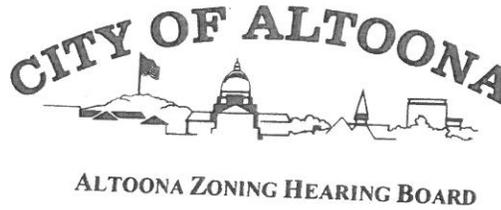


1301 Twelfth Street, Suite 400
Altoona, Pennsylvania 16601

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planning@altoonapa.gov



Michael Halloran
Horace McAnuff
Richard Andrews
Eric Wible
Donna Royer
Julie Hirschak, Alternate
Sherry Peck, Alternate
Anthony Rhine, Alternate

Our Valley Properties, LLC
400 E. Pleasant Valley Blvd.
Altoona, PA 16602

Michael Adams, Esquire
800 North Logan Boulevard
Altoona, PA 16602

Rick Strohmeyer
111 Mosser Street
Altoona, PA 16602

Mr. Francis Givler
114 Scott Avenue
Altoona, PA 16602

Mr. David Heisler
223 Dewey Street
Altoona, PA 16602

Mr. Darryl Little
306 East Southey Avenue
Altoona, PA 16602

Carol Dively
412 Bellview Street
Altoona, PA 16602

RE: 109 Bellview Street, request for special exception educational services in an existing church structure on premises located in a single household residential zone.

Your petitioner appeared by and represented through its Attorney, Michael Adams.

Various neighbors appeared in opposition identified by the above-named individuals being mailed a copy of this Decision.

FINDINGS OF FACT

1.

Your petitioner has an ownership interest, conditioned upon the grant or denial of the variance through an conditional sales agreement.

2.

Requisite notices were made and property posted.

3.

The subject property is a church by construction having been abandoned from its use and listed for sale in the general market, in which the only interest apparently had, was in and



for “schools”, be they baton schools, dance studios and/or this, your particular request for a pre-school.

4.

The use in said zone is indeed recognized as a permitted one, under and by virtue of the provisions by the Zoning Ordinance made and contained, relative to such properties by and for a special exception, as set forth and provided at Section 535-68C(2).

5.

Also, however, the said zone does not permit daycare centers.

6.

As pointed out by both your petitioner and the neighbors in opposition, there is no request for a daycare center.

7.

While it was understood by the residents that this was an initial part of the Application, none is therein contained, and none is therefore being requested and, therefore, certainly none is allowed.

8.

As set forth in 535-68C, such educational services as herein requested, can be allowed should they comply with the elements therein contained, as set forth and lettered A through E.

9.

The definition section provides and permits educational services in: “Any building or part thereof which is designed, constructed or used for education or instruction in any branch of knowledge and to any age level.”

10.

Furthermore, as provided in definitions, child daycare center: “Any premises other than the child’s own home operated for profit or non-profit, in which child daycare is provided at any one time to 6 or more children, who are not relatives of the caregiver, the uses are considered retail services but also qualifies as major impact home based businesses.” Thus, these are prohibited in the subject zone at issue.

11.

Your petitioners have indicated that they will be in compliance with all the rules and regulations applicable to them and imposed by any governing body including but not limited to the Commonwealth of Pennsylvania, pertinent to the educational services being requested.

12.

In connection therewith, any and all teachers shall be licensed for such pre-schools and there shall be compliance with the ratio of students to teacher pertinent thereto.

13.

Testimony was presented that varied age groups cannot exceed 4 in number for any one teacher, for "differentiated instructions".

14.

Your petitioners propose at no time having a total of more than 50 students in the subject school.

15.

It is proposed that ingress and egress to and from the school shall be along an alley which said alley abuts toward the Logan Boulevard side of the subject structure and commercial businesses, which front Logan Boulevard.

16.

While within that block, there are or may be residences on the side of the subject property, to its opposite side there are only commercial uses.

17.

The requisite one-way in and one-way out for drop off and pick-up will be made part of the contract in and agreed to by any such student, parent or guardian specifically that they will comply therewith, and shall only come from Logan Boulevard and out to Logan Boulevard and **NOT** enter into, through, or from the Garden Heights area, unless, of course, they reside therein.

18.

The days of operation shall be as any school: Monday through Friday.

19.

The hours of operation shall be from 6:00 a.m. to 6:00 p.m., allowing drop-off and pick-up to be staggered so as to further de minimize interference with the neighborhood, and to allow for different times for different classes and age groups..

20.

The property itself shall, therefore, allow for only one way of ingress and egress, namely, the parking lot entry thereto and along the afore-described alley.

21.

There is indeed adequate off-street parking for the personnel which was testified as being 26 in number, of which 9 were "double stacked".

22.

The scale of the proposal accordingly shall not detract from the residential character of the surrounding neighborhood, being that as above identified as a church.

23.

The appearance of the building shall be again residential in character by virtue of its nature, including roof lines, brick, articulated footprint, etc.

24.

The proposed traffic will not **severely** change the residential nature of the neighborhood and all public and private roads serving the site are of adequate design and width to handle the traffic.

25.

There is no exterior loud speaker system nor audible signals which could be heard beyond the property line.

26.

The signage is limited to that which pre-existed, namely, one free standing identification sig, upon which the subject facility has frontage and access to any and all traffic signs to direct flow of traffic shall be permitted only as necessary by and only through the land development process.

27.

Much of problems to which the residents complain deal with the existence of individuals throughout the community, "cutting through their neighborhood", as a "short cut", from already and past existing businesses.

28.

Testimony was presented that already, existing traffic violators, come in and through the neighborhood, interfering with their use, basically making an argument that any increase in traffic is intolerable in light of the already existing problem with which they are faced.

29.

One cannot simply deny any use of the property in question which would

apparently otherwise have to be done, as any use would provide some increase in traffic in, to, and from the subject premises, even if the same were again utilized as a church or religious institution, for which it was obviously originally built.

30.

The limited number of students and the requirement by contract that they proceed only along the private property's parking lot and its adjacent alley, which as above indicated, is adjacent to commercial property will and should deminimize interference.

31.

As such, while the traffic will not "benefit" the neighborhood, it will not **severely** change the nature of the neighborhood.

32.

Testimony has indeed been provided that such a pre-school educational service can be provided and should be provided for the students which they request to enroll.

33.

Testimony by a licensed educator was indeed presented, verifying that even children less than 3 years of age can indeed be "educated" for which she is licensed and trained to provide and accomplish.

34.

While questions were raised as to the extent of education, one can provide to such children of tender years, it is notwithstanding the testimony presented that it will be, and can be, provided and are the precise services which your petitioner intends to provide and charge for; and that it is not simply going to be a "babysitting or daycare service" provided for non-licensed instructional individuals.

From the foregoing testimony, the Board makes the following:

CONCLUSIONS OF LAW

1.

The petitioner has adequately proven that its request is limited to providing "educational services".

2.

The educational services shall be in compliance with any and all rules and regulations, including that of the Commonwealth of Pennsylvania, and that the subject educational services request do herein and hereby comply with the elements required under and by virtue of the special exception requirements set forth in Section 535-68, herein and hereby incorporated by

reference.

3.

That said educational services will be provided to all age levels and will not simply be a child daycare center in any way.

WHEREFORE, the Board makes the following:

DECISION

WHEREFORE, THIS 23rd DAY OF February, A.D., 2016, THE BOARD GRANTS THE REQUEST OF YOUR PETITIONER, PROVIDED, AND SUBJECT TO THE FOLLOWING CONDITIONS:

THERE SHALL BE NO MORE THAN 50 STUDENTS;

ALL RULES, REGULATIONS AND REQUIREMENTS OF THE COMMONWEALTH OF PENNSYLVANIA SHALL AND MUST BE COMPLIED WITH PERTINENT TO THE EDUCATION OF THESE CHILDREN;

THERE SHALL BE NO DAYCARE UNDER ANY CIRCUMSTANCES MADE OR PROVIDED OR HAD IN THE SUBJECT PROPERTY AND IN DIRECT CONNECTION THEREWITH, THERE SHALL BE NO MORE THAN 5 STUDENTS OF ANY ONE AGE GROUP, SAID GROUP TO BE DEFINED BY 12 MONTH INCREMENTS, LESS THAN 3 YEARS OF AGE, TO WIT: 0 TO 12 MONTHS, NO MORE THAN 5; 1 TO 2 YEARS, NO MORE THAN 5, 2 TO 3 YEARS, NO MORE THAN 5, AND 3 AND UP THERE SHALL BE NO LIMIT UP TO, AND NOT TO EXCEED, OF COURSE, 50 TOTAL STUDENTS;

FURTHERMORE, THE SCHOOL/STUDENT'S CONTRACT SHALL BE WRITTEN, AND SHALL REQUIRE THEREIN THAT A DROP-OFF AND PICK-UP MUST BE MADE AT THE PARKING LOT ENTRY CLOSEST TO THE ALLEY, AND THAT THE SAME SHALL CONTINUE IN AN ONE-WAY DIRECTION ONLY ALONG THE ALLEY, CLOSEST TO LOGAN BOULEVARD, AND THAT SAID INGRESS AND EXIT SHALL BE FROM AND TO LOGAN BOULEVARD DIRECTLY, AND NOT THROUGH THE GARDEN HEIGHTS NEIGHBORHOOD;

FINALLY, THE PETITIONER MUST COMPLY WITH ANY AND ALL LAND DEVELOPMENT REQUIREMENTS OF THE CITY OF ALTOONA, INCLUDING, BUT NOT LIMITED TO TRAFFIC STUDY MITIGATION, IF AND AS THE CITY REQUIRES.

PETITIONERS MUST, OF COURSE, MEET ANY AND ALL OTHER CITY, STATE AND FEDERAL REGULATIONS AND/OR REQUIREMENTS PERTAINING TO THE SUBJECT PREMISES, WHICH ARE OUTSIDE THE JURISDICTION OF THE ALTOONA ZONING HEARING BOARD.

ANY AND ALL NECESSARY PERMITS INVOLVED MUST BE SECURED WITHIN SIX (6) MONTHS FROM THE DATE OF THIS NOTICE, OR THE AUTHORIZATION SHALL BECOME NULL AND VOID WITHOUT FURTHER ACTION OF THE BOARD.

ANY PERSON AGGRIEVED BY A DECISION OF THE ZONING HEARING BOARD MAY APPEAL THEREFROM TO THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE, IN THE MANNER SO PROVIDED BY LAW.

**THE ZONING HEARING BOARD OF THE
CITY OF ALTOONA,**

Michael Halloran 2/23/16
Michael Halloran, Chairman

Richard Andrews 2/22/16
Richard Andrews

Eric Wible 2-18-16
Eric Wible

Donna Royer 2-19-16
Donna Royer

DISSENTS Julie Hirschak 02-17-16
Julie Hirschak

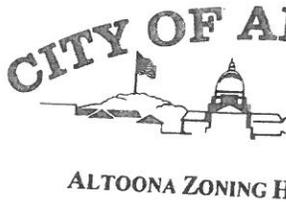
MAILED TO YOUR PETITIONER: February 23, 2016
Date

cc: William J. Stokan, Zoning Board Solicitor
Lee Slusser, Director of Planning
Marilyn Morgan, Planner II, Zoning Office

1301 Twelfth Street, Suite 400
Altoona, Pennsylvania 16601

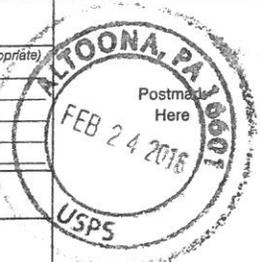
Voice - 814/949-2470
Fax - 814/949-0372
TDD - 711

planning@altona.gov



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| PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions | |



Theresa White
314 Caroline Avenue
Altoona, PA 16602

RE: 400-10 24th Street, request for special exception, off-site parking for restaurant at 2400 4th Avenue on premises in a multiple household residential zone.

Your petitioner appeared on her own behalf, together with her architect, Joseph Oricko.

From the uncontradicted testimony presented at the hearing of February 10, 2016 and the Board's view of the subject premises, the Board makes the following:

FINDINGS OF FACT

1.

Your petitioner has an ownership interest in the subject property.

2.

Requisite notices were made and property posted.

3.

The subject property is one otherwise known as "Jack and Georges", at which business is regularly and continuously conducted.

4.

In direct connection, therewith, the subject property has literally outgrown the existing parking that it already has in order to accommodate the customers, thereby continuing to trade and do business while minimizing any interference with surrounding residents and their off-street parking needs.

5.

As such, a building, once upon a time a dairy, which has long since been abandoned



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and fallen into a state of disrepair, was acquired by your petitioner.

6.

The building having not been used was literally close to a condemned condition, if not, already in one.

7.

As such, your petitioner has razed the building requesting to utilize it for additional off-street parking.

8.

The lot will accommodate and provide for 28 off-street parking spaces.

9.

Testimony was produced that these additional spaces plus the other two existing lots will provide such parking so as to eliminate interference with the surrounding neighbors.

10.

Lighting will be provided such that an existing 3-way spot light that shines intensely from the restaurant roof unto the other 2 lots that already exist will, and can be eliminated, thus, minimizing lighting interference with the surrounding neighbors and/or traffic that might come up or down the respective streets and avenues adjoining it.

11.

Furthermore, lighting upon each and every lot will and can focus the light to entirely remain on the lot while providing security in and for the restaurant as well as the users of the said parking lots.

12.

It is proposed that there will be only one ingress and egress, a curb-cut existing already of 24 feet and the remainder of the lot will be buffered and landscaped by fencing or otherwise as your petitioner can decide by working with the City and its land development rules and regulations.

13.

In discussing lighting, the architect has agreed that it can be provided for adequately and to be independently provided on each and everyone of the 3 parking lots.

14.

The lots upon which the restaurant itself is situate, is full to the max literally being

built from one lot line to another, all of which was a pre-existing legitimate non-conforming use and condition.

From the foregoing testimony, the Board makes the following:

CONCLUSIONS OF LAW

1.

There exist no spaces on the principal lot for adequate off-street parking.

2.

The center of the lot is within 400 feet of the principal use in question.

3.

Spaces sufficient to allow compliance with land development standards as set forth in Article XXVIII Part 7.

4.

The lot will not allow the principal use to exceed maximum parking allowances as set forth in the land development standards.

5.

The installation of parking at this location will not have a deleterious effect on the overall neighborhood in terms of residential stability and economic development and will rather improve it by eliminating off-street parking difficulties for the residents.

6.

The installation of the parking facility will not necessitate the demolition of a viable and structurally sound building, but rather is one that has already existed and has already been done due to its poor and inadequate condition.

WHEREFORE, the Board makes the following:

DECISION

WHEREFORE, THIS 23rd DAY OF February, A.D., 2016, THE BOARD GRANTS THE REQUEST OF A SPECIAL EXCEPTION UNTO YOUR PETITIONER; PROVIDED, HOWEVER, AND DIRECTLY CONDITIONED UPON THE FOLLOWING:

A. INGRESS AND EGRESS WILL BE BUT FROM ONE AVENUE/STREET, AND SHALL BE 24 FOOT IN WIDTH;

B. FURTHER, LIGHT ON THIS LOT AS WELL AS THE OTHER 2

OFF-STREET PARKING LOTS SHALL BE PROVIDED FOR INDEPENDENTLY, THAT IS, THERE SHALL BE INDEPENDENT LIGHTING FOR EACH AND EVERY LOT AND SAID LIGHT SHALL BE CONTAINED IN AND UPON THE LOT AND NOT SHINE ONTO OR ABOUT THE NEIGHBORHOOD INTO OTHER PROPERTIES OR RESIDENCES;

C. FURTHERMORE, SAID LOT MUST BE PAVED AND LINED;

D. FURTHERMORE, THE EXISTING LIGHT THAT SITS ON THE ROOF AND SHINES FROM THE EXISTING RESTAURANT SHALL BE REMOVED UPON COMPLETION OF THE ABOVE REQUIRED INDEPENDENT LIGHTING;

E. PROVIDED, FINALLY, THAT THE PETITIONER MUST COMPLY WITH ANY AND ALL LAND, USE, DEVELOPMENT, RULES AND REGULATIONS IMPOSED UPON THEM, INCLUDING, BUT NOT LIMITED TO, STORM WATER MANAGEMENT AND BUFFERING AND LIGHTING.

PETITIONERS MUST, OF COURSE, MEET ANY AND ALL OTHER CITY, STATE AND FEDERAL REGULATIONS AND/OR REQUIREMENTS PERTAINING TO THE SUBJECT PREMISES, WHICH ARE OUTSIDE THE JURISDICTION OF THE ALTOONA ZONING HEARING BOARD.

ANY AND ALL NECESSARY PERMITS INVOLVED MUST BE SECURED WITHIN SIX (6) MONTHS FROM THE DATE OF THIS NOTICE, OR THE AUTHORIZATION SHALL BECOME NULL AND VOID WITHOUT FURTHER ACTION OF THE BOARD.

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THE ZONING HEARING BOARD OF THE
CITY OF ALTOONA,

Michael Halloran 2/23/16
Michael Halloran, Chairman

Richard J. Andrews 2/22/16
Richard Andrews

E. Wible 2-18-16
Eric Wible

Donna Royer 2-19-16
Donna Royer

Julie Hirschak 02-17-16
Julie Hirschak

MAILED TO YOUR PETITIONER: February 23, 2016
Date

cc: William J. Stokan, Zoning Board Solicitor
Lee Slusser, Director of Planning
Marilyn Morgan, Planner II, Zoning Office