

1301 Twelfth Street, Suite 400
Altoona, Pennsylvania 16601

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

planning@altoonapa.gov

CITY OF ALTOONA



ALTOONA ZONING HEARING

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Sent To: Larry Burk
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City/State, ZIP+4: Hollidaysburg, PA 16648

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



Larry Burk
943 Route 22
Hollidaysburg, PA 16648

Pam Mitchell
307 Cherry Avenue
Altoona, PA 16601

Pam Nelson
3714 Beale Avenue
Altoona, PA 16601

William Kitt
675 Hawthorne Drive
Hollidaysburg, PA 16648

Richard Wallace
1116 - 12th Avenue
Altoona, PA 16601

RE: Request for a special exception for a student home located at 1401 North Fifth Avenue, Rear, in a limited residential zone.

Your petitioner appeared on his own behalf.

Various neighbors appeared in opposition.

From the testimony presented at the hearing of September 13, 2017 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.



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2.

Requisite notices were made and the property posted.

3.

Your petitioner has indicated that the front property on the subject lot is only being used for his "personal use" and he is rehabilitating it, with and for the intent of future leasing although for purposes of the present request, he has indicated it will not be for student housing.

4.

As such, there will only be one building upon the subject lot which is the building situate to the rear being requested for student housing.

5.

He does indeed have a paved driveway leading to the garage space of that subject structure, which can accommodate two off-street parking spaces.

6.

He is requesting, since it is but a two-bedroom home, to use the same for lease to two separate students but only two.

7.

This, of course, will more than likely be less than the maximum number of occupants permitted but yet to be determined by a building inspector from the City's inspection department with which any such request must comply.

8.

As above indicated, there will be no more than one dwelling unit being used as a student home.

9.

Your petitioner admits that he has presently lease the same to an individual who he thereafter learned was a student.

10.

It is his testimony that once he learned that she was indeed a student, he placed her in one of his other apartments removing her immediately from the subject location.

11.

Other testimony has similarly been provided that she has continuously been in and

upon the subject property.

12.

Your petitioner indicates that while she, the tenant, is using the subject property and she is a student, it is for the purposes of doing laundry and studying for pursuit of her education in and at the subject facility.

13.

Thus, the subject property is being “used”, and had, obviously, been used, prior to the acquisition of a zoning permit by a student(s).

14.

Furthermore, testimony has been presented that the property was indeed being used and rented prior to the acquisition of a residential rental unit license.

15.

Testimony had also been presented that the subject property had been used and rented as early as April of 2017, per the sworn testimony of the various neighbors that appeared at the Nelson hearing of April 12, 2017, that indeed this subject property was indeed being used in and by students, whose testimony therefrom is incorporated by reference.

16.

As of April 18, 2017, the codes and inspections division of the City of Altoona did indeed find violation as an unregistered rental, whereafter, your petitioner in May of 2017 corrected the violation.

17.

As such, credible testimony was indeed presented that your petitioner did, has, and does indeed continue to “use” the subject property without zoning permission.

From the foregoing findings, the Board makes the following:

CONCLUSIONS OF LAW

1.

Your petitioner has failed to prove adequately that it is able to comply with all of the requisite elements required in and by the controlling zoning ordinance pertinent hereto.

2.

Specifically, your petitioner has failed to prove compliance with 800-49 (7) F.

The subject student home has been occupied and is, was, and is still used without zoning permit and/or residential rental unit licenses having been issued, including but not limited to on-going visiting of the facility for both laundry and studying uses and purposes of student(s).

DECISION

WHEREFORE, THIS 22ND DAY OF SEPTEMBER, A.D., 2017, THE BOARD DENIES THE REQUEST OF YOUR PETITIONER, SUBJECT TO THE LIMITATIONS SET FORTH HEREIN.

ANY PERSON AGGRIEVED BY THE DECISION OF THE ZONING HEARING BOARD MAY APPEAL HEREFROM 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 9-19-17
Michael Halloran, Chairman

Richard J. Andrews 9-21-17
Richard Andrews

Donna Royer 9-22-17
Donna Royer

Horace McAnuff 9-18-2017
Horace McAnuff

MAILED TO YOUR PETITIONER: Sept 22, 2017
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

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411 N. Dr. Charles Prijatelj	
2407 6th Ave	
City, State, ZIP+4	
Altoona, PA 16602	

PS Form 3800, April 2015 PSN 7530-02-000-907 See Reverse for Instructions



Altoona Area School District
2407 - 6th Avenue
Altoona, PA 16602
Attention: Dr. Charles Prijatelj

Ed Kreuz
1830 North Fourth Avenue
Altoona, PA 16601

RE: Request for setback and height variances for proposed buildings at 1300 - 6th Avenue in a multiple household residential zone.

Your petitioner appeared by and through Dr. Charles Prijatelj, Ryan Orr of KCBA Architects, Alyssa Rouser of EADS, engineers/architects.

From the testimony presented at the hearing of September 13, 2017 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 the properties posted.

3.

The subject request entails a project of a new construction razing existing structures, additions updates to other existing structures, building of parking lots and athletic fields.

4.

The same is necessary and reasonable in light of the current needs of the



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community as it relates to educating its youth, as its existing facilities are inadequate and/or outdated.

5.

There is an inadequate ability to continue to use the existing structures while they construct a new one without the grant of the variances as requested.

6.

This is particularly due to the unique circumstance with which it is faced and conditioned of its property, to wit, the existence of a power plant/building in which it is contained as it is necessary to continue to "work around it" with the new construction, in order that it can continue to power the other buildings which will remain open for its educational purposes, while the new construction is being done.

7.

As such, while it had first appears as though it has an unlimited amount of land within which to work, this unique circumstance alters and restricts the same and the applicant's ability to design, plan, and construct without any limitations upon it.

8.

The subject area is in a sense literally a "campus", similar to the Altoona Hospital and the Penn State Altoona campus.

9.

There is no per se zoning for such "campuses" within the City Ordinance, making this a further unique situation and circumstance for the applicant.

10.

The areas in question are literally surrounded by other properties also owned by your petitioner.

11.

For example, the addition to the existing gymnasium building will affront Sixth Avenue immediately across the avenue from the existing athletic field upon which the new proposed structure, for which the setback variances are requested, is and will be situate.

12.

Furthermore, the structure that will be built upon the existing athletic field is immediately across Seventh Avenue from property it owns to wit, the Junior High School.

13.

As such, the properties most affected by the grant of such a variance will only be the applicant itself.

14.

Your petitioner has continuously owned these properties and has continuously acted as an educational use and purpose, from and at a time well preceding the effective date of the existing Zoning Ordinance.

15.

Interesting to note, this had been once zoned by the City itself as "institutional".

16.

This zoning designation no longer even exists in the subject ordinance and, indeed, for some reason or another, these properties had been rezoned as multiple household residential zone.

17.

It is from this residential zoning that the subject setbacks and height restrictions are applicable, and being requested a variance from.

18.

Your petitioner has never abandoned the use or ownership of its subject property.

19.

As such, your petitioner falls within the legal category of a pre-existing non-conforming use, which said non-conforming use must, of course, be given the status to which it had previously to any changes in the subject Zoning Ordinance, generally referred to as "grandfathered".

20.

Your petitioner, likewise, is governed by and subject to the rules, laws and regulations pertinent to it as imposed upon the Commonwealth of Pennsylvania for the size of the classrooms and relevant areas of education within which this request falls.

21.

Your petitioner has testified and presented evidence through its architect/engineers that they performed studies in order to comply with those sizing and educational rules, and regulations, and this is the de minimus layout that will conform with those said rules and

regulations while attempting to de minimize the need for any variances.

22.

For instance, it is recognized that they could go "up and higher" to accommodate going into another story rather than the slight variance setbacks that are otherwise being incorporated hereto and herein by its request.

23.

These setbacks are demonstrated by the plans, introduced in and to the application and at the hearing, which are herein and hereby incorporated by reference.

24.

By the combination of the minimal height variance being requested and the de minimis setback variance being requested, the building will be able to comply with the rules and regulations pertinent to it, while being the least egregious of the variance request that would otherwise be reckless of it.

25.

The slight setbacks as requested are less egregious than the addition of an entire other floor to the subject building, making it even higher than that as requested.

26.

The subject tower as requested necessitates the subject request in order to adequately, from an engineering standpoint, reasonably support the proposed enclosed bridge that will exist between the two buildings at issue.

27.

This is important from a public health, welfare, and safety aspect in order to allow students to safely be able to cross from one building to another without obviously facing traffic in and along Sixth Avenue, that it would otherwise have to and will allow the most engineering safe and sound construction of the same according to the testimony of the engineer/architects at the hearing.

28.

The particular needs, of course, as alluded to, are further restricted by the imposition upon it for the ADA rules and regulations pertinent to it, particularly as it relates to the area that will exist after the demolition of the power plant structure, further disallowing the building to be shifted in that direction.

29.

As earlier testified, to which testimony is accepted as true and credible, the space as requested between the building and the currently requested new construction is both reasonable

and necessary from an engineering standpoint for the safety of the two buildings and allowing construction equipment to pass and for the health, welfare, and safety of those involved in its very construction and thereafter demolition, so as to de minimize the risk during demolition of the power plant that it could or might have upon the newly constructed building.

30.

This is further evident even by the footprint on the plans and specifications of the proposed new structure that it is indeed being built in a step back nature, in and along the very footprint of that building to be raised.

31.

The previous institutional zone had required far less zoning than the zoning that is now attempted to be imposed upon your applicant and when the setback variances are compared to it, are indeed de minimis at best while still allowing relief to your petitioner.

32.

Furthermore, the height variance as being requested is likewise very de minimis when compared to the earlier institutional zoning and the height that was allowed therewith.

From the foregoing findings, the Board makes the following:

CONCLUSIONS OF LAW

1.

Your petitioner has adequately proven that it is indeed a pre-existing legitimate non-conforming use.

2.

The change and expansion is both reasonable and necessary in order for your petitioner to continue to operate as such an institution in and at the subject properties.

3.

Your petitioner also adequately proven there exists unique circumstances, conditions peculiar to the property under and by virtue of which an unnecessary hardship has been created due to which there is little, reasonable possibility that the property could otherwise realistically be developed in strictest conformity with the provisions of the Zoning Ordinance.

4.

The subject variance is necessary to enable a reasonable use of the property to be made.

5.

This hardship was not created by your petitioner relative to the subject request or need for variance.

6.

The variance as authorized will not alter the nature or character of the property nor impair the appropriate use or development of the properties adjacent thereto, which are, as above noted, also properties owned by your applicant petitioner itself.

7.

The variance as authorized will not be detrimental to the public health, welfare, and safety, but as earlier alluded above, will actually further insure the same, e.g., the engineering structure and ability to provide a crossover bridge.

Wherefore the Board makes the following:

DECISION

WHEREFORE, THIS 22ND DAY OF SEPTEMBER, A.D., 2017, THE BOARD GRANTS THE REQUEST OF YOUR PETITIONER; PROVIDED, HOWEVER, THAT IT DOES INDEED COMPLY WITH ALL THAT IS REPRESENTED IN AND BY THE ENGINEERING DRAWINGS AND DOCUMENTS PRESENTED TO THE BOARD, IN AND BY, IN AND AT THE SUBJECT HEARING WHICH ARE HEREIN AND HEREBY INCORPORATED BY REFERENCE.

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

YOUR PETITIONER MUST, OF COURSE, MEET ANY AND ALL OTHER CITY, STATE AND FEDERAL REGULATIONS AND/OR REQUIREMENTS PERTAINING TO THE SUBJECT PROPERTY, 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.

THE ZONING HEARING BOARD OF THE
CITY OF ALTOONA,

Michael Halloran 9-19-17
Michael Halloran, Chairman

Richard Andrews 9-22-17
Richard Andrews

Horace McAnuff 9-18-2017
Horace McAnuff

Dissent Donna Royer 9-22-17
Donna Royer

MAILED TO YOUR PETITIONER: SEPTEMBER 22, 2017
Date

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