



**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 <sup>1</sup> / <sub>3</sub> -stories maximum building height, 75'-6-stories requested
Variance	Section 916.02.B	Maximum building height 40 <sup>1</sup> / <sub>3</sub> -stories within 50' of R District  Maximum building height 50 <sup>1</sup> / <sub>4</sub> -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).<sup>1</sup>
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

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<sup>1</sup> 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'<sup>1</sup>/<sub>6</sub>-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'<sup>1</sup>/<sub>6</sub>-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'<sup>1</sup>/<sub>5</sub>-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'<sup>1</sup>/<sub>3</sub>-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'<sup>1</sup>/<sub>6</sub>-story height and another portion of the structure at the 62'<sup>1</sup>/<sub>5</sub>-story height would be located within 50' of the R1A-H District at the corner of Ella Street and Gangwish Street. The 62'<sup>1</sup>/<sub>5</sub>-story portion of the structure would be located within 100' of the R1A-H District across Ella Street. The 41'<sup>1</sup>/<sub>3</sub>-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 39<sup>th</sup> 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'<sup>3</sup>/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.