- Residential / Parking
- Grocery
- Retail / F&B



Planning

Site Connectivity



Perspective Views
Approach from Liberty Avenue to East



Perspective Views

Approach from Liberty Avenue to West



Perspective Views

From Middle of Bloomfield Bridge, View to Northeast



Perspective Views

From Howley North of Site, View to Southwest



Perspective Views

From Howley and Gangwish, View to Southeast



Perspective Views

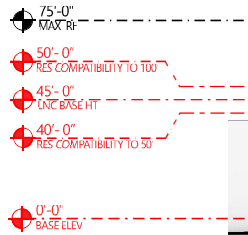
Corner of Ella and Gangwish, View to Southwest



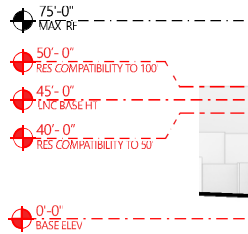
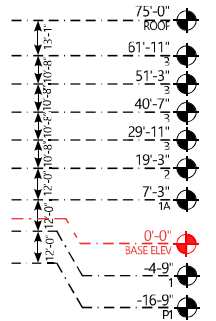
Elevations

Building Exteric

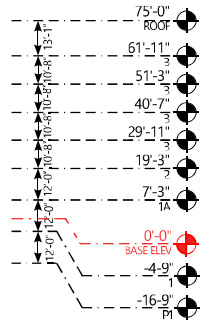
SCALE : 1" = 50'



SE ELEVATION
ELLA STREET



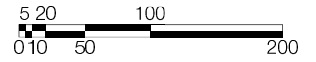
NE ELEVATION
GANGWISH STREET



Elevations

Building Exterior

SCALE : 1" = 50'



 ©AE7 PITTSBURGH 2021



20
EG

CHARTERS & CO.
ALTA-

Topography

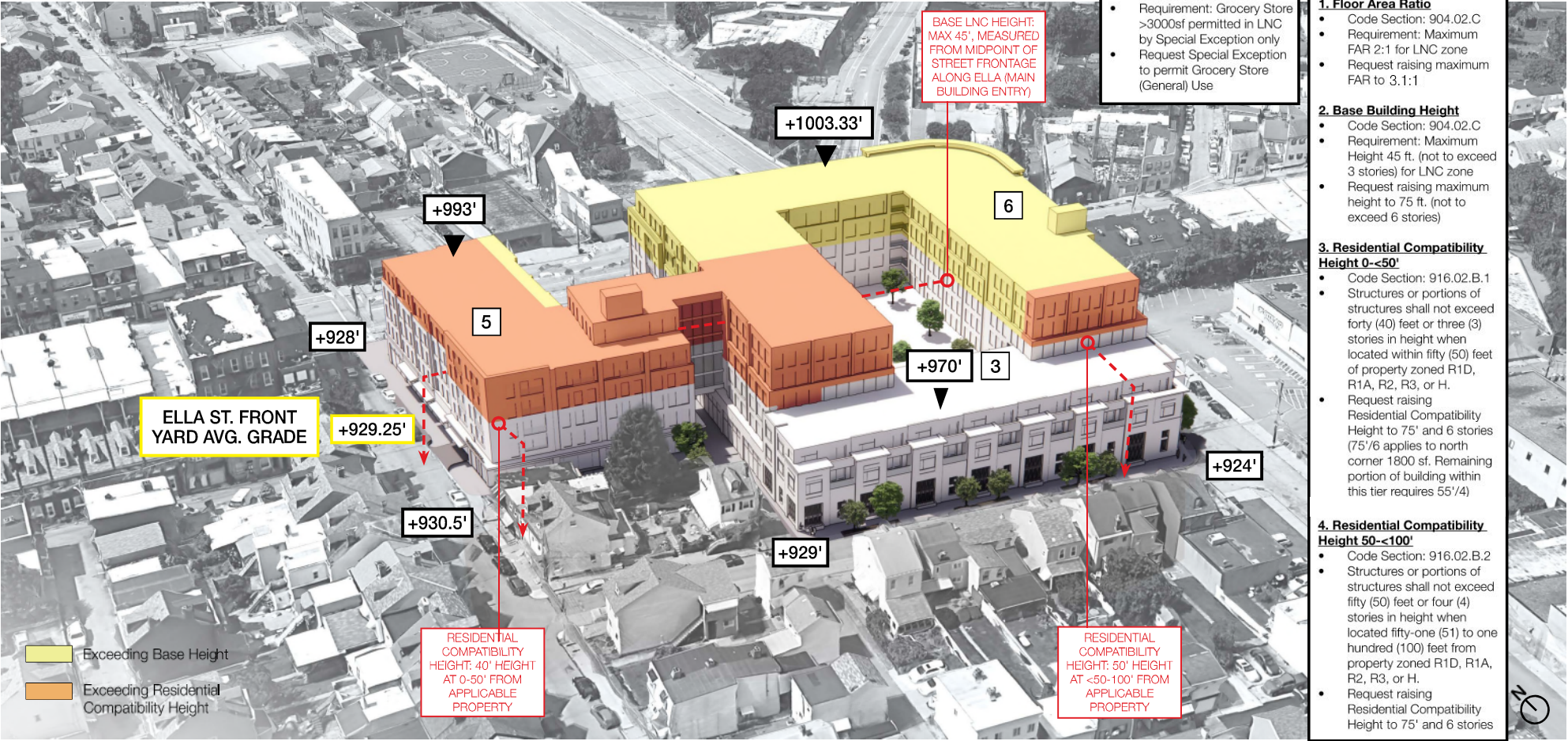
Elevations and Grades



Google Earth

Summary of Requests

Variances and Special Exception



SUMMARY

Summary Limitations: This summary is presented for introductory purposes only and should be used in conjunction with the complete report.

Background and General Information: The Bloomfield Square Development site is located east of the intersection of Liberty Avenue and Howley Street in the Bloomfield neighborhood of the City of Pittsburgh, Allegheny County, Pennsylvania. The approximately 2.0-acre site currently consists of a Shursave grocery store, former VFW lodge, former machine shop, residential structure, and paved parking lot. The proposed development will include demolishing the existing buildings and parking areas in order to redevelop the property into a mixed-use development with one below-grade level and four above-grade levels.

Subsurface Investigations: Nine (9) test borings, totaling 325.7 linear feet of soil sampling and 87.3 linear feet of bedrock sampling, were performed between November 29 and December 2, 2021, as part of CEC's subsurface investigation. The test boring depths ranged from 36.1 to 55.4 feet below the existing ground surface (bgs). The subsurface materials encountered at the test boring locations generally included asphalt or concrete pavement, existing fill, alluvial soil, and weathered rock overlying bedrock. The bedrock, which was encountered at depths ranging from 27.3 to 55.4 feet bgs in the test borings, consisted of sandstone, siltstone, and claystone. The test boring locations are shown on Figure 1 in Appendix B.

High-Plasticity Alluvial Soil: High-plasticity (i.e. fat clay or elastic silt) fine-grained alluvial soil was encountered above basement subgrade in five of CEC's nine test borings, in thicknesses as great as 6 feet, to a maximum depth of 12 feet bgs. Fat clay, elastic silt, and fine-grained alluvium with an elevated moisture content should be removed from the site as part of the grading for the lower level parking.

Deep Foundations: CEC recommends that the proposed structures utilize deep foundations that bear on bedrock. CEC anticipates that drilled-in, cast-in-place concrete piers (caissons) will be the most feasible deep foundations system to support structural loads from the proposed structures.

CEC recommends drilling caissons to auger refusal in medium hard to hard bedrock or socketed a minimum of three feet into weathered, medium hard to hard sandstone or siltstone bedrock. Design caissons socketed into medium hard to hard bedrock with a maximum allowable end bearing pressure of 60 kips per square foot (ksf). Drilled shafts utilizing frictional resistance to develop factored capacities can be designed with an axial capacity of 11.5 ksf and an uplift capacity of 8.5 ksf within sandstone/siltstone bedrock. Drilled shafts should not derive more than 50 percent of their capacity from skin friction.

On-Grade Slabs: Design on-grade concrete slabs for the proposed structure using a modulus of subgrade reaction of 100 pounds per cubic inch for the proposed structures. Isolate the slabs on-grade from columns and load bearing walls. Unsuitable soils (loose coarse-grained, soft fine-grained, and/or potentially expansive existing fill) will likely be encountered at some garage slab subgrade locations across the site. Therefore, some overexcavation of the existing fill should be anticipated. Backfill the overexcavation with suitable fill material placed and compacted in accordance with the recommendations contained herein.

Below-Grade Walls: Temporary shoring or an earth retention structure will be necessary to support adjacent roads, buildings, and utilities during site development. All permanent and temporary below-grade walls should be designed to withstand lateral earth pressures from the supported soils and consider surcharge loads such as building and construction loads. Feasible shoring systems may include, but are not limited to, tangential caissons or soldier piles and lagging. CEC recommends the following soil parameters be used for wall design based on a soil angle of internal friction of 26 degrees:

$K_0 = 0.56$	At-rest Earth Pressure Coefficient (Non-yielding Walls)
$K_a = 0.39$	Active Earth Pressure Coefficient (Yielding Walls)
$K_p = 2.56$	Passive Earth Pressure Coefficient
$\gamma = 115 \text{ pcf}$	Unit Weight
$\tan \delta = 0.30$	Factor for Sliding Resistance, Fine-Grained Soil to Concrete
$\tan \delta = 0.40$	Factor for Sliding Resistance, Coarse-Grained Soil to Concrete

be used in areas where hand-operated compactors are being used and where foundations or utilities will be constructed.

4.1.4 Fill Quality Control

Density and moisture content testing should be performed on all new fill material placed at the site in accordance with ASTM D6938. Perform density and moisture testing for approximately every 10,000 square feet of fill placed at the site with a minimum of one test performed for every lift. Density testing should also be performed every 100 linear feet along utility trenches, with a minimum of one test per lift.

4.2 STRUCTURE FOUNDATIONS

The proposed FFE of the below-grade level and the structure column loads have not yet been determined. CEC assumes that the below-grade level FFE will be near Elevation 910 and the structural columns will be heavily loaded due to the type and height of the structure. The proposed multi-use development will likely encounter a combination of variable consistency/relative density existing fill and alluvium at shallow foundation subgrade based on the test borings. Therefore, CEC recommends deep foundations socketed into bedrock be utilized to support the proposed structure.

4.2.1 Caissons

CEC anticipates that drilled-in, cast-in-place concrete piers (caissons) will be the most feasible foundations system to support structural loads. Drill caissons to auger refusal in medium hard to hard bedrock or socketed a minimum of three feet into weathered, medium hard to hard sandstone or siltstone bedrock. As shown on Figure 1, CEC estimates that medium hard to hard sandstone or siltstone bedrock will be encountered during deep foundation construction at elevations ranging from approximately Elevation 891 to Elevation 875 across the majority of the site, and at or below Elevation 860 where the apparent abandoned sewer is present – as it was in Test Boring B-01 in

the west corner of the site. Do not found the caissons on the soft bedrock encountered in the test borings.

Design caissons socketed into medium hard to hard bedrock with a maximum allowable end bearing pressure of 60 kips per square foot (ksf). Drilled shafts utilizing frictional resistance to develop factored capacities should be designed with an axial capacity of 11.5 ksf and an uplift capacity of 8.5 ksf within sandstone/siltstone bedrock. Drilled shafts should not derive more than 50 percent of their capacity from skin friction. Longer foundation elements may be required for fixity from lateral loading depending on the final structural design and construction sequencing.

Drilled shafts should have a minimum center to center spacing of three pile diameters (3D) to minimize reduction of load carrying capacities from group effects. Temporary full-length steel casing may be required to retain the drilled shaft sidewalls, control water, and to allow for inspections. Caissons encountering the apparent abandoned storm sewer should include permanent casing of sufficient length to prevent a loss of concrete into the void. CEC was unable to identify the alignment of the apparent abandoned sewer based on records reviewed. It is also possible the void was created by something other than a pipe.

The caissons should be drilled with a rig capable of applying a minimum 20,000 pounds of crowd (down pressure) and 50,000 foot pounds of torque. Caissons should be a minimum of 30 inches in diameter to facilitate cleaning and inspection. All caissons should be properly cleaned prior to concrete placement. Hand cleaning may be required if, in the opinion of the CEC representative, the caisson bottoms are not adequately cleaned using augers or mud buckets. After the caissons have been adequately cleaned and inspected, they should be constructed using a minimum 4-inch slump, 4,000 psi concrete. If groundwater is encountered during caisson installation, temporary full-length steel casing may be required to retain caisson sidewalls and control water. Caissons containing over two inches of water should be pumped out prior to inspection and concrete placement.

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4.2.2 Lateral Capacity of Deep Foundations

Deep foundations should be designed for lateral load capacity, horizontal displacement at the pile tip, and fixity if the piles will be subjected to lateral loads and/or moments at the pile tops. The structural engineer should determine the allowable horizontal deflection at the pile head and the allowable lateral capacity. Utilize p-y response software (e.g. LPILE software by Ensoft, or similar) to determine allowable lateral capacity and movement. If the designer utilizes p-y response software (similar to LPILE), CEC recommends modeling the piles using the soil parameters presented on the following table:

Table 3 - LPILE Input Parameters

Material Type, Model Type	Unit Weight (pcf)	Uniaxial Compressive Strength (psi)	Undrained Cohesion (psf)	Strain Factor, $\epsilon_{50}/\epsilon_{km}$	Friction Angle (degrees)	k-value (pci)	RQD (%)	Rock Mass Modulus (psi)
Existing Fill/Alluvium, Sand (Reese) $0 < N \leq 10$	115	—	—	—	28	25	--	—
Existing Fill/Alluvium, Sand (Reese) $10 < N \leq 30$	120	—	—	—	32	90	--	—
Existing Fill/Alluvium, Sand (Reese) $N > 30$	125	—	—	—	35	225	--	—
Existing Fill/Alluvium, Clay (Matlock) $0 < N \leq 4$	105	—	400	0.02	—	30	--	—
Existing Fill/Alluvium, Clay (Reese) $4 < N \leq 8$	110	—	750	0.01	—	100	--	—
Existing Fill/Alluvium, Clay (Reese) $N > 8$	115	—	1,500	0.005	—	500	--	—
Elastic Silt/Fat Clay, Clay (Reese)	115	—	750	0.01	—	100	--	—
Weathered Bedrock, Weak Rock (Reese)	135	1,000	—	0.0005	—	—	0	10,000
Bedrock, Strong Rock (Vuggy Limestone)	145	10,000	—	—	—	—	--	—

4.3 ON-GRADE FLOOR SLABS

Design on-grade concrete slabs for the proposed structure using a modulus of subgrade reaction of 100 pounds per cubic inch. Isolate the slabs-on-grade from columns and load bearing walls. Prepare slab subgrades in accordance with Section 4.1. Proofroll the slab subgrade making multiple passes in both directions immediately prior to slab construction. Remove soft or deflecting subgrade material delineated by proofrolling, to a depth at which the subgrade displays minimal deflection or up to a maximum depth of 3 feet. Based on the likelihood that some loose, soft, and/or potentially expansive existing fill will be encountered below the garage slab subgrade, some overexcavation of the existing fill should be anticipated. Backfill the overexcavation with suitable fill material placed and compacted in accordance with the recommendations contained herein.

Provide a minimum 4-inch thick layer of non-expansive crushed stone (such as PennDOT 2A) as a porous fill beneath concrete slabs placed on grade. A minimum 10-mil thick vapor retarder should be placed immediately below the floor slab if a moisture-sensitive floor covering will be used. The vapor retarder should meet the specifications of ASTM E1745, Class A, and be placed in accordance with ASTM E1643. All seams should be taped and any penetrations should be sealed according to American Concrete Institute (ACI) guidelines. Failure to properly install the vapor retarder could result in the failure of floor coverings due to migration of moisture vapor through the floor slab. If a moisture-sensitive floor covering is proposed in a humidity-controlled area, CEC recommends that the floor covering manufacturer or installer be consulted during design of the vapor barrier system and floor slab. If a vapor retarder is placed immediately below the floor slab, CEC recommends that measures be taken to reduce the potential for slab curling, such as reduced joint spacing and/or using a concrete with low shrinkage potential.

4.4 BELOW-GRADE WALLS

Temporary shoring or an earth retention structure will be necessary to support adjacent roads, buildings, and utilities during site development. All permanent and temporary below-grade walls should be designed to withstand lateral earth pressures from the supported soils. Additionally, the walls should be designed to resist the lateral components of surcharge loads, such as building and

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construction loads, occurring within a zone defined by a plane extending up at a 45-degree angle from the base of the wall. Feasible shoring systems may include, but are not limited to, tangential caissons or soldier piles and lagging. Shoring designs may require the use of drilled soil anchors extending behind the wall face.

Below-grade walls will likely encounter both fine- to coarse-grained existing fill and fine- to coarse-grained alluvium based on a below-grade parking level extending to an assumed Elevation 910. CEC recommends the following soil parameters be used for wall design based on fine-grained soils with an angle of internal friction of 26 degrees:

$K_o = 0.56$	At-rest Earth Pressure Coefficient (Non-yielding Walls)
$K_a = 0.39$	Active Earth Pressure Coefficient (Yielding Walls)
$K_p = 2.56$	Passive Earth Pressure Coefficient
$\gamma = 115 \text{ pcf}$	Unit Weight
$\tan \delta = 0.30$	Factor for Sliding Resistance, Fine-Grained Soil to Concrete
$\tan \delta = 0.40$	Factor for Sliding Resistance, Coarse-Grained Soil to Concrete

A minimum 2-foot-thick drainage layer consisting of crushed limestone meeting PennDOT No. 57 gradation aggregate wrapped in a PennDOT Class 1 geotextile should be placed directly behind permanent below-grade walls to the full height to promote drainage of the retained soils. Place a 4-inch diameter perforated PVC pipe at the bottom of the drainage layer. Proper performance of the wall is predicated on the structure being maintained in a drained condition. The drainage layer behind the wall will promote drained conditions, allowing the free flow of water to a foundation drain. The drain at the base of the wall should transfer any water by gravity to a sump pump or outlet into the storm drainage system. Imported soils proposed for use as wall backfill should be evaluated by CEC prior to use.

Based on the test boring information, it is not anticipated that groundwater will be encountered during excavation of the below-grade level, however, CEC recommends adequate waterproofing to prevent intrusion of water due to surface infiltration. If ground water is encountered during construction, CEC should be notified and appropriate waterproofing measures developed.

4.5 SITE DRAINAGE

Downspouts from the proposed structures should connect into the proposed stormwater conveyance piping.

4.6 WEATHER CONSIDERATIONS

Fine-grained soil materials are present on site and will be encountered during site excavations and earthwork. If soils become wet, proper placement as new fill will not be possible. If earthwork is performed during winter or spring months, or during inclement weather, the contractor should expect a reduction in productivity. The project earthwork and paving construction can be significantly affected by inclement weather and/or precipitation. CEC recommends performing earthwork construction during summer or early fall to reduce the impact of weather on the contractor's productivity.

4.7 MOLD PREVENTION

None of the services performed as part of this investigation were designed or conducted for the purpose of mold prevention. Proper implementation of the recommendations conveyed in this report may not be sufficient to prevent mold from growing in or on the structure involved. CEC recommends that an experienced mold prevention consultant be retained to prevent or minimize mold problems.

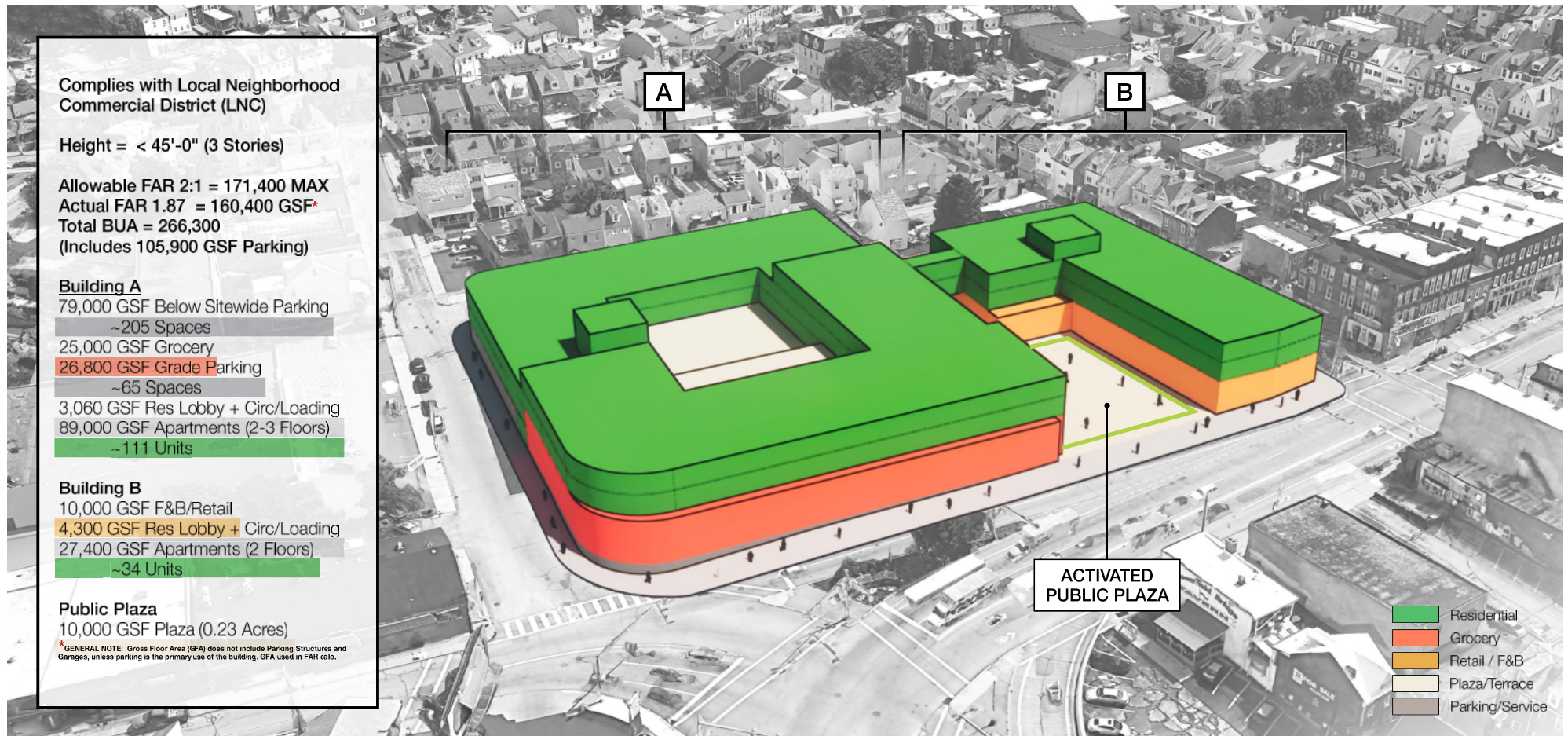
4.8 CONSTRUCTION PHASE SERVICES

4.8.1 Geotechnical Monitoring

Geotechnical engineering is a two-phase process. The first phase includes a subsurface investigation, analysis, and preparation of a report presenting conclusions and recommendations. The second phase involves observing field subsurface conditions, assessing the appropriateness of the recommendations based on the field conditions, and confirming that the geotechnical recommendations are being properly implemented. This report documents significant

Conformant Scheme

"As-of-Right" Per Zoning Code



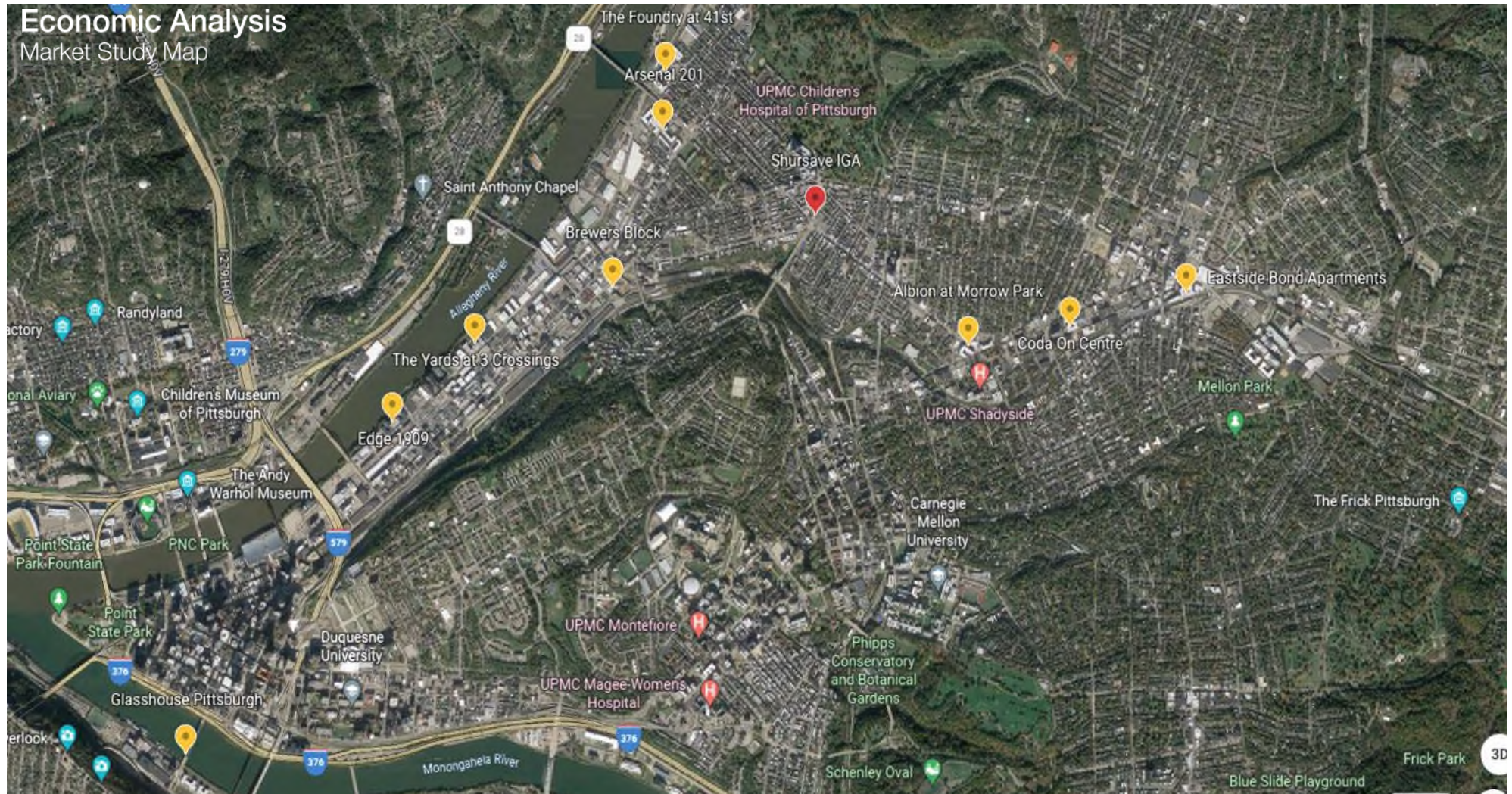
Cost Impact

Geotechnical Conditions



Economic Analysis

Market Study Map



Economic Analysis

Market Study Data

East Side Bond 6105 Spirit Street Pittsburgh, PA Units-360 Year Built-2016 Average SF-797SF Occupancy-99.7% Daily Pricing-Yes Concessions? No Floors-5 Average Rent Average Rent per SF Deposit: Number of Parking Spaces	Spot Rents Axio Rents  \$2,372.00 \$2.98 \$300.00 514 Spaces or 1.43x	Edge 1909 1909 Waterfront Place Units-364 Year Built-2018 Average SF-874SF Occupancy-95.3% Daily Pricing-Yes Concessions? No Floors-5 Average Rent Average Rent per SF Deposit: Number of Parking Spaces	Spot Rents Axio Rents  \$2,346.00 \$2.69 \$300.00	Brewers Block Units-376 Year Built Average SF-696SF Floors-5 and 6 Average Rent Average Rent per SF Deposit:	Proforma Rents CBRE as of 2020  \$1,849.00 \$2.66
The Yards 2645 Railroad Street Pittsburgh, PA Units-300 Year Built-2016 Average SF-773SF Occupancy-93.7% Daily Pricing-Yes Concessions? No Floors-5 Average Rent Average Rent per SF Deposit: Number of Parking Spaces	Spot Rents Axio Rents  \$1,791.00 \$2.32 None 498 Spaces (includes HUB Parking) or 1.66x	Albion at Morrow Park 5250 Liberty Ave Pittsburgh, PA Units-213 Year Built-2015 Average SF-750SF Occupancy-99% Daily Pricing-No Concessions? No Floors-6 Average Rent Average Rent per SF Deposit: Number of Parking Spaces	Spot Rents Axio Rents  \$1,904.00 \$2.54 \$500.00	Coda 5765 Centre Avenue Pittsburgh, PA Units-175 Year Built-2018 Average SF-613SF Occupancy-97% Daily Pricing-Yes Concessions? No Floors-6 Average Rent Average Rent per SF Deposit: Number of Parking Spaces:	Spot Rents Axio Rents  \$1,736.00 \$2.83 \$250.00 152 Spaces or 0.87x
The Foundry at 41st 4107 Willow Street Pittsburgh, PA Units-182 Year Built-2017 Average SF-910SF Occupancy-97% Daily Pricing-Yes Concessions? No Floors-6 Average Rent Average Rent per SF Deposit: Number of Parking Spaces	Spot Rents Axio Rents  \$1,772.00 \$2.43 \$500.00 182 Spaces or 1.0x (Currently a waitlist)	Arensal 201 3922 Foster Street Pittsburgh, PA Units-243 Year Built-2018 Average SF-961SF Occupancy-93% Daily Pricing-Yes Concessions? Yes, 1 Mo. Free on 13 Month Lease Floors-4 Average Rent Average Rent per SF Deposit: Number of Parking Spaces	Spot Rents Axio Rents  \$2,205.00 \$2.29 \$250.00	Glasshouse 160 E Station Square Pittsburgh, PA Units-319 Year Built-2020 Average SF-933SF Occupancy-92.5% Daily Pricing-Yes Concessions? Yes Floors-5 Average Rent Average Rent per SF Deposit: Number of Parking Spaces	Spot Rents Axio Rents  \$2,315.00 \$2.48 \$300 335 Spaces or 1.05x

Cost Analysis

Cost Per Apartment Unit

Scenario	Units	Residential GSF	Commercial GSF	GSF	Total Development Cost Net	Total Development Cost per Unit	% Increase from Proposed
Proposed Plan	248	227,893	38,500	266,393	\$ 84,151,300	\$ 300,932	*
By Right Plan	145	150,000	38,500	188,500	\$ 61,840,284	\$ 360,829	* 20%

* Includes \$7,269,000 of caisson and below grade parking premium costs

Cost Analysis

Impact of Affordability Requirement

Bloomfield Unit Overview

Unit Type	Description	No. Units	Mix	AVG Net SF	Total Net SF	Monthly Rents	Rent/SF
MARKET RATE							
	Studio A (w/ alcove)	51	21%	540	27,540	\$1,700	\$3.15
	1 BR (small)	45	18%	650	29,250	\$2,100	\$3.23
	1 Bedroom	70	28%	720	50,400	\$2,300	\$3.19
	2 Bedroom	57	23.0%	1,050	59,850	\$2,800	\$2.67
Market Totals		223	89.92%	749	167,040	\$2,250	\$3.00
Affordable							
	Studio A (w/ alcove)	5	2.0%	540	2,700	\$742	\$1.37
	1 BR (small)	6	2.4%	650	3,900	\$742	\$1.14
	1 Bedroom	6	2.4%	720	4,320	\$795	\$1.10
	2 Bedroom	8	3.2%	1,050	8,400	\$955	\$0.91
Market Totals		25	10.08%	773	19,320	\$823	\$0.00
Totals		248	100.00%	749	185,700	\$0	\$2.81

\$1,430/mo delta between market rent and affordable rent for 25 units

\$ 428,203.26

Enterprise value based on current market rates

\$8,564,065.29

Units included in the proposed plan to make up difference

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1.0 INTRODUCTION AND EXECUTIVE SUMMARY

1.1 Purpose of Report and Study Objectives

This report provides the results of the transportation impact study prepared for the proposed Bloomfield Square mixed-use development, the composition and location of which are detailed below. The study, as documented in this report, was performed in order to meet the study requirements of the City of Pittsburgh Department of Mobility and Infrastructure (DOMI) as detailed in their *Transportation Impact Review Guidelines*, 2018 publication.

The study objectives were to identify the potential transportation impacts of the proposed Bloomfield Square mixed-use development, and if necessary, develop appropriate mitigation measures.

1.2 Executive Summary

An overview of the project description, principal findings resulting from the analysis, and recommended mitigation strategies are presented in this summary.

1.2.1 Site Location and Study Area

The site is located at 4401 Liberty Avenue, within the Bloomfield Neighborhood of the City of Pittsburgh, Allegheny County, Pennsylvania, as shown in Figure 1.

Based on the results of a Transportation Study Scoping Meeting held with representatives of DOMI on July 30, 2021, the following intersections were selected for study:

- Liberty Avenue with the Bloomfield Bridge/Main Street/Howley Street (existing signalized);
- Liberty Avenue with Ella Street (existing signalized);
- Howley Street with the site driveway (proposed);
- Ella Street with the site driveway (proposed);
- Howley Street with Gangwish Street (existing unsignalized);
- Ella Street with Gangwish Street (existing unsignalized); and
- Friendship Avenue with Howley Street/Carroll Street (existing signalized).

A total of five (5) existing intersections and two (2) proposed driveway intersections were included in the scope of the study. The study intersections with respect to the site are shown in Figure 2.

1.2.2 Development Description

The proposed Bloomfield Square development is anticipated to include the construction of a 28,000 square foot grocery store, 10,000 square feet of ancillary retail development and 196 apartment units and is planned

to be completed and fully occupied in 2025. In order to accommodate the proposed Bloomfield Square development, the existing Community Supermarket, the existing Veterans of Foreign Wars (VFW) building and two (2) existing single family dwellings will need to be razed.

1.2.3 Land Development Control Status

The majority of the site is currently zoned LNC (Local Neighborhood Commercial). No change in zoning status is proposed as part of this project. However, both grocery store and restaurant are special exceptions in the LNC zoning district and, therefore, a special exception will be required. It is also noted that there is one property along Ella Street that contains a single family dwelling unit that is currently within the R1A-H (Single-Unit Attached Residential-High Density) zoning district. This property will need to be rezoned to LNC in order to accommodate the proposed development.

1.2.4 Principal Findings

Parking Analysis

With no reduction for bicycle parking, the proposed Bloomfield Square development is required to provide a minimum of 369 parking spaces, including a minimum of 158 parking spaces for the proposed grocery store, a minimum of 15 parking spaces for the proposed ancillary retail development and a minimum of 196 parking spaces for the proposed apartments.

According to Section 914.05.D of the *City of Pittsburgh Urban Zoning Code*, the proposed Bloomfield Square mixed-use development is required to provide bicycle parking at a ratio of one (1) space for every 10,000 square foot of retail development and one (1) space for every three (3) dwelling units. Therefore, 69 bicycle parking spaces would be required for the proposed Bloomfield Square mixed-use development. However, the proposed Bloomfield Square mixed use development plans to provide a total of 109 bicycle parking spaces.

After applying the maximum permitted 30% reduction in required parking spaces for providing the required number of bicycle parking spaces, the proposed Bloomfield Square development is required to provide a minimum of 258 parking spaces, including a minimum of 111 parking spaces for the proposed grocery store, a minimum of 10 parking spaces for the proposed ancillary retail development and a minimum of 137 parking spaces for the proposed apartments.

A total of 260 parking spaces are proposed to accommodate the Bloomfield Square mixed-use development, including 121 parking spaces dedicated to the proposed grocery store and retail developments and 139 parking spaces dedicated to the residents of the proposed apartments.

Trip Generation

Because the existing Community Supermarket, the existing Veterans of Foreign Wars (VFW) building and two (2) existing single family dwellings will need to be razed in order to accommodate the proposed

Traffic Impact Study

Partial

Bloomfield Square development, the anticipated trips to be generated by the proposed Bloomfield Square development will represent an increase in trip generation over the existing development and not entirely new trip generation. Therefore, the vehicular trip generation of the existing Community supermarket, the existing VFW building and two (2) existing single family dwellings was estimated based upon data published by the Institute of Transportation Engineers (ITE) in their *Trip Generation*, Eleventh Edition, 2021. Land Use Code 850, *Supermarket*, was used to estimate the trip generation the existing 22,060 square foot Community Supermarket, Land Use Code 495, *Recreational Community Center*, was used to estimate the trip generation of the existing 5,125 square foot VFW building and Land Use Code 210, *Single-Family Detached Housing*, was used to estimate the trip generation of the two (2) existing single family dwellings.

Using this methodology, the existing development at 4401 Liberty Avenue was estimated to generate a total of 2,560 vehicular trips on a typical weekday, with approximately 77 of these trips estimated to occur during the weekday A.M. peak hour (45 trips entering/32 trips exiting) and approximately 264 of these trips estimated to occur during the weekday P.M. peak hour (132 trips entering/132 trips exiting).

However, internal trips between the existing Community Supermarket, the VFW building and the single family dwelling units can be anticipated to occur that would not require trips to utilize the existing roadway system. Internal trips between the existing land uses were anticipated to represent 20% of the trips generated by the lower of the trip generators. Using this methodology, approximately 84 of the total 2,560 vehicular trips on a typical weekday can be anticipated to be internal trips, with approximately seven (7) of the 77 trips generated during the weekday A.M. peak hour (three (3) trips entering/four (4) trips exiting) and approximately 16 of the 264 trips generated during the weekday P.M. peak hour (eight (8) trips entering/eight (8) trips exiting) anticipated to be internal trips.

In addition, trips generated by the existing Community Supermarket, VFW building and two (2) single family dwellings can be anticipated to be multi-modal trips made by transit, pedestrians or bicyclists. Based on data published by PGHSNAP, multi-modal trips in the Bloomfield Neighborhood of the City of Pittsburgh can be anticipated to represent approximately 45.3 percent of the trips generated, including 20.0 percent of trips by transit, 6.5 percent of trips by bicycle and 18.8 percent of trips by pedestrians. Therefore, approximately 1,122 of the remaining 2,476 vehicular trips on a typical weekday can be anticipated to be multi-modal trips, with approximately 31 of the remaining 70 trips generated during the weekday A.M. peak hour (18 trips entering/13 trips exiting) and approximately 112 of the remaining 248 trips generated during the weekday P.M. peak hour (56 trips entering/56 trips exiting) estimated to be multi-modal trips.

Finally, the existing Community Supermarket can be anticipated to generate pass-by trips (those vehicles already traveling the study roadways that stop at the Community Supermarket as an intermediate trip between their primary origin and primary destination). Based on data published in the aforementioned *Trip Generation*, the existing Community Supermarket could be estimated to generate approximately 24% pass-by trips during the weekday P.M. peak hour. *Trip Generation* does not provide pass-by trip generation data for a grocery store during the weekday A.M. peak hour. Therefore, pass-by trips during the weekday A.M.

peak hour were estimated to be approximately 10% less than pass-by trips during the weekday P.M. peak hour, or approximately 14%.

Using this methodology, approximately five (5) of the remaining 39 trips generated during the weekday A.M. peak hour (three (3) trips entering/two (2) trips exiting) and approximately 28 of the remaining 136 trips generated during the weekday P.M. peak hour (14 trips entering/14 trips exiting) were estimated to be pass-by trips.

Therefore, the existing Community Supermarket, VFW building and two (2) single family dwellings were estimated to generate approximately 1,354 new trips on a typical midweek day, with approximately 34 of these new trips estimated to occur during the weekday A.M. peak hour (21 trips entering/13 trips exiting) and approximately 108 of these new trips estimated to occur during the weekday P.M. peak hour (54 trips entering/54 trips exiting).

Vehicular trip generation of the proposed Bloomfield Square mixed-use development was projected based upon data published in the aforementioned *Trip Generation*. Land Use Code 850, *Supermarket*, was used to estimate the trip generation the proposed 28,000 square foot grocery store, Land Use Code 822, *Strip Retail Plaza (<40k)*, was used to estimate the trip generation of the proposed 10,000 square feet of ancillary retail development and Land Use Code 221, *Multifamily Housing (Mid-Rise)*, was used to estimate the trip generation of the proposed 196 apartment units.

Using this methodology, the proposed Bloomfield Square development can be anticipated to generate a total of 4,418 vehicular trips on a typical weekday, with approximately 184 of these trips anticipated to occur during the weekday A.M. peak hour (81 trips entering/103 trips exiting) and approximately 431 of these trips anticipated to occur during the weekday P.M. peak hour (224 trips entering/207 trips exiting).

As previously discussed, internal trips between the proposed grocery store, the proposed ancillary retail and the proposed apartments can be anticipated to occur. Again, internal trips between the proposed land uses were anticipated to represent 20% of the trips generated by the lower of the trip generators. Using this methodology, approximately 876 of the total 4,418 vehicular trips on a typical weekday can be anticipated to be internal trips, with approximately 50 of the 184 trips generated during the weekday A.M. peak hour (25 trips entering/25 trips exiting) and approximately 90 of the 431 trips generated during the weekday P.M. peak hour (45 trips entering/45 trips exiting) anticipated to be internal trips.

In addition, trips generated by the proposed Bloomfield Square development can be anticipated to be multi-modal trips made by transit, pedestrians or bicyclists. Approximately 1,606 of the remaining 3,542 vehicular trips on a typical weekday can be anticipated to be multi-modal trips, with approximately 61 of the remaining 134 trips generated during the weekday A.M. peak hour (36 trips entering/35 trips exiting) and approximately 154 of the remaining 341 trips generated during the weekday P.M. peak hour (81 trips entering/73 trips exiting) estimated to be multi-modal trips.

Traffic Impact Study

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Finally, the proposed grocery store and the ancillary retail can be anticipated to generate pass-by trips (those vehicles already traveling the study roadways that stop at the Community Supermarket as an intermediate trip between their primary origin and primary destination). As previously discussed, the proposed grocery store can be anticipated to generate approximately 14% pass-by trips during the weekday A.M. peak hour and approximately 24% pass-by trips during the weekday P.M. peak hour. The aforementioned *Trip Generation* does not provide pass-by trip generation data for a *Strip Retail Plaza* (<40k). Therefore, pass-by trip generation data for a *Shopping Plaza* (40-150k) was used to estimate the anticipated pass-by trip generation of the proposed ancillary retail. Using this methodology, the proposed ancillary retail can be anticipated to generate approximately 40% pas-by trips during the weekday P.M. peak hour. *Trip Generation* does not provide pass-by trip generation data for a *Shopping Plaza* (40-150k) during the weekday A.M. peak hour. Therefore, pass-by trips during the weekday A.M. peak hour were estimated to be approximately 10% less than pass-by trips during the weekday P.M. peak hour, or approximately 30%.

Using this methodology, approximately eight (8) of the remaining 73 trips generated during the weekday A.M. peak hour (five (5) trips entering/three (3) trips exiting) and approximately 43 of the remaining 187 trips generated during the weekday P.M. peak hour (22 trips entering/21 trips exiting) can be anticipated to be pass-by trips.

Therefore, the proposed Bloomfield Square development can be anticipated to generate approximately 1,936 new trips on a typical midweek day, with approximately 65 of these new trips anticipated to occur during the weekday A.M. peak hour (25 trips entering/40 trips exiting) and approximately 144 of these new trips anticipated to occur during the weekday P.M. peak hour (76 trips entering/68 trips exiting).

Based on the estimated trip generation of the Community Supermarket, VFW building and two (2) single family dwellings, as well as the anticipated trip generation of the proposed Bloomfield Square development, the proposed Bloomfield Square development can be anticipated to generate approximately 582 new trips more than the Community Supermarket, VFW building and two (2) single family dwellings on a typical weekday, with approximately 31 of these additional trips anticipated to occur during the weekday A.M. peak hour (four (4) trips entering/27 trips exiting) and approximately 36 of these additional trips anticipated to occur during the weekday P.M. peak hour (22 trips entering/14 trips exiting).

Traffic Analysis

As per the City of Pittsburgh Transportation Impact Study Review Guidelines, 2018: *“The TIS shall compare the LOS and delay of the future year conditions without the development to the future year conditions with the development. An impact occurs when the overall intersection LOS degrades and the average delay per vehicle increases more than 10.0 seconds. When an intersection is anticipated to operate at LOS F during the future conditions without development, the 10.0 second allowable increase shall apply.”*

The results of the capacity calculations performed using the opening year 2025 build conditions (with the proposed Bloomfield Square development) and the design year 2030 build conditions (with the proposed Bloomfield Square development) revealed that no impacts can be anticipated at the existing study intersections. In addition, the proposed site driveway intersections with Howley Street and Ella Street can be anticipated to operate at an overall intersection Level of Service A during both the weekday A.M. and weekday P.M. peak hours under both opening year 2025 build conditions (with the proposed Bloomfield Square development) and the design year 2030 build conditions (with the proposed Bloomfield Square development).

Additionally, based on the results of queuing analyses performed, no significant increases in the 95th percentile queue lengths are anticipated under opening year 2025 build (with the Bloomfield Square development) and design year 2030 build conditions (with the Bloomfield Square developments) over the opening year 2025 no-build(base) and design year 2030 no-build (base) conditions. Any potential increases in queue lengths are projected to be less than two(2) vehicles in length. The reported 95th percentile queue lengths that are projected to queue beyond their storage or block lengths are projected to occur with or without the proposed Bloomfield Square development. The potential minor increases in queue length are not expected to have a significant impact on the operations of the study network.

1.2.5 Recommendations

This study has been performed in order to determine the transportation impacts of the proposed Bloomfield Square mixed-use development. These impacts were evaluated based upon the criteria published in the City of Pittsburgh’s *Transportation Impact Review Guidelines*, 2018.

According to Section 914.05.D of the *City of Pittsburgh Urban Zoning Code*, the proposed Bloomfield Square mixed-use development is required to provide bicycle parking at a ratio of one (1) space for every 10,000 square foot of retail development and one (1) space for every three (3) dwelling units. Therefore, 69 bicycle parking spaces would be required for the proposed Bloomfield Square mixed-use development. However, the proposed Bloomfield Square mixed use development plans to provide a total of 109 bicycle parking spaces.

Based on the results of the capacity analyses, the proposed development is not expected to have a significant impact on the surrounding roadway network. No mitigation measures are necessary in order to accommodate the projected trips generated by the proposed Bloomfield Square mixed-use development.

Traffic Impact Study

Update



Civil & Environmental Consultants, Inc.

August 7, 2023

Mr. Philip Bishop
Senior Vice President
Echo Realty
560 Epsifon Drive
Pittsburgh, PA 15238

Dear Mr. Bishop:

Subject: Bloomfield Square Mixed Use Development
CEC Project 307-222

In February 2022, Civil & Environmental Consultants Inc. (CEC) prepared a Traffic Impact Study (TIS) for the proposed Bloomfield Square Mixed Use Development. Since that time, minor adjustments to the proposed development plan have been made. Primarily, the number of residential units has increased from 196 to 248 units. In order to document the potential changes, CEC reviewed the previous study and provided updated trip generation and parking requirement calculations. The results of which are discussed in this letter.

Trip Generation

Consistent with the TIS prepared in February 2022, trip generation calculations were based upon the data published in the Institute of Transportation Engineers (ITE) *Trip Generation*, 11th Edition. All ITE land uses were kept consistent with the previously prepared TIS. However, as directed by the City of Pittsburgh Department of Mobility and Infrastructure (DOMI), the modal splits were updated from the PGHSNAP data to the most recent Make My Trip Count Data (MMTC). As per DOMI's request, the anticipated modal split for the proposed development is as follows:

- Grocery Store/Retail
 - Automobile: 69%
 - Transit: 13%
 - Bicycle: 4%
 - Pedestrian: 14%
- Residential
 - Automobile: 25%
 - Transit: 57%
 - Bicycle: 9%
 - Pedestrian: 9%

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Mr. Bishop
CEC Project 307-222
Page 2
August 7, 2023

After consideration of internally captured trips between the proposed land uses as well pass-by trips, the remaining primary (new trips to the study area) are projected as shown in Table 1:

Primary Trips:

- Weekday AM Peak Hour
 - 62 new trips (28 entering and 34 exiting)
- Weekday PM Peak Hour
 - 126 new trips (66 entering and 60 exiting)

As detailed in Table 2, the February 2022 TIS projected the following peak hour trips utilizing the PGHSNAP multi-modal trip data and previous site plan components:

Primary Trips:

- Weekday AM Peak Hour
 - 65 new trips (25 entering and 40 exiting)
- Weekday PM Peak Hour
 - 144 new trips (76 entering and 68 exiting)

Therefore, with the updated site plan and the new modal split travel data provided by DOMI from the MMTC survey, the proposed development is anticipated to generate three (3) less trips in the weekday AM peak hour and 18 less trips in the weekday PM peak hour than what was presented in the February 2022 TIS.

City of Pittsburgh Zoning Code Parking Requirements

As detailed in the site plans, a total of 308 vehicular parking spaces and 120 on-site bicycle parking spaces are to be provided.

The number of parking spaces expected to be required for the proposed development were based on the City of Pittsburgh Zoning Code, Chapter 914. As detailed in the attached Table 3, the proposed development is anticipated to require a total of 408 parking spaces. However, accounting for on-site bicycle parking, the required number of parking spaces was calculated to be 288 parking spaces. Therefore, the proposed development is planned to provide sufficient parking to meet the City of Pittsburgh Zoning Code requirements.

Civil & Environmental Consultants, Inc.

Traffic Impact Study

Update

Mr. Bishop
CEC Project 307-222
Page 3
August 7, 2023

Summary

As detailed in the February 2022 TIS, "Based on the results of the capacity analyses, the proposed development is not expected to have a significant impact on the surrounding roadway network. No mitigation measures are necessary in order to accommodate the projected trips generated by the proposed Bloomfield Square mixed-use development." Based on the revised calculations included with this letter, the results of that TIS are expected to remain unchanged.

Sincerely,

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.



Chris A. Droznek II, P.E. PTP
Senior Project Manager



Austin N. Lucas
Staff Consultant

Civil & Environmental Consultants, Inc.

Traffic
Impact
Study

Update

TABLE 1
ANTICIPATED TRIP GENERATION SUMMARY - WITH MODAL SPLIT
Proposed Bloomfield Square Mixed-Use Development
City of Pittsburgh, Allegheny County, Pennsylvania

Land Use Code	Description	Size	Time Period	Trip Generation ⁽¹⁾												Total Trips		
				Primary Trips			Pass-By Trips ^(4,5,6,7)			Multi-Modal Trips ⁽³⁾			Internal Trips ⁽²⁾					
				Enter	Exit	Total	Enter	Exit	Total	Enter	Exit	Total	Enter	Exit	Total	Enter	Exit	Total
850	Supermarket	28,000 s.f.	Weekday 24-Hour	No data provided for weekday 24-hour												1,437	1,437	2,874
			Weekday AM Peak Hour	20	15	35	5	4	9	11	8	19	11	6	17	47	33	80
			Weekday PM Peak Hour	53	48	101	29	26	55	37	33	70	19	31	50	138	138	276
822	Retail	10,000 s.f.	Weekday 24-Hour	No data provided for weekday 24-hour												326	326	652
			Weekday AM Peak Hour	4	4	8	4	2	6	4	2	6	5	4	9	17	12	29
			Weekday PM Peak Hour	3	6	9	5	8	13	4	6	10	27	19	46	39	39	78
221	multi-family residential	248 units	Weekday 24-Hour	No data provided for weekday 24-hour												569	568	1,137
			Weekday AM Peak Hour	4	15	19	0	0	0	12	47	59	7	13	20	23	75	98
			Weekday PM Peak Hour	10	6	16	0	0	0	29	17	46	20	15	35	59	38	97
Total			Weekday 24-Hour	No data provided for weekday 24-hour												2,332	2,331	4,663
			Weekday AM Peak Hour	28	34	62	9	6	15	27	57	84	18	19	37	87	120	207
			Weekday PM Peak Hour	66	60	126	34	34	68	70	56	126	39	46	85	236	215	451

(1) Trip generation determined through the data published in the Institute of Transportation Engineers (ITE) *Trip Generation*, 11th Edition.

(2) Internal trips captured based on ITE methodology which uses the NCHRP 684 internal trip calculation tool. For analysis purposes, the supermarket and retail were combined for internal trip reductions. Therefore, internal trips were summarized under the supermarket only category item within this table. For pass-by calculations, the internal trips were removed from the supermarket category as well.

(3) Multi-modal trip splits determined through the use of the City of Pittsburgh Make My Trip Count Data provided by the City of Pittsburgh. For the retail components, an automobile trip rate of 69% was provided. For the residential component, an automobile trip rate of 25% was provided.

(4) Pass-by trip percentage of 24% for a Supermarket during the weekday P.M. peak hour obtained from the Institute of Transportation Engineers (ITE) publication *Trip Generation*, 11th Edition, 2021.

(5) No pass-by trip percentages for a Supermarket during the weekday A.M. peak hour provided in the Institute of Transportation Engineers (ITE) publication *Trip Generation*, 11th Edition, 2021. Therefore, pass-by trip percentage of 10% less than the P.M. peak hour pass-by trip percentage, or 14%, assumed for the weekday A.M. peak hour.

(6) No-pass-by trip percentages for Strip Retail Plaza (<40k) provided in the Institute of Transportation Engineers (ITE) publication *Trip Generation*, 11th Edition, 2021. Therefore, pass-by trip data for Land Use Code 821, Shopping Plaza (40-150k), used to estimate the pass-by trips generated by the proposed Strip Retail Plaza. Pass-by trip percentage of 40% for a Shopping Plaza (40-150k) during the weekday P.M. peak hour obtained from the Institute of Transportation Engineers (ITE) publication *Trip Generation*, 11th Edition, 2021.

(7) No pass-by trip percentages for a Shopping Plaza (40-150k) during the weekday A.M. peak hour provided in the Institute of Transportation Engineers (ITE) publication *Trip Generation*, 11th Edition, 2021. Therefore, pass-by trip percentage of 10% less than the P.M. peak hour pass-by trip percentage, or 30%, assumed for the weekday A.M. peak hour.

Traffic
Impact
Study

Update

TABLE 2
TRIP GENERATION COMPARISON TO FEBRUARY 2022 STUDY
Proposed Bloomfield Square Mixed-Use Development
City of Pittsburgh, Allegheny County, Pennsylvania

	Time Period	Trip Generation ⁽¹⁾														
		Primary Trips			Pass-By Trips			Multi-Modal Trips			Internal Trips			Total Trips		
		Enter	Exit	Total	Enter	Exit	Total	Enter	Exit	Total	Enter	Exit	Total	Enter	Exit	Total
Current Site Plan																
Total	Weekday 24-Hour	No data provided for weekday 24-hour												2,332	2,331	4,663
	Weekday AM Peak Hour	28	34	62	9	6	15	27	57	84	18	19	37	87	120	207
	Weekday PM Peak Hour	66	60	126	34	34	68	70	56	126	39	46	85	236	215	451
Previous Site Plan, February 2022 TIS ⁽²⁾																
Total	Weekday 24-Hour	No data provided for weekday 24-hour												2,209	2,209	4,418
	Weekday AM Peak Hour	25	40	65	5	3	8	26	35	61	25	25	50	81	103	184
	Weekday PM Peak Hour	76	68	144	22	21	43	81	73	154	45	45	90	224	207	431
Difference																
Total	Weekday 24-Hour	No data provided for weekday 24-hour												123	122	245
	Weekday AM Peak Hour	3	-6	-3	4	3	7	1	22	23	-7	-6	-13	6	17	23
	Weekday PM Peak Hour	-10	-8	-18	12	13	25	-11	-17	-28	-6	1	-5	12	8	20

(1) From Table 1
(2) From TIS for the proposed development dated February 14, 2022.

TABLE 3
PARKING REQUIREMENT BASED ON CITY OF PITTSBURGH ZONING CODE
Proposed Bloomfield Square Mixed-Use Development
City of Pittsburgh, Allegheny County, Pennsylvania

Development Component/Land Use ⁽¹⁾⁽³⁾	Size			Automobile Parking Requirement: City of Pittsburgh Zoning Code ⁽²⁾		Bicycle Parking Requirement: City of Pittsburgh Zoning Code ⁽³⁾					Total Number of Parking Spaces Required with Bicycle Reductions
				Minimum Requirements without Bicycle Reductions		Required Minimum Bicycle Parking		Maximum Reduction of Automobile Parking Spaces Due to Implementation of Bicycle Space ⁽⁴⁾			
	Size	variable	80% GFA for parking cales ⁽¹⁾	Off-Street Automobile Parking Rate	Required Number of Automobile Spaces	Bicycle Parking Rate	Required Number of Bicycle Spaces	Maximum Bicycle Parking Reduction Rate	Maximum Reduction	Maximum Reduction based on proposed bicycel parking supply	
Grocery Store	28,000	SF	22,400	1 per 150 SF	149	1 per 10,000 SF	3	30% of required number automobile spaces	45	—	—
Retail	10,000	SF	8,000	1 per 500 SF above first 2,400 SF	11	1	1	30% of required number automobile spaces	3	—	—
Multi-family Residential	248	units	—	1 per unit	248	1 per 3 units	83	30% of required number automobile spaces	74	—	—
SubTotal	38,248		—	—	408	—	87	—	122	120	288

(1) Based on the City of Pittsburgh Urban Zoning Code Section 914.03.C, the usable floor area is equal to 80% of the gross floor area.
(2) Based on the City of Pittsburgh Urban Zoning Code, Chapter 914: Parking Loading and Access, Section 914.02.A.
(3) Bicycle parking requirements provided in Section 914.05D of the City of Pittsburgh Urban Zoning Code. Section 914.05E of the zoning code indicates that the reduction in the number of automobile parking spaces shall be reduced by no more than one (1) space for each Bicycle Parking Space (minimum reduction), but by no more than thirty (30) percent of the total required spaces (maximum reduction).

Letter of Support

Bloomfield
Development
Corporation



July 21, 2023

Zoning Board of Adjustment
200 Ross Street, Fourth Floor
Pittsburgh, PA 15219

Re: 4401 Liberty Avenue

Dear Esteemed Members of the Zoning Board:

On behalf of Bloomfield Development Corporation (BDC), the Registered Community Organization (RCO) for Bloomfield, I write today to convey the community opinion on the zoning variances sought by Echo Realty for the site located at 4401 Liberty Avenue.

On July 11, 2023, BDC convened an open and public Development Activities Meeting (DAM) attended by 101 community members and stakeholders. A second identical meeting attended by 35 community members was held on July 15, 2023. The Echo Realty development team presented plans for the redevelopment to include a grocery store, commercial space, 248 rental housing units of which 25 will be affordable as required by the Inclusionary Zoning Overlay District, and an outdoor plaza. At the meetings they presented their intention to request the following variances:

1. Special Exception: Section 911.02 – Grocery Store (General) in LNC district;
2. Variance: Section 904.02.C – Maximum FAR in LNC Zoning District is 2:1; requesting FAR of 3.25:1;
3. Variance – Section 904.02.C – Maximum building height 45 feet, not to exceed 3 stories; requesting maximum height of 75 feet, not to exceed 6 stories;
4. Variance – Section 916.02.B.1 – Residential Compatibility, structures not to exceed 40 feet or 3 stories in height within 50 feet of R1A district; requesting up to 75 feet, 6 stories at corner and 55 feet elsewhere within 50 feet of R1A district; and
5. Variance – Section 916.02.B.2 – Residential Compatibility, structures not to exceed 50 feet or 4 stories within 100 feet of R1A district; requesting up to 75 feet, 6 stories within 100 feet of R1A district.

BDC has found the following statements to be true of or in relation to the proposed development:

1. The proposed development includes a grocery store of approximately 28,000 square feet, intended to be leased to Giant Eagle upon execution of a final lease agreement
2. The proposed development includes provided parking that is within code standards for the uses proposed with the provision of bicycle parking reduction.
3. The proposed development includes approximately 10,000 sq ft of unspecified commercial space that will be split into multiple spaces and leased. The use or uses of that commercial space has not yet been determined.
4. An open space plaza fronting on Liberty Avenue of at least 7,900 square feet is included
5. Echo Realty has committed to improving the comfort and accessibility of the two adjacent bus stops, widening sidewalks, providing bike parking both at the front of the building on Liberty and in the parking garage, and adding more than the City-minimum street trees.

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The attendees at the DAM had many questions about the development, particularly regarding the housing component and the potential transportation impacts. While questions still remain about some elements of the eventual redevelopment, Echo Realty has continued to engage in good faith with community concerns and shown an openness to continued discussions and negotiation.

Therefore, BDC is taking the position of support with the following conditions on that approval:

1. Accept, or require acceptance by a management company, housing choice vouchers for all affordable-designated units.
2. Consent to the exclusion of the new development's address(es) from the Residential Parking Permit (RPP) program.
3. Complete a comprehensive traffic study of the entire Bloomfield Bridge/Liberty/Main/Howley intersection, and fund bump outs or other DoMI-recommended pedestrian-specific safety improvements on Howley Street at Main Street and Gangwish Street in order to decrease pedestrian crossing distance, slow vehicle traffic, and improve the safety of residents navigating the intersection as a route to schools and healthcare facilities.
4. Require that the property management company collaborate with BDC for advertising and to fill the designated affordable units as well as the eventual non-grocery commercial spaces.
5. Maintain the health of plantings at the Bloomfield sign island upon completion of the development's construction, seeking a maintenance agreement with the City of Pittsburgh.
6. Convene monthly meetings with BDC during construction in order to provide updates on the progress of the project and work collaboratively to minimize impacts on neighbors. Echo will provide a single central contact for BDC and residents to report issues.
7. During the period a grocery store is not open at the site, alternative means for grocery shopping will be developed with input from relevant organizations such as use of Giant Eagle's online ordering service, mobile grocery kiosk, and/or development of shuttle services to other nearby Giant Eagle locations
8. Before returning to the Planning Commission for review, an **additional city-mandated DAM** be held to allow the community to provide input on further details of the proposed project.
9. At the time of a Planning Commission hearing, additional input and possible conditions desired by the community will be put forward to the Planning Commission.

In addition to the above requirements, BDC requests that Echo Realty and their team work with the community to address significant concerns around backing of delivery trucks on Howley over sidewalks; size of trucks turning from Howley onto Friendship; pedestrian and transit rider experience design; exterior signage design; landscape maintenance plan; construction plan with designated contact person and worker parking plan; and residential and commercial delivery plans.

BDC's opinion is based solely on development plans reviewed at the July 11 and July 15, 2023 Development Activities Meeting. Substantial deviations would necessitate additional city-mandated Development Activities Meetings.

We thank the Zoning Board for their consideration of our requests.

Sincerely,

Christina Howell
Executive Director, Bloomfield Development Corp.

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Summary

Hardships and Development Constraints

PHYSICAL CONDITIONS

- 17' of grade change across the site
- Unconsolidated historical fill on site
- Bedrock depth 30' to 50' below surface

RESPONDING TO COMMUNITY CONCERNS

- Open Space exceeding ordinance requirement
- Grocery Store and additional height to accommodate it
- Premium cost for underground parking to minimize building height
- Minimize impact to Gangwish Street residents

RESPONDING TO NEW CITY REQUIREMENT

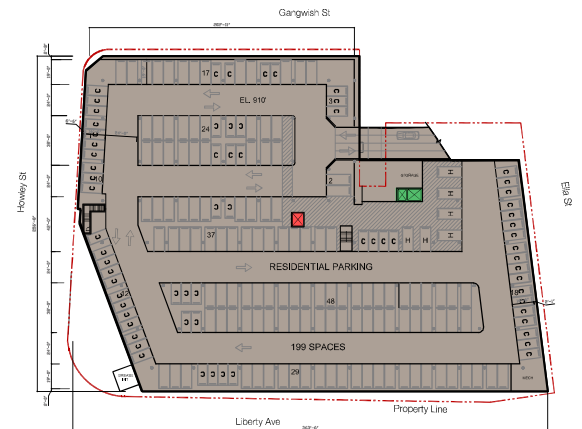
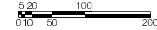
- IZ Ordinance and compliance cost/revenue loss

Ground Floor Plan



Basement Plan

SCALE : 1" = 100'



Hearing Notice Posting

Photographic Documentation



Hearing Notice Posting
Photographic Documentation



EXHIBIT C

Zoning Board of Adjustment

Date of Hearing August 10, 2023
Zone Case: Case 112 of 2023
Address: 4401 Liberty Avenue
Lot and Block: 49-S-106, 49-S-125, 49-S-128, 49-S-136
Ward: 9
Neighborhood: Bloomfield Neighborhood

Owner Bloomfield Bridge Associates LLC
Applicant: Phil Bishop
Request: Construction of 6-story mixed-use building, including ground floor grocery store and 248 residential units

Application: **DCP-ZDR-2023-06302**

Special Exception	Section 911.02	Grocery Store (General) in LNC District
Variance	Section 904.02.C	2:1 Maximum Floor Area Ratio (FAR), 3.1:1 FAR Requested
Variance	Section 904.02.C	45'3-stories maximum building height, 75'6-stories requested
Special Exception (Variance)	Section 916.02.B	Maximum building height 40'3-stories within 50' of R District Maximum building height 50'4-stories within 100' of R1A District

Appearances:

Applicant: Kevin F. McKeegan; Philip A Bishop; Philip Wilkinson; Chris Droznek

In Support: Christina Howell, Executive Director of the Bloomfield Development Corporation; Dave Brenegan, Executive Director for Lawrenceville United; Ryan Levereget, 52 Coral Street; Jodie Lincoln, Board member of Bloomfield Development Corporation.

I. FINDINGS OF FACT:

Description of the Subject Property

1. The Subject Property is a 1.97 acre site at the intersection of Liberty Avenue & Main Street and Howley Street & Ella Street in the City's Bloomfield neighborhood. Hrg. Tr., 5-6; Ex. 2, "Site & Context."¹
2. The Property is the location of a stand-alone, 36,000 square foot grocery store surrounded by a paved parking lot with no urban street presence. The Property is also the site of a closed VFW Hall and a vacant residence. Hrg. Tr., 6-7; Exs. 3-4, "Current Conditions."
3. The entire Property is zoned Local Neighborhood Commercial ("LNC"). LNC allows for "mixed-use" projects containing multi-family residential and retail as of right. Grocery Stores over 3,000 square feet are permitted as a special exception. Hrg. Tr., 10.
4. The Applicant acquired the Property in January of 2020, before the COVID-19 pandemic, and before the City's enactment of the Inclusionary Housing Overlay District (IZ-O), which now requires that at least 10% of the residential rental units meet certain affordability requirements.
5. Prior to the Applicant purchasing the Property, the Bloomfield neighborhood worked through an extensive community planning process to define how development of the site would best support and fit within the character of the neighborhood. Hrg. Tr., 7-9; Ex. 9, "Planning."
6. A duly noticed hearing was held by the Zoning Board of Adjustment on August 10, 2023. Exs. 40-41, "Hearing Notice Posting."

Proposed Development

7. The Applicant proposes to demolish the existing structures and redevelop the site to construct a six-story mixed-use building, including an approximately 28,000 square feet ground floor grocery store, roughly 10,000 square feet of ancillary retail/restaurant space, 248 residential rental units, and 318 underground parking spaces. Twenty-five (25) of the rental units will be "affordable" as defined by the IZ-O. Hrg. Tr., 10-11, Ex. 7, "Building Program."

¹ Unless otherwise noted, references to the transcript of the August 10, 2023 Zoning Hearing Board hearing transcript will be cited as "Hrg. Tr., ____".

"Ex. ____" references the page number of the "Bloomfield Square Zoning Variance Application Exhibits" deck presented during the August 10, 2023 hearing.

8. The gross floor area for the proposed building is expected to be 266,400 square feet, with a 3.1:1 Floor Area Ratio ("FAR"). *Id.*
9. The height of the proposed structure will vary across the site, but at its maximum along Liberty Avenue (as measured from the proposed building's average grade at Ella Street) would be six stories or 75 feet tall; the structure will comply with the LNC's 45-foot height limit where it adjoins Gangwish Street and nearby homes. *Id.*

Evidence in Support of Proposed Relief

Philip Wilkinson

10. Philip Wilkinson of AE7 Architects, architect of record for the project, testified for the Applicant as to the current conditions on the Site and described the components of the proposed redevelopment and project design. Hrg. Tr., 12.
11. Mr. Wilkinson explained there are two elements to the Project: an L-shaped component including retail and food and beverage space connected to a square-shaped element that will include the grocery store and parking components. The garage, a substantial portion of which below grade, will accommodate 318 vehicles, satisfying the parking requirements of the City of Pittsburgh Zoning Code, PITTSBURGH, PENN., CODE §§ 901.01-902.03 ("Code"). The multi-family apartment units will be above the first level of both building elements. Hrg. Tr., 14-15; Ex. 8, "Site Plan."
12. Mr. Wilkinson testified that Project was designed to and does meet many goals established by the Bloomfield community for redevelopment of the site, including a gateway plaza, more housing opportunities, a grocery store, and orienting taller structures along Liberty Avenue. Hrg. Tr., 14-15; Ex. 9, "Planning."
13. Mr. Wilkinson discussed preliminary perspective views of the proposed development from several vantage points. Hrg. Tr., 16-17; Exs. 10-15, "Perspective Views." These perspective views established that the proposed structure respects the residential character of Gangwish Street by limiting the height of the structure there to 45 feet while fitting into the context of Liberty Avenue by placing the tallest portions of the structure closer to or along Liberty Avenue.²
14. Mr. Wilkinson testified that the grocery store required the first floor of the structure to be 6-8 feet (one-half story) higher than a standard retail store to accommodate plumbing and mechanical transfer between the grocery and residential areas, as required by the Allegheny County Plumbing Code. Hrg. Tr., 18-19.

² Bloomfield's community plans reference a preference for buildings greater than three stories in height along Liberty Avenue. Ex. 9, "Planning."

15. The base height of the structure was established by reference to the average grade of the frontage of the proposed building along Ella Street, the main entrance to the development. The height of the Project steps back along Gangwish Street in accordance with the Residential Compatibility Standards of the Code. Hrg. Tr., 19-22, 24-25; Exs. 16-17, “Elevations.”
16. Mr. Wilkinson testified there is 17 feet of grade change across the site, falling generally away from Ella Street toward Liberty Avenue and Howley Street. Further, due to the slope of Liberty Avenue, the proposed height of the Project is contextual to the height of properties further uphill from the site. Hrg. Tr., 22-23; Exs. 18-19, “Topography.”
17. He discussed the impact of the topography challenges on the design and costs of the Project, providing a three-dimensional image of the proposed structure and summarizing the requests for relief. Hrg. Tr., 26-28; Ex. 20, “Summary of Requests.”
18. In his professional opinion, the Project is in scale with existing neighborhood conditions. Hrg. Tr., 16.

Philip Bishop – Echo Realty

19. Mr. Bishop is a senior vice president at Echo Realty, an affiliate of the Applicant responsible for design and development of the Project. Hrg. Tr., 19.
20. He testified that “viability” in planning a project involves four facts: fitting within a business plan, generating economic returns, permissibility within zoning regulations, and compatibility with the community. A development project cannot proceed if the costs do not align with expected returns, because the project cannot obtain financing. Hrg. Tr., 29-31.
21. Mr. Bishop testified that the existing buildings on the Property, built in the 1960s, are not viable for reuse. Hrg. Tr., 31-33.
22. When Echo purchased the Property in early 2020, the world was very different. The pandemic and resulting inflation have significantly impacted the project. Hrg. Tr., 32.
23. Civil & Environmental Consultants, Inc. (“CEC”) performed a geotechnical analysis of the subsurface conditions at the site in January 2021. CEC found alluvial material immediately under the surface that cannot support new structures. Thus, a caisson foundational system must be installed on the bedrock to support any

new retail or commercial structure. The bedrock is 30-50' below the surface. Hrg. Tr., 34-36; Exs. 21-24, "Geotechnical Report."³

24. The Applicant considered the viability of a development permitted by Code, but even an as-of-right plan would require the installation of a caisson foundational system due to the site's subsurface conditions. The as-of-right plan also included underground parking, which increases the building height by 12-15 feet. (Above-grade parking would increase the height even more). Hrg. Tr., 38-40; Ex. 25, "Conformant Scheme."
25. Based on an estimate provided by Rycon Construction, Inc, the cost of constructing the required caisson foundational system will be \$1.1 million, even on an "as-of-right" plan. Further, due to the subsurface conditions, the cost of underground parking will be \$6,169,000 more than construction of an above-grade garage. Hrg. Tr., 37-38; Ex. 26, "Cost Impact."
26. Developing an as-of-right plan with 145 units would cost 20% more per unit than the proposed Project with 248 units. Hrg. Tr. 40-44; Ex. 29, "Cost Analysis." However, the rental market in this area will not support the higher rents required to make financing an as-of-right plan economically viable. Comparable apartments in the neighborhood range from approximately \$1800 per month to \$2700 per month. Ex. 27-28, "Economic Analysis." Thus, the Applicant estimates it can lease the market rate units at an average of \$2,250/month. Hrg. Tr., 44-45.
27. The Applicant is supportive of, and the Project complies with, the affordable housing requirements of IZ-O imposed after the Property was purchased. Thus, the Project includes 25 affordable units (10.08%), which generate approximately \$428,000 less per year in rental income than comparable market rate units. This loss translates to an \$8.5 million "enterprise cost" that must be recovered to make the Project economically viable. The Project must include 28 additional market rate units to offset the costs of the affordable units, which requires an increase in height over Code's limitation. Hrg. Tr. 44-46; Ex. 30, "Cost Analysis."
28. The Applicant considered various iterations of a by-right project, but due to the land costs, geotechnical conditions, and need to comply with the IZ-O requirements, a smaller project is not viable. The requested height and density variances are the least modification necessary to make the Project economically viable, and to obtain financing for construction. These variances are not requested solely to increase the profitability of the Project. Hrg. Tr., 46-47.
29. Mr. Bishop stated that the grocery store component of the Project would be approximately 28,000 square feet. While this footprint is slightly smaller than the

³ A full copy of the Geotechnical Report prepared by CEC was submitted with the Zoning Application.

current store, it will provide the same offerings due to modern efficiencies in grocery store design. Hrg. Tr., 47.

30. Gangwish Street faces the “back of house” of the existing grocery store, including mechanical equipment, deliveries, boxes, and trash. The Project will enclose these conditions within the structure to shield residences from them and mitigate those impacts. Hrg. Tr., 47-49.
31. The grocery store parking will be accommodated within the enclosed two-story garage behind the store. The new safety/pedestrian lighting will be less intrusive than the current lighting. Hrg. Tr., 49.
32. Deliveries will occur in an enclosed delivery zone on the side of the site, during controlled hours that account for street traffic patterns. *Id.*

Chris Droznek, Traffic Engineer

33. Chris Droznek, Senior Project Manager and traffic engineer with CEC prepared a Transportation Impact Study (“TIS”) in coordination with requirements imposed by the City’s Department of Mobility and Infrastructure (“DOMI”) in February 2022. Exs. 31-33, “Traffic Impact Study.”⁴ The original TIS considered a development with 196 housing units and was updated in August 2023 to analyze the impacts of the increase to 248 units. It also considered, at DOMI’s request, more recent multimodal data. Hrg. Tr., 52-56; Exs. 34-37, “Traffic Impact Study Update.”⁵
34. The Project will not cause a significant change in the number of vehicular trips to the site, and the Project will have no negative impacts on the surrounding streets. Rather, the intersections will operate similarly as they do now. Further, the proposed 318 vehicle spaces and 120 onsite bicycle spaces satisfy the Code parking requirements. Hrg. Tr., 56-59.
35. The Applicant will continue to work with DOMI on mitigation efforts, especially regarding pedestrian improvements surrounding the site.⁶ Hrg. Tr., 59.

⁴ A full copy of the TIS prepared by CEC was submitted with the Zoning Application.

⁵ A full copy of the updated TIS prepared by CEC was submitted with the Zoning Application.

⁶ The nearby intersection where the Bloomfield Bridge meets Liberty Avenue and Main Street was recently awarded a \$1.8 million grant to improve road conditions for motorists, pedestrians, bicyclists, and public transit. A copy of an article announcing the grant is attached hereto as Exhibit 42.

Community Support

36. Applicant has engaged in significant community outreach, coordinated by the Bloomfield Development Corporation (“BDC”) over the last three years. Hrg. Tr., 7-9; Ex. 5, “Community Engagement.” The BDC’s planning efforts influenced the project design in several ways, including preserving the grocery store use, providing a community plaza, and massing the higher structures along Liberty Avenue. Ex. 6, “Community Goals.”
37. Christina Howell, Executive Director of the BDC, the registered community organization (“RCO”) for the neighborhood, expressed appreciation for Applicant’s “intense engagement,” and provided a letter of support for the Project and requested relief, which included certain conditions that the Applicant is prepared to meet, including accepting housing choice vouchers. Hrg. Tr., 49-51, 61-62; Ex. 38, “Letter of Support.”
38. Dave Brenegan, Executive Director for neighboring RCO Lawrenceville United, testified in support of the Project and the conditions in BDC letter. He expressed appreciation to the Applicant for including his organization in the community development process. Hrg. Tr., 62-64.
39. A majority of neighbors either testified or wrote in support of the requested variances. Ryan Leveregt, 52 Coral Street appeared and offered testimony, as did Jodie Lincoln, Board member of Bloomfield Development Corporation. Hrg. Tr., 65-67, 75-78.

The following neighbors submitted written testimony supporting the requested relief: Michael Miller Yoder, Broad Street; Thomas Youngs, 340 S. Evaline Street; Maura Kay, 4094 Cabinet Street; Robert Solano, Bloomfield Resident; Jonathan Salmans, 5616 Malborough Road; Elizabeth Amato, Lawrenceville Resident; Sean McKillop, Pittsburgh resident; Adam Peterson, Shadyside resident; and Lucas Bouck, 5704 Wilkins Avenue.

40. The Applicant submitted proposed findings of fact and conclusions of law to the Board on September 20, 2023, and the record closed as of that date.

II. CONCLUSIONS OF LAW

1. These aspects of the Project require relief:

Use: The use of a Grocery Store (General) in the LNC District is permitted as a special exception. Code § 911.02 (2018).

FAR: The maximum floor area in the LNC District is 2:1. *Id.* at § 904.02.C. The FAR proposed for this development is 3.1:1.

Height: The maximum building height in the LNC District is 45', 3-stories. *Id.* at § 904.02.C. The residential compatibility height standards apply to portions of the site, limiting it to 40'/3-stories and 50'/4-stories in other areas. *Id.* at § 916.02.B. At its highest, the proposed building is 75'/6-stories.

2. Under Code Section 904.02.C, the site development standards for the LNC District include a 45'/3-stories maximum height; and the maximum floor area ratio (FAR) is 2:1.
3. The Applicant engaged in a robust community process in developing this proposal.

Variances – Maximum Floor Area

Maximum Building Height- Stories

Residential Compatibility Standards Height Limitations

4. At its tallest, the proposed building is 75 feet and 6 stories. The Applicant requests variances from the FAR limitation and height limitations imposed by the Code as follows.
5. The maximum floor area in the LNC District is 2:1. Code § 904.02.C (2018).
6. The FAR proposed for this development is 3.1:1.
7. The maximum building height in the LNC District is 45', 3-stories. *Id.* at § 904.02.C.⁷
8. The Residential Compatibility Standards impose additional building height limitations where a proposed structure, or portions of a structure, would be proximate to properties zoned R1D, R1A, R2, R3, or H. *Id.* at § 916.02.A.
9. Building Heights within 50 feet of a property zoned residential (including R1D, R1A, R2, R3, or H) are limited to forty (40) feet or three (3) stories in height. Building Heights within 51-100 feet of a property zoned residential (including

⁷ If the proposed building met LEED standards, then the maximum allowed height in the LNC District with Planning Commission approval would be 54 feet. See Code §§ 915.04.D, 915.04.E.

R1D, R1A, R2, R3, or H) are limited to fifty (50) feet or four (4) stories in height. Code § 916.02.B.⁸

10. The Board may grant variances where the applicant presents substantial evidence of a unique hardship associated with the property that prevents strict compliance with the Code's requirements and where the applicant demonstrates that the variance requested is the minimum that would afford relief.
11. Code Section 922.09.E sets forth the general conditions the Board is to consider regarding variances. The criteria for determining whether to grant a variance include: 1) whether unique circumstances or conditions of a property would cause an unnecessary hardship; 2) whether the property can be developed under the Code's requirements to allow for its reasonable use; 3) whether the applicant created this hardship; 4) whether the requested variance would adversely affect the essential character of the neighborhood or public welfare; and 5) whether the variance requested is the minimum variance that would afford relief with the least modification possible. See *Marshall v. City of Philadelphia*, 97 A.3d 323 (Pa. 2014); *Hertzberg v. Zoning Bd. of Adjustment*, 721 A.2d 43, 47 (Pa. 1998) (citing *Allegheny West Civic Council v. Zoning Bd. of Adj.*, 689 A.2d 225 (Pa. 1997)).
12. "A dimensional variance involves a request to adjust zoning regulations to use the property in a manner consistent with regulations, whereas a use variance involves a request to use property in a manner that is wholly outside zoning regulations." *Tidd v. Lower Saucon Twp. Zoning Hearing Bd.*, 118 A.3d 1, 8 (Pa. Commw. Ct. 2015).
13. The requested variances each involve "a request to adjust zoning regulations to use the property in a manner consistent with regulations" and, therefore, qualify as dimensional. *Tidd*, 118 A.3d at 8; see, e.g., *Lench v. Zoning Bd. of Adjustment*, 13 A.3d 576, 582 (Pa. Commw. Ct. 2011) (citing *Schomaker v. Zoning Hearing Bd.*, 994 A.2d 1196, 1203 (Pa. Commw. Ct. 2010)); *Johnson v. Zoning Hearing Bd.*, 503 A.2d 1117 (Pa. Commw. Ct. 1986); *Campbell v. Doylestown Borough Zoning Hearing Bd.*, No. 274 C.D. 2012, 2013 Pa. Commw. Unpub. LEXIS 27, at *25 (Pa. Commw. Ct. Jan. 7, 2013) ("The variance requested by Applicant in this case is a dimensional variance for floor area ratio.").
14. "When the application is for a dimensional rather than a use variance, the analysis of what constitutes unreasonable hardship focuses on whether the zoning requirements work an unreasonable hardship on the owner's pursuit of a permitted use and, if so, allows for a lesser quantum of proof." *In re Appeal of Towamencin*

⁸ Code Section 916.09 allows the Board to waive the Residential Compatibility Standards as a special exception, subject certain standards. However, waiver is permitted "only if there is a taller intervening structure between the proposed structure and the adjacent residential zoning district, in which case the height shall be limited to the height of the intervening structure." Because no taller structure separates the Project from the adjacent residential properties, relief from these height restrictions in the Residential Compatibility Standards also requires a variance.

Twp. from the Decision, 42 A.3d 366, 370 (Pa. Commw. Ct. 2012) (citing *Hertzberg*, 721 A.2d at 47); see also, *Tidd*, 118 A.3d at 8.

15. “[I]n a dimensional variance analysis, because of this lesser quantum of proof, (it is appropriate to) consider multiple factors not traditionally considered in the analysis for use variances, including ‘the economic detriment to the applicant if the variance was 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.’” *Towamencin*, 42 A.3d at 370 (quoting *Hertzberg*, 721 A.2d at 260).
16. In establishing hardship, “an applicant for a variance is *not required* to show that the property at issue is valueless without the variance or that the property cannot be used for any permitted purpose.” *Marshall*, 97 A.3d at 395 (emphasis in original).
17. Even under the more relaxed standard, the applicant must provide some credible evidence of a hardship as a basis of the variances requested. Where no hardship is shown, or where the asserted hardship amounts to simply a desire to increase profitability, the “unnecessary hardship” standard required to obtain a variance is not satisfied even under the relaxed *Hertzberg* standard of dimensional variances. *Lamar Advantage GP Co. v. Zoning Hearing Bd. of Adjustment*, 997 A.2d 423, 445-46 (Pa. Commw. Ct. 2010); *Lawrenceville Stakeholders v. City of Pittsburgh Zoning Bd. of Adjustment*, 247 A.3d 465, 477 (Pa. Commw. Ct. 2021).
18. As to the first *Marshall* factor, the Applicant presented credible and unrefuted evidence confirmed by a geotechnical consultant establishing unique circumstances and conditions from topography: the slope and 17 feet of grade change across the site, falling generally away from Ella Street toward Liberty Avenue and Howley Street, significantly aggravated by the adverse subsurface conditions in the form of 30-50 feet deep bedrock and historical fill.
19. The Applicant also demonstrated that the effect of the height limitations and IZ-O requirements create construction and cost challenges to redevelopment of the site.
20. These unique property characteristics add materially higher costs for redeveloping the Property.
21. As to the second *Marshall* factor, the Board finds that the Property cannot be developed strictly under the Code’s requirements to allow for its reasonable use. The Applicant presented credible and unrefuted evidence as to why a “by right” development would not be feasible because of the unusually high costs for redeveloping the Property, especially under the IZ-O affordable housing requirements.

22. As to the third *Marshall* factor, no evidence was presented that the Applicant created the hardships it asserted.
23. As to the fourth *Marshall* factor, the Board finds that the requested variances will not adversely affect the essential character of the neighborhood or the public welfare. The Applicant presented credible and unrefuted evidence that the increased density represented by the proposed development will not result in adverse traffic impacts and sufficient parking will be available onsite. The Applicant also presented evidence that the building design is consistent with the surrounding built environment, and with the neighborhood's expressed desires and plans for development of this gateway to Bloomfield.
24. As to the fifth *Marshall* factor, the Board finds that the additional height and density proposed are the minimum that would allow for the economically feasible development of the site. The Applicant presented credible and unrefuted evidence regarding costs involved in development the site, including the subsurface conditions, and why the requested height and density are required to address the economic detriment to the applicant if the variance is denied, and the financial hardship created by the work necessary to bring the building into strict compliance with the zoning requirements.
25. The Board has accepted similar evidence of the cost impact created by existing site conditions and the effect of height and density limitation imposed by the Code to support the grant of dimensional variances. See, e.g., *In re 525 S. Aiken Avenue (Mozart Management)*, Case No. 27a of 2022 (Zoning Bd. of Adjustment, Mar. 13, 2023); *In re 5303 Butler Street (Albion)*, Case No. 294 of 2022 (Zoning Bd. of Adjustment, Apr. 9, 2023).
26. For these reasons, consistent with the evidence and testimony presented, and the applicable legal standards governing dimensional variances, the Board concludes that approval of the requests for variances to increase density and height is appropriate.

Special Exception – Grocery Store in LNC District

27. A Grocery Store (General) is a Special Exception in LNC District and subject to these standards:
 - (1) Parking and access facilities shall be designed and located to clearly meet the demand of the facility in a way that does not interfere with parking spaces required for the surrounding residential uses;
 - (2) The Approving Body shall determine that such use will not create detrimental impacts on surrounding residential properties, considering, among others, the following factors: the adequacy of parking and loading facilities, trash

storage, traffic generation, pedestrian access, exhaust odors, vibration, dust, noise, outdoor lighting, signage, and landscape features.

- (3) The Approving Body shall determine that such use will not create detrimental impacts on surrounding properties considering the compatibility of the proposed uses with the surrounding and adjacent uses.

Code §§ 911.02, 911.04.A.83.

28. The Board must approve requests for special exceptions that comply with the Code, and these general criteria:

- (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;
- (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.

29. As a general principle of Pennsylvania law, a special exception is permitted, absent showing detrimental effect. *Heck v. Zoning Hearing Bd.*, 397 A.2d 15 (Pa. Commw. Ct. 1979); ROBERT S. RYAN, PENNSYLVANIA ZONING LAW AND PRACTICE § 5.1.3 (George T. Bisel Company, vol. 1 1981) (2020) (hereinafter, “Ryan”).
30. A special exception is evidence that the municipality has determined the particular use is not *per se* adverse to the public interest. Ryan at § 5.1.1.
31. Once an applicant establishes compliance with any specific criteria in the ordinance applicable to the special exception, the application must be granted unless protestants present evidence that the use would pose a substantial threat to the community. *Bray v. Zoning Hearing Bd.*, 410 A.2d 909 (Pa. Commw. Ct. 1980); *Greaton Prop. v. Lower Merion Twp.*, 796 A.2d 1038 (Pa. Commw. Ct. 2002); *Allegheny Tower Assocs., LLC v. City of Scranton Zoning Hearing Bd.*, 152 A.3d 1118, 1125 (Pa. Commw. Ct. 2017); Ryan at § 5.2.5.
32. This Project meets the specific standards for a Grocery Store in an LNC District in Code Section 911.04.A.83, and the General Criteria in Code Section 922.07.D.1.
33. The Property is currently the site of a grocery store that will be demolished and replaced with the proposed structure.
 - (1) Applicant has offered evidence that the proposed parking and access facilities are designed and located to clearly meet the demand of the grocery store and will not interfere with parking spaces required for the surrounding residential uses. Further, Applicant has committed that the Project’s residents will not be eligible to obtain street parking permits from the Pittsburgh Parking Authority.
 - (2) The Board has determined that the use will not create detrimental impacts on surrounding residential properties. The Applicant has demonstrated through the TIS that the parking and loading facilities are adequate and provide for pedestrian and other modal access.

The Applicant has further demonstrated that the “back of house” operational items like loading, trash storage, odors, and vibration to which Gangwish Street residents are currently exposed will be enclosed within the structure.

Applicant has offered evidence that the project’s outdoor lighting will be less detrimental and have less of an impact on neighboring residences than the current surface parking lighting.
 - (3) Thus, the Board finds that the Grocery Store use will not create detrimental impacts on surrounding properties and is compatible with the surrounding and adjacent uses.

Code § 911.04.A.83.

34. This request for special exception for a Grocery Store Use further complies with the general criteria in Code Section 922.07.D.1.
- (a) The grocery store use will not create detrimental visual impacts or have an incompatible relationship with the surrounding built environment, public streets, open spaces, or land use patterns. *Id.* at § 922.07.D.1.a.
 - (b),(c) Applicant conducted a TIS in accordance with the City's directive, which determined that the Project provides all Code required parking and is not expected to create any detrimental impacts on surrounding residential and other properties. *Id.* at § 922.07.D.1.a.
 - (d),(e) The Property is the current site of a grocery store. The new development will decrease the potential impacts of noise, emissions, and/or vibrations from the grocery store, as the "back of house" delivery and other operations that front the residential homes on Gangwish Street will be enclosed in the proposed structure.
 - (f),(g) Far from having a detrimental impact, the Project will likely spur continued redevelopment and investment along Liberty Avenue and the Bloomfield area and have a positive impact on property values.
35. The Applicant presented substantial evidence to show compliance with the specific criteria applicable to its special exception request. No witnesses testified in opposition to the use as a grocery store; rather, the proposed use is supported by the community.

CONCLUSION

Applicant respectfully requests that the Board approve the Project as depicted in the plans and accompanying exhibits.

Respectfully submitted,

/s/ Kevin F. McKeegan

/s/ Brittany M. Bloam

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HOME SIDEBAR

Bloomfield receives state grant to address dangerous intersection on Liberty Avenue



by Ed Blazina

August 25, 2023



The view looking east from the intersection of Main Street and Liberty Avenue toward the Bloomfield Bridge in Bloomfield. (Jon Moss/Pittsburgh Union Progress)

Exhibit 42

This story was updated Friday at 5:56 p.m.

Pittsburgh's Bloomfield neighborhood finally may be able to address safety concerns at one of the city's more dangerous intersections: the five-way juncture where the Bloomfield Bridge meets Liberty Avenue.

Gov. Josh Shapiro announced Thursday the city would receive a \$1.8 million grant to address problems with the intersection. The grant was part of \$49.6 million awarded for 58 projects across the state through the Multi-Modal Transportation Fund, which funds projects to improve road conditions for motorists, pedestrians, bicyclists and public transit.

Bloomfield advocates say they have been pushing for help with the intersection for more than 20 years. Although the grant application was filed without neighborhood input, Bloomfield Development Corp. Executive Director Christina Howell said she expects it would be used for a feasibility study of how to address safety issues because it likely isn't enough money to make substantial physical changes.

"We weren't able to review the application, but we've been advocating for this area to be addressed for a long time," said Christina Howell, executive director of the Bloomfield Development Corp. "Hopefully, this amount will get the process started."

The area is a hotspot for congestion and accidents because the bridge joins on one end with Bigelow Boulevard, a four-lane highway from Downtown Pittsburgh, and on the other end with Liberty Avenue. Liberty curves in front of the bridge, but on the far side Liberty splits to provide an easier connection with Main and Howley streets just across from the end of the bridge.

"We have a highway with an exit ramp onto a city neighborhood," Howell said. "We've definitely seen an increase in vehicular traffic. It's just a super dangerous intersection."

In a statement Friday afternoon, Angela Martinez, the city's assistant director of policy, planning and permitting, said the grant should cover the full cost of revamping the intersection.

"The award will cover engineering and construction for a full rebuild of the signal at Liberty Avenue, Bloomfield Bridge and Main Street," she said. "The upgraded intersection will include improved accommodations for pedestrians and cyclists. The public can expect to be engaged throughout the process."

City Councilwoman Deb Gross, whose district includes the neighborhood, said her office and others have battled for years to address the intersection. It is a particularly dangerous area because children walk to two elementary schools in the neighborhood, and Bloomfield Playground and a city swimming pool are under the bridge.

“There has been 20 years of community organizing around this issue,” Gross said. “We want to work with [the city’s Department of Mobility and Infrastructure] to see what we can come up with.”

The project also comes at an opportune time because Giant Eagle has proposed replacing the existing Shursave IGA supermarket at the Liberty end of the bridge with a Market District store and more than 200 apartments. That project is working through the city planning process, but the neighborhood supports it with some restrictions to require affordable housing.

Two other projects in Allegheny County also received funding:

- Ingram, \$555,046 to calm traffic along Ingram Avenue and restore the pavement, install a bike lane and create a raised pedestrian crosswalk.
- Thornburg, \$152,000 to replace 492 feet of sidewalk and fence along Hamilton Road and reinforce the hillside where they are located, which is above a park and other borough facilities.



Ed Blazina

Ed covers transportation at the Pittsburgh Post-Gazette, but he's currently on strike. Email him at edblazina@unionprogress.com.

EXHIBIT D

**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: August 10, 2023 (Virtual Hearing)
Date of Decision: November 6, 2023

Zone Case: 112 of 2023
Address: 4401 Liberty Avenue
Lot and Block: 49-S-101, 102, 103, 106, 125, 128, 136 and 137

Zoning Districts: LNC/IZ-O
Ward: 9
Neighborhood: Bloomfield

Owner: Bloomfield Bridge Associates LLC
Applicant: Philip Bishop
Request: Construction of 6-story mixed use building, including ground floor grocery store and 248 residential units

Application: DCP-ZDR-2023-06302

Special Exception	Sections 911.02/911.04.A.83.c	Grocery Store (General) in LNC District
Variance	Section 904.02.C	2:1 Maximum Floor Area Ratio (FAR), 3.1:1 FAR Requested 45'3-stories maximum building height, 75'-6-stories requested
Variance	Section 916.02.B	Maximum building height 40'3-stories within 50' of R District Maximum building height 50'4-stories within 100' of R1A District

Appearances:

Applicant: Kevin McKeegan, Philip Bishop, Philip Wilkinson, Chris Droznek

In Support: Christina Howell, David Breingan, Ryan Levegert, Jody Lincoln

Opposed: Jordan Botta, Amy Burress, Alan Gunther

Findings of Fact:

- **Description of the Subject Property**

1. The Subject Property is comprised of eight parcels (Parcel Nos. 49-S-101, 102, 103, 106, 125, 128, 136 and 137) in Bloomfield, in an LNC (Local Neighborhood Commercial) District. (App. Ex. 7).¹
2. The LNC District extends along the Liberty Avenue commercial corridor.
3. The property is also within the IZ-O (Inclusionary Housing Overlay) District for Bloomfield and Polish Hill, where at least 10% of proposed residential rental units are to meet certain affordability requirements.
4. The site, which uses the street address of 4401 Liberty Avenue, occupies a significant portion of the block that is generally bound by Howley Street, Liberty Avenue, Ella Street and Gangwish Street.
5. The combined area of the parcels is approximately 1.98 acres/86,600 sf. (App. Ex. 7).
6. The Subject Property does not include 5 parcels within the block, at the corner of Ella Street and Gangwish Street. Those parcels are within a R1A-H (Residential One Unit Attached High Density) District, which abuts the Subject Property.
7. The large R1A-H District to the rear and side of the site extends, in part, from Gangwish Street to Comrie Way, at the rear of the Penn Avenue LNC District, and from Howley Street to Cedarville Street.
8. The grade of the Subject Property has an upward slope along Liberty Avenue, from Howley Street towards Ella Street, with an elevation change of approximately 17'.
9. The built environment in the immediate vicinity of the Subject Property includes the 3 and 4-story mixed-use commercial structures on Liberty Avenue, in the LNC District, and 2 and 3-story houses to the rear and sides of the site, in the R1A-H District.

- **Existing and Proposed Uses of the Subject Property**

10. A one-story grocery store, and a 120-space surface parking lot are located on Parcel Nos. 49-S-106, 125 and 128. The grocery store is set back from Liberty Avenue and is more proximate to the R1A-H District at the rear of the site. The parking lot is located at the

¹ Citations are to the Applicant's presentation exhibit, by page number (App. Ex. __) and to the transcript of the August 10, 2023 hearing (Tr. ____).

front of the grocery store, with access from curb cuts on Liberty Avenue, Howley Street and Ella Street.

11. A three-story detached house is located on Parcel No. 49-S-136 and a one-story structure, which was most recently used as a VFW hall, is located on Parcel Nos. 49-S-101, 102 and 103, all within the combined area of the Subject Property.

12. The Applicant, Bloomfield Bridge Associates, proposes to demolish the existing structures and to redevelop the site for a mixed-use structure with a 28,000 sf grocery store and 10,000 sf of retail space on the ground floor, and 248 residential units on the five upper floors.

13. The maximum height proposed for the structure is 75'6-stories.

14. The Department of City Planning determined that the proposed mixed-use development would require 408 parking spaces. With the provision of 120 bicycle spaces, the required number of parking spaces could be reduced to 288 vehicle spaces.

15. The proposed development includes a two-level, partially underground parking garage with 318 spaces. The parking garage would have access from curb cuts on Howley Street and Ella Street. The Applicant proposes to provide 120 bicycle parking spaces at different locations throughout the site.

16. As proposed, the portion of the structure with the maximum height of 75'6-stories, would be along the front of the parcel on Liberty Avenue. The structure would be set back 5'-3" from the Liberty Avenue property line and 5'-6" from the exterior side property line on Howley Street.

17. The height of the structure would be reduced to 62'5-stories along the Ella Street property line, with a 6'-3" exterior side set back from the Ella Street property line.

18. Towards the rear of the site, the height of the structure would be reduced to 41'3-stories. The structure would extend to the rear property line, with a 0' setback from the rear property on Gangwish Street, with residential properties in the R1A-H District on the opposite side of Gangwish Street.

19. A portion of the structure at the full 75'6-story height and another portion of the structure at the 62'5-story height would be located within 50' of the R1A-H District at the corner of Ella Street and Gangwish Street. The 62'5-story portion of the structure would be located within 100' of the R1A-H District across Ella Street. The 41'3-story portion of the structure, with a 0' setback from the Gangwish Street property line, would be within 50' of the R1A-H District on the opposite side of Gangwish Street. (App. Exs. 16, 17 and 20).

20. No intervening structure with a height greater than that of the proposed structure is located between the proposed structure and any part of the R1A-H District.

21. The proposed FAR (Floor Area Ratio) for the 266,400 sf structure on the 1.98 acre (86,600 sf) site would be 3.1:1.

22. Of the 248 units proposed, the Applicant indicated an intent to provide 25 units (10% of the units proposed) that would be affordable to households that earn 50% of the area

median income, consistent with the IZ-O District standards that apply to all new multi-unit residential developments in Bloomfield.

23. The Bloomfield community goals indicate that new development should be in context but should not be limited to 2 or 3-stories. It also notes that gateway buildings should match the scale and character of the surrounding built context and states that “housing towers” should not be created. (App. Ex. 6). These community goals are not contained in the Code.

- **Evidence Presented in Support of the Requested Relief**

24. Philip Wilkinson of AE7 Architects, the architect of record for the project, testified for the Applicant as to the current conditions of the site and described the components of the proposed development and project design. (App. Exs. 2-4; Tr. 12-28).

25. Mr. Wilkinson also described the Applicant’s community engagement efforts with respect to the project. (App. Exs. 5-6; Tr. 8-10).

26. Mr. Wilkinson presented preliminary perspective views of the development from several vantage points from Liberty Avenue, the Bloomfield Bridge, Howley Street and Ella Street. (App. Exs. 10-15; Tr. 19-22).

27. Mr. Wilkinson stated that the intent of massing the proposed structure along the Liberty Avenue frontage was to limit the impact of the height on residential properties on Ella Street and Gangwish Street. (Tr. 19-22).

28. Mr. Wilkinson also asserted that the grocery store use proposed for the first floor of the structure requires a height of 6’ to 8’ higher than a standard retail store to accommodate the plumbing and mechanical transfer that Allegheny County Plumbing Code would require between the grocery store and the proposed residential units on the upper floors. (Tr. 19).

29. Mr. Wilkinson maintained that, because the Subject Property is on an upward slope, which continues along Liberty Avenue through Bloomfield, the height of the building would be contextual to the height of the 3 to 4-story structures located on Liberty Avenue, as measured from sea level. (App. Exs. 16-17; Tr. 23-26).

30. Philip Bishop, a senior vice president of Echo Realty, also testified for the Applicant. Mr. Bishop is responsible for development activities for the project and is a registered engineer. (Tr. 28-52).

31. Mr. Bishop described the pro-forma that Echo Realty developed for the project and the estimated costs compared with Echo’s preferred return for the project, for financing purposes. (App. Exs. 26-30; Tr. 31-46).

32. Mr. Bishop generally asserted that certain conditions of the site affect the costs of its redevelopment. (Tr. 31-46).

33. Mr. Bishop described a January 2022 geotechnical assessment of the site from Civil & Environmental Consultants, Inc. (CEC). The report assumes development of the site for a mixed-use structure with one below-grade and four above-grade levels. The report states that layers of unstable alluvial soil with bedrock, at 27.3’ to 55.4’ from the surface, are located below

the site. The assessment indicates that, because of the subsurface conditions, drilled-in, cast-in-place concrete piers (caissons) would be the most feasible deep foundation system to support loads from the proposed structures. (App. Exs. 21-24; Tr. 33-36).

34. In conjunction with the geotechnical report, Mr. Bishop presented an estimate from Rycon Construction, which identifies costs of approximately \$1.1 million for addressing the subsurface conditions of the site that the CEC report describes for the type of structure proposed. (App. Ex. 26).

35. The Rycon estimate assumes that the construction of the proposed underground parking garage would cost approximately \$6.2 million more than the construction of an above-ground garage. (App. Ex. 26; Tr. 37-40).

36. The Applicant also provided a market study that outlined current average rents at a variety of multi-unit residential developments at different locations throughout the City. (App. Ex. 28; Tr. 40-43).

37. Based on the assumptions of costs from the caissons for the foundation system and the two-story underground parking garage, the Applicant's cost analysis indicated that the development costs for a by-right development would exceed the costs of the proposed plan by 20%. (App. Ex. 29). The cost analysis also included information regarding the cost impact of providing 25 affordable units required the addition 28 more units to make up the difference in cost resulting from the addition of the affordable units. (App. Ex. 30; Tr. 44-47).

38. Mr. Bishop asserted that the 248 residential units proposed would be the minimum that would allow the project to be financially viable. He stated that the height proposed for the structure would allow for sufficient residential density to subsidize the cost of providing 25 units at below-market rents, consistent with the IZ-O District standards. (Tr. 47).

39. Mr. Bishop also explained how the proposed grocery store would operate on the site. (Tr. 47-49).

40. Chris Droznek, with CEC, presented a transportation impact study for the project. He indicated that the study had been developed through scoping meetings with the Department of Mobility and Infrastructure and was submitted to the City, which had not yet provided comments. (App. Exs. 31-35; Tr. 52-58).

41. Mr. Droznek's study concludes that the development would not cause a significant change in the number of vehicle trips to the site and would not have a negative impact on traffic on the surrounding streets. (App. Ex. 35; Tr. 54).

- **Community Testimony**

42. Christina Howell, the Executive Director of Bloomfield Development Corporation, appeared at the hearing to offer conditional support for the request. In a letter submitted to the Board, the community group outlines proposed conditions, to which the Applicant agreed. (Tr. 60-62). The proposed conditions include the acceptance of housing choice vouchers; the exclusion of tenants from the Residential Parking Permit program; and the funding of pedestrian safety improvements at nearby intersections.

43. Dave Breingan, the executive director of Lawrenceville United, appeared at the hearing to support the request. (Tr. 62-63).

44. Councilperson Deb Gross submitted a letter of conditional support for the request, which includes the same conditions set forth in the Bloomfield Development Corporation letter.

45. Ryan Levereget, a resident of Coral Street, and Jody Lincoln, the owner of property at 4741 Lorigan Street, appeared at the hearing to support the request. (Tr. 65-67, 75-78).

46. Several individuals submitted written testimony to the Board in favor of the development. The letters of support expressed that the additional housing and grocery store would be beneficial to the area, and that the development would improve the condition of the site.

47. Alan Gunther, the resident of property at 223 Ella Street; Amy Burress, a resident of Gangwish Street; and Jordan Botta, a resident of 39th Street, appeared at the hearing to oppose the request. (Tr. 67-75, 78-83).

48. A number of individuals submitted written testimony to the Board in opposition to the request. The letters of opposition expressed concerns about the size and density of the development, and potential impacts on traffic and parking in the surrounding neighborhood.

- **Post-hearing Submission**

49. The Board allowed time for post-hearing submissions following receipt of the hearing transcript. The Board's record closed with the Applicant's submission on September 20, 2023.

Conclusions of Law:

- **Relevant Provisions Of The Zoning Code**

1. Pursuant to Section 911.02 of the Code, the grocery store (general) use is permitted as a special exception in LNC Districts, subject to the criteria set forth in Section 911.04.A.83.c. Those criteria include parking and access facilities designed to meet demand in a way that does not interfere with surrounding residential uses; consideration of detrimental impacts including parking/loading, trash storage, traffic generation, odors, noise, lighting and landscaping; and potential detrimental impacts in consideration with "compatibility of the proposed uses with surrounding and adjacent uses."

2. The site development standards for LNC Districts, in Section 904.02.C, include a maximum FAR of 2:1 and a maximum building height of 45'3-stories. Unlike other mixed use zoning districts, the site development standards for LNC District do not make provision for additional height as a special exception.

3. Chapter 916 of the Code sets forth the Residential Compatibility Standards. As stated in Section 916.01.A, the Residential Compatibility Standards "are intended to protect residential properties and neighborhoods from the adverse impacts sometimes associated with adjacent higher density and multi-unit residential development and non-residential development and uses."

4. Section 916.02.B of the Residential Compatibility Standards imposes additional building height/setback limitations where a proposed structure or “portions of a structure” would be proximate to property in R1, R2, R3 or H Districts. Within 0’ to 50’ of property zoned R1, R2, R3 or H, the height of a structure or portions of a structure “shall not exceed forty (40) feet or three stories in height.” Within 51’ to 100’, structures or portions of structures “shall not exceed fifty (50) feet or four stories in height.”

5. In essence, the Residential Compatibility Standards both limit structure height and, depending on the proposed height, require additional setbacks from residential districts. These standards apply regardless of the height permitted and setbacks required under the site development standards for the district where the subject property is located.

6. Section 916.09 allows the Board to waive certain Residential Compatibility Standards as a special exception, subject to certain considerations. Section 916.09.C provides that the Residential Compatibility Standards for building height restrictions may be waived “only if there is a taller intervening structure between the proposed structure and the adjacent residential district, in which case the height shall be limited to the height of the intervening structure.” Where no taller structure separates a new structure from a residential district, the Residential Compatibility Standards cannot be waived as a special exception and any relief from these height restrictions would require a variance.

7. The Board is authorized to consider requests for variances from a zoning ordinance’s requirements, under the applicable standards. See Sections 922.09 and 923.02.

8. The general conditions for approval of a variance are set forth in Section 922.09.E. These conditions require the applicant to demonstrate the existence of unique physical circumstances or conditions that are peculiar to the particular property; that these conditions result in an unnecessary hardship that prevents development of the property in strict conformance with the Code’s requirements; that the variance is necessary to allow for reasonable use of the property; that the applicant did not create the asserted hardship; that the variance would not alter the essential character of the neighborhood; and that the variance requested is the minimum that would afford relief.

9. The general standards for special exceptions are set forth in Section 922.07.D.1 and require consideration of the visual impact of the proposed development and its relationship with the surrounding built environment; the transportation and traffic impacts of the proposed use; operational impacts (if any); and impacts on the future and potential development of parcels in the vicinity.

- **General Principals Of Law Related To Requested Relief**

10. Zoning regulations are derived from a local government’s “police power” to promote the public health, safety and general welfare. See *Metal Green, Inc. v. City of Philadelphia*, 266 A.3d 495, 505, citing *National Land Investment Co. v. Easttown Twp. Bd. of Adj.*, 215 A.2d 597 (Pa. 1966) and *C & M Developers, Inc. v. Bedminster Twp. Zoning Hearing Bd.*, 820 A.2d 143, 150 (Pa. 2002).

11. Zoning allows a governing body to address the needs of its community, within its legislative judgment. See *National Land Investment*, 215 A.2d at 610.

12. Zoning regulations are within the judgment of the governing body. *Metal Green*, 266 A.3d at 506. A zoning board “is not a legislative body, and it lacks authority to modify or amend the terms of a zoning ordinance.” *Greth Development Group, Inc. v. Zoning Hearing Bd. of Lower Heidelberg Twp.*, 918 A.2d 181, 187 (Pa. Commw. Ct. 2007), citing *Hill v. Zoning Hearing Bd. of Maxatawny Twp.*, 597 A.2d 1245, 1251 (Pa. Commw. Ct. 1991) (only the governing body has the power to enact laws to regulate land use pursuant to its police power); see also *One Meridian Partners v. Zoning Bd. of Adj. of Philadelphia*, 867 A.2d 706, 710 (Pa. Commw. Ct. 2005) (establishing height limitations is policy-making and for the governing body to decide).

13. An application for a variance is, in essence, a request to do something that a zoning ordinance prohibits. It is “an exception to the otherwise expressed will of the citizens regarding the use of property in certain neighborhoods of the community.” *Metal Green*, 266 A.3d at 511; see also *Marshall v. City of Philadelphia*, 97 A.3d 323, 239 (Pa. 2014).

14. Pennsylvania law recognizes two distinct types of variances – use variances and dimensional variances. As the Pennsylvania Supreme Court explained in *Hertzberg v. Zoning Bd. of Adj. of the City of Pittsburgh*, 721 A.2d 43, 47 (Pa. 1998), a “use variance” is a request to use property in a manner that is wholly outside the zoning regulations. A dimensional variance, by contrast, is a request for reasonable adjustment of the ordinance’s dimensional regulations to accommodate a use that is allowed in the relevant zoning district. *Id.* Whether for a use variance or dimensional variance, the analysis of a variance request is not a “highest and best use of property” analysis.

15. In *Hertzberg*, the Court explained that a less restrictive standard is appropriate when considering requests for dimensional variances, which require only a reasonable adjustment of the zoning regulations to accommodate a use that is permitted. *Hertzberg*, 721 A.2d at 47-48. Thus, in determining whether unnecessary hardship has been established with regard to a request for a dimensional variance, the Court held that a zoning 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.

16. In *Hertzberg*, the Court noted that only technical and superficial deviations from dimensional requirements were sought.

17. In *One Meridian Partners v. Zoning Bd. of Adj. of Philadelphia*, 867 A.2d 706, 710 (Pa. Commw. Ct. 2005), the Commonwealth Court considered a request for dimensional variances for a high-rise condominium tower. It observed that, although *Hertzberg* eased the requirements for dimensional variances and allowed consideration of financial hardship resulting from dimensional restrictions, it did not obviate the need to demonstrate a hardship associated with the property and that to hold otherwise would render dimensional requirements and local governments’ planning efforts meaningless. The court also emphasized that a zoning code’s height limitations are a bona fide exercise of the city’s zoning power and that “the wisdom of such policy making is for City Council to decide.” 867 A.2d at 710. See also, *O’Neill v. Zoning Bd. of Adj. of City of Philadelphia*, 254 A.2d 12, 16 (1969) (where a building would contain over double the floor space typically allowed under zoning regulation, the appropriate remedy for a party would be rezoning rather than a variance request).

18. As set forth in the Code's variance standards, an asserted "unnecessary hardship" must be unique to the property and cannot be based on "circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located." Section 922.09.E.1. Consistent with this rule, the Pennsylvania Supreme Court has held that, to support a variance request, the asserted hardship cannot arise from the impact of the zoning regulations on the entire district. *Marshall*, 97 A.3d at 329, citing *Valley View Civic Ass'n v. Zoning Bd. of Adj.*, 462 A.2d 637, 640 (Pa. 1983).

19. Under Pennsylvania law, a special exception, unlike a variance, is a form of a permitted use. 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.

- **Requested Relief At Issue**

20. The Applicant seeks dimensional variances from the Site Development Standards for both height and FAR. It also seeks related variances from the Residential Compatibility Standards, which include height limitations and/or setbacks requirements where the subject property is proximate to a residential district. It seeks a special exception to allow the proposed grocery store (general) use on the first floor of the proposed structure.

21. The Applicant proposes a structure with a maximum height of 75'6-stories, almost twice the height permitted in LNC Districts. The height of the proposed structure would vary and, in limited areas of the site, it would actually comply with the 45'3-story height limitation for the LNC District. However, significant portions of the structure, at its full height of 75'6-stories, would be located within 100' of the R1A-H District, where the Residential Compatibility Standards allow a maximum height of 50'4-stories. Other portions of the structure, with the 62'5-story and 41'3-story heights, would be located within 50' of the R1A-H District, where the Residential Compatibility Standards allow a maximum height of 40'3-stories.

22. The Applicant does not propose the type of technical and superficial deviations from dimensional requirements that the Court considered in *Hertzberg*.

23. Even under the more relaxed standards that the Board is allowed to consider under *Hertzberg*, the Applicant has not presented sufficient, substantial or credible evidence to meet its burden with respect to all of the standards for dimensional variances, as required.

24. The Applicant presented evidence of the site conditions and the estimated costs of addressing the geotechnical issues for the proposed development on the site. The Applicant also asserted that the provision of 25 affordable units would add to the development costs, requiring additional units and thus, additional height, to make up for the cost of the affordable units,

25. The Applicant indicated that the additional height proposed is related to addressing the geotechnical costs and providing affordable units. However, it appears that any asserted hardship and costs relate more directly to the magnitude of the development proposed and less so to any unique conditions of the Subject Property.

26. Further, the requirement of including affordable units applies to all development in the IZ-O District, not just to the Subject Property. For that reason, that requirement and the associated costs are not unique to the Subject Property and do not constitute an “unnecessary hardship.”

27. The height proposed here is nearly twice the height allowed in LNC Districts. The proposed height essentially ignores the Residential Compatibility Standards, which impose additional height and setback requirements based on proximity to residential districts. The Code allows for waiver of these provisions, but only where a taller structure is located between the proposed structure and a residential district. These provisions reflect legislative determinations that, particularly where proximate to residential areas, building heights should be limited.

28. In LNC Districts, the maximum height permitted is 45’/3-stories and the Code makes no provision for requesting additional height as special exception. Similarly, the intent of the Residential Compatibility Standards is to protect residential neighborhoods from non-residential and higher density residential uses. Under the Code, the Board is only permitted to waive those protections where taller structures separate the residential neighborhood from a structure that does not comply with the standards.

29. The Board does not have the authority to disregard these legislative determinations and to alter the Code’s height and Residential Compatibility Standards to allow deviations of the order of magnitude proposed here, particularly where the Applicant did not present sufficient evidence with respect to all of the variance standards for the substantial variances requested.

30. The Applicant did not meet its burden of demonstrating that the height proposed would be consistent with the essential character of the neighborhood, which includes the 2 and 3-story houses in the abutting R1-H District and the 3 and 4-story structures in the LNC District.

31. The Board is also not persuaded that that the variances requested are the minimum that would afford relief.

32. The Applicant asks the Board to take note of its decisions in Zone Case Nos. 27a of 2022 (525 S. Aiken Avenue) and 294 of 2022 (5303 Butler St.), particularly with respect to evidence related to cost impacts. Because each property is unique, no zoning case can be viewed as “precedential” with respect to another. The variance standards, particularly the “unique hardship;” effect on essential character; and minimum variance standards, can only be evaluated with respect to a specific site. Information related to an asserted financial hardship is only one of the standards that an applicant for a dimensional variance is required to address. The Board’s consideration of an asserted financial hardship in those cases was only one component of the Board’s decisions. The Board notes that, in Zone Case No. 27a, the proposed 10-story residential building was to be located immediately adjacent to a nonconforming 10-story residential building. In Zone Case No. 294, the subject property was

adjacent to properties in RIV-IMU (Riverfront Industrial Mixed Use) and LNC Districts and did not involve a request for variances from the Residential Compatibility Standards for height.

33. The Board is also mindful of the challenges associated with developing affordable residential units. However, these challenges require legislative solutions, which are not within the Board's authority.

34. The evidence that the Applicant presented with respect to the proposed grocery store (general) use assumed a location on the first floor of the proposed structure. The site has been used for a grocery store (general) use, in compliance with the special exception criteria. The evidence that the Applicant presented is sufficient to demonstrate that the site is appropriate for a grocery store use and that the Applicant intends to comply with those criteria. See *Broussard v. Zoning Bd. of Adj.*, 907 A.2d 494 (Pa. 2006).

Decision: The Applicant's request for variances from the site development standards for height and FAR limitations in the LNC District and from the Residential Compatibility Standards for height are DENIED. The request for a special exception for the proposed grocery store (general) use is APPROVED, subject to compliance with the requirements of Section 911.04.A.83.c.

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.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

MEYER, UNKOVIC & SCOTT LLP

BY: /s/ **Brittany M. Bloam**
Kevin M. McKeegan, Esquire
Brittany M. Bloam, Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **NOTICE OF LAND USE APPEAL** was served by mailing the same via first class mail, postage prepaid, to the following on December 4, 2023:

City of Pittsburgh Zoning Board of Adjustment
c/o Corey Layman, City of Pittsburgh Zoning Administrator
Division of Development Administration and Review
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By: /s/ **Brittany M. Bloam**
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