

**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:** April 14, 2022 (Virtual Hearing)**Date of Decision:** June 13, 2022**Zone Case:** 80 of 2022**Address:** 6633 Northumberland Street**Lot and Block:** 126-N-56**Zoning Districts:** RM-M**Ward:** 14**Neighborhood:** Squirrel Hill North**Owner/Applicant:** Zhang Jiangyang**Appellant:** Adam Long**Request:** Appeal of the approval of zoning application #DCP-ZDR-2020-05624 for the new construction of a new structure for four-unit residential use and continued use of existing structure for a single-unit residential use.**Application:** DCP-PAP-2022-00078

Appeal	Section 923.03.B.1	Appeal of the approval of zoning application #DCP-ZDR-2020-05624 for new construction of a new structure for four-unit residential use and continue use of existing structure for a single-unit residential use.
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**Appearances:**

Applicant: Kevin McKeegan, Shimon Zhimbovsky

Appellant: Adam Long

In Support of Appeal: Ben Antin

Observing: Corey Layman

## **Findings of Fact:**

### **• Relevant Factual Background**

1. This case involves an appeal of the Zoning Administrator's approval of a zoning application for development on the Subject Property, which is Parcel No. 125-N-56, located at 6633 Northumberland Street in an RM-M (Residential Multi-Family Medium Density) District in Squirrel Hill North.
2. The dimensions of the parcel are 80' by 120' (9,600 sf). The single parcel is a "double-lot," which combined two 4,800 sf parcels originally laid out in a 1908 recorded subdivision plan.
3. A two-story house is currently the only primary structure on the Subject Property.
4. On June 10, 2020, a representative of the property owner filed Application No. DCP-ZDR-2020-05624, which sought approval to construct on the Subject Property a new structure for four residential units.
5. Pursuant to the plan submitted, the existing house on the parcel would remain as a fifth residential unit on the property, in the existing single-unit structure.
6. The lot size per unit for the total of five units proposed for the 9,600 sf lot would be 1,920 sf.
7. The proposed structure otherwise complies with the site development standards for RM-M Districts, on the existing 9,600 sf lot.

### **• Procedural Background**

8. Upon review of the Application, the Department of City Planning determined that the proposal complied with the Zoning Code, and, on January 4, 2022, the Department issued a Record of Zoning Approval.
9. Adam Long, the Appellant here, is the owner of the property located at 6630 Ridgeville Street, to the rear of the Subject Property.
10. As of January 14, 2022, Mr. Long filed a timely appeal of the Department of City Planning's approval of the proposed development, challenging the Zoning Administrator's determination that the development would comply with the Code's use standards as set forth in Code Section 911.02.
11. The Board conducted a hearing on Mr. Long's appeal on April 14, 2022. The parties stipulated to the essential facts relating to the property and offered different interpretations of the relevant provisions of the Zoning Code.
12. On behalf of the Department of City Planning, Zoning Administrator Corey Layman confirmed his interpretation of the relevant Code provisions. He also confirmed that the Department had reviewed the Applicant's zoning application and determined that the proposed development complies with the Code's requirements.

13. Ben Antin appeared at the hearing on behalf of Mitchell and Lisa Antin, the owners of the property located at 6630 Northumberland Street, in support of the appeal.

14. Following the hearing, the Board left the record open until April 28, 2022 to allow the parties to provide post-hearing submissions. The Board received submissions from the Appellant and the Applicant.

- **Relevant Provisions of the Zoning Code**

15. Pursuant to Code Section 911.02, both “single-unit residential” and “multi-unit residential” uses are permitted by right in RM-M Districts.

16. “Multi-Unit Residential” is defined in Section 911.02 as “the use of a zoning lot for four or more dwelling units that are contained within a single building.”

17. The site development standards for RM-M Districts include a minimum lot size requirement of 3,200 sf; a density requirement of 1,800 sf lot size per unit; and height limitations of 55’/4-stories.

18. Pursuant to Section 926.129, a “lot” is defined as “land occupied or intended to be occupied by no more than one (1) main structure, or unit group of buildings, and accessory buildings, together with such setbacks and lot area as are required by this Code, and having at least one (1) frontage upon a street.”

19. Pursuant to Section 926.127, a “lot, recorded” is defined as “lot designated on a plat of subdivision duly recorded pursuant to statute, in the Recorders’ Office for the recording of deeds, plans, etc., of Allegheny County. A recorded lot may or may not coincide with a zoning lot or an accredited zoning lot.”

20. Pursuant to Section 926.134, a “lot, zoning” is a parcel of land that is “designated by its owner at the time of applying for a building permit” as one lot, “all of which is to be used, developed or built upon as a unit under single ownership.” Under the Code’s definition, a “zoning lot” could be a single “recorded lot;” a portion of a “recorded lot;” or a combination of “recorded lots,” and/or portions of “recorded lots.”

21. Pursuant to Section 926.241, a “unit group development” is two or more “related primary buildings or uses” on one “zoning lot.”

22. Pursuant to the Zoning Administrator’s interpretation of these provisions, the proposed development of the Subject Property, with a single residential unit in the existing structure and four residential units in a single, new structure on the 9,600 sf “zoning lot,” are permitted as a “single-unit residential use” and “multi-unit residential” use, which are configured as a “unit group development” in two structures on the “zoning lot.”

- **Positions of the Parties**

23. As the Appellant, Mr. Long asserts that the proposed development does not comply with Section 911.02 of the Code because both the existing house and the new four-unit residential structure would exist as primary uses on the same zoning lot.

24. He also asserts that because Section 911.02 defines the multi-unit residential use as four or more units “that are contained within a single building,” the single-unit use and the multi-unit use cannot co-exist on the same zoning lot.

25. Mr. Long argues that “unit group development” is a form of use that is not permitted in RM-M Districts and thus the proposed development should not be permitted.

26. Mr. Long also notes that the Subject Property could not be subdivided into two parcels, to separate the single-unit and multi-unit uses, without violating the site development standards for the RM-M District.

27. Kevin McKeegan presented the legal position of the Applicant, in support of the Zoning Administrator’s interpretation of the Code and the issuance of the Record of Zoning Approval.

28. Mr. McKeegan asserts that, consistent with the definition of “zoning lot,” the Subject Property is comprised of two “recorded lots” from a 1908 recorded plan; and that nothing in the Code precludes development of the single “zoning lot” for a “unit group development,” which includes two structures, one for a permitted single-unit use/structure and one for a permitted multi-unit use/structure.

29. Mr. McKeegan maintains that “unit group development” is a form of development, which allows for more than one structure on a single zoning lot and that “unit group development” is not a distinct type of “use.”

30. Mr. McKeegan also notes that, as proposed, the development would comply with the Code’s site development standards for the RM-M District.

31. Mr. McKeegan states, on behalf of the Applicant, that the Applicant does not intend to subdivide the Subject Property.

### **Conclusions of Law:**

1. The Zoning Administrator’s interpretation of the Code is entitled to deference. See *McIntyre v. Bd. of Sup’rs*, 614 A.2d 335, 337 (Pa. Commw. Ct. 1992); *Kohl v. New Sewickley Twp. Zoning Hearing Bd.*, 108 A.3d 961, 968-69 (Pa. Commw. Ct. 2015).

2. The Board agrees with the Zoning Administrator’s determination that the “unit group development,” which is to consist of one structure that is to be used for a single-unit residential use and one structure that is to be used for a multi-unit residential use, is permitted on the single “zoning lot,” for uses that are permitted in the RM-M District.

3. Under the Code’s definition and Use Table, “unit group development” is a form of development and not a type of use.

4. The single-unit residential use and the multi-unit residential uses are both uses that are permitted in RM-M Districts.

5. The four new residential units proposed would be within a single structure and thus would be with the Code’s definition of the permitted “multi-unit residential” use.

6. The condominium form of ownership that is contemplated for the separate residential units does not constitute a “subdivision” of the property. It is not within the authority of the Zoning Code or the Board to regulate or consider the form of ownership of the proposed residential units.

7. Because both structures within the proposed “unit group development” would comply with the Code’s site development standards for RM-M Districts, the Zoning Administrator properly issued the Record of Zoning Approval.

8. Mr. Long correctly notes that the proposed addition of four residential units on the Subject Property is only possible because of the 9,600 sf area of the “zoning lot.” If the Subject Property were to be divided into two parcels, consistent with those identified in the original 1908 recorded plan, both parcels could comply the required 3,200 sf minimum lot size. However, sufficient area would not be available to allow for one compliant parcel for the single-unit structure and another parcel for the 4-unit residential use, which would also comply with the lot size per unit requirement or, potentially, the other site development standards for the RM-M District.

9. The Applicant here has indicated that no subdivision of the Subject Property is intended and the Board accepts that assertion.

10. If the Applicant chooses now to proceed with the proposed “unit group development,” within the two structures in the approved configuration, it cannot later seek *post hoc* approval for a different type of development on the site.

11. If, following construction of the 4-unit structure, the Applicant were to seek approval for a subdivision of the Subject Property into separate parcels for the single-unit structure and for the multi-unit structure, any resulting violations of the site development standards would not warrant the grant of any variances because the non-compliance with the Code’s requirements would be wholly of the Applicant’s creation.

**Decision:** For the foregoing reasons, the Appellant’s protest appeal is hereby **DENIED**, subject to the condition that the unit group development, as proposed, may only continue on the 9,600 sf Subject Property, in compliance with the site development standards and without subdivision of the 9,600 sf parcel.

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.