

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

ADAM J. LONG,

NO. SA-2022-

Appellant,

**NOTICE OF APPEAL FROM
ZONING BOARD OF
ADJUSTMENT DECISION**

vs.

THE CITY OF PITTSBURGH ZONING
BOARD OF ADJUSTMENT; ZHANG
JIANGYANG,

Filed on behalf of Appellant

Counsel of Record:

Appellees.

Adam J. Long
Pa. I.D. #308322
adam@longandlongllc.com

Long & Long, LLC
305 West Pittsburgh Street
Greensburg, PA 15601
(724) 834-9300

CERTIFICATE OF COMPLIANCE

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



Adam J. Long, Esquire
Attorney for Appellant

IN THE COURT OF COMMON PLEAS OF
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CIVIL DIVISION

ADAM J. LONG,

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Appellant,

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THE CITY OF PITTSBURGH ZONING
BOARD OF ADJUSTMENT; ZHANG
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Appellees.

**NOTICE OF APPEAL FROM ZONING BOARD OF
ADJUSTMENT DECISION**

AND NOW, comes the Appellant, Adam J. Long, and files the following Notice of Appeal from Zoning Board of Adjustment Decision:

Background

1. Appellant, Adam J. Long (“Appellant”), is an adult individual residing at 6630 Ridgeville Street, Pittsburgh, PA 15217.¹
2. Appellee, Zhang Jiangyang (“Appellee”) is an adult individual with a last known mailing address of P.O. Box 81503, Pittsburgh, PA 15217.
3. Appellee, the City of Pittsburgh Zoning Board of Adjustment, has business offices located at 200 Ross Street, Third Floor, Pittsburgh, PA 15219.
4. The property at issue consists of two separate recorded lots having an address of 6629-6633 Northumberland Street, Pittsburgh, PA 15217 (Lot and Block No. 126-N-56)(“Property”).

¹ Appellant is also a licensed attorney in the Commonwealth of Pennsylvania.

5. The Property is zoned Multi-Unit, with a Moderate Density Subdistrict (“RM-M”).

6. Appellant’s property directly abuts the Property’s rear boundary line.

7. One of the Property’s recorded lots contains a single-family structure and the other recorded lot is vacant.

8. During the zoning application process, Appellee indicated that he intends to treat the two recorded lots as a single zoning lot, which will have a five-unit condominium development in two distinct buildings.

9. Four of the units will be in the to-be-constructed building, and the fifth unit will be the separate existing single-family residence.

Zoning Review and Hearing

10. On January 4, 2022, Appellee was granted a Record of Zoning Approval at No. DCP-ZDR-2020-05624 to construct the four-unit condominium building on the vacant lot. A copy of the Record of Zoning Appeal is attached hereto as Exhibit A.

11. Appellant filed a timely protest appeal with the Zoning Board of Adjustment (“ZBA”).

12. The ZBA held a virtual hearing on April 14, 2022.

13. At the conclusion of the hearing, the ZBA requested that written briefs be submitted on or before April 28, 2022.

14. The ZBA issued a decision on June 13, 2022 denying Appellant’s protest appeal. A copy of the ZBA’s decision is attached hereto as Exhibit B.

Grounds for Appeal


15. The decision of the ZBA is arbitrary, capricious, an abuse of discretion, not supported by substantial evidence, and an error of law generally and in the following specifics:

- a. The ZBA ignored the definition within the Zoning Code of the City of Pittsburgh (“Code”) defining a “single-unit detached residential” to be “the use of a zoning lot for one detached housing unit” Code at §911.02;
- b. The ZBA ignored the definition within the Zoning Code of the City of Pittsburgh (“Code”) holding that multi-unit residential is “the use of a zoning lot for four or more dwelling units that are contained within a single building” Code at §911.02; and
- c. The ZBA committed an error of law in determining that the Code permits a unit group development within the RM-M subdistrict.

WHEREFORE, Appellant respectfully requests that this Court enter a final order in his favor, holding that the Zoning Board of Adjustment’s denial of Appellant’s protest appeal was arbitrary, capricious, an abuse of discretion, not supported by substantial evidence, and an error of law and reversing the Zoning Board of Adjustment’s denial of Appellant’s protest appeal.

Respectfully submitted,

LONG & LONG, LLC

By  _____
Adam J. Long, Esquire
Attorney for Appellant


CERTIFICATE OF SERVICE

I, Adam J. Long, Appellant, hereby certify that I served a true and correct copy of the foregoing Notice of Appeal from Zoning Board of Adjustment Decision by mailing the same via first-class mail, postage prepaid on July 12, 2022 as follows:

City of Pittsburgh Zoning Board of Adjustment
Division of Development Administration and Review
City of Pittsburgh, Department of City Planning
200 Ross Street, Third Floor
Pittsburgh, PA 15219

Kevin F. McKeegan, Esquire
Meyer, Unkovic and Scott, LLP
535 Smithfield Street, Suite 1300
Pittsburgh, PA 15222

City of Pittsburgh Law Department
313 City-County Building
Pittsburgh, PA 15219




Adam J. Long, Esquire
Attorney for Appellant

VERIFICATION

I, Adam J. Long, verify that the statements made in the Notice of Appeal from Zoning Board of Adjustment Decision are true and correct to the best of my knowledge or information or belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: 7-12-2022



Adam J. Long

EXHIBIT A



RECORD OF ZONING APPROVAL # DCP-ZDR-2020-05624

PROPERTY INFORMATION

Applicant: Shimon Zimbovsky

Property Address: 6633 NORTHUMBERLAND ST #101, Pittsburgh, PA 15217-

Parcel ID: 0126N00056000000

Neighborhood: Squirrel Hill North

Landslide Prone Overlay: No

Zoning District: RM-M

Undermined Overlay: No

City Historic Landmark: No

25% Slope Overlay: No

City Historic District: No

Baum-Centre Overlay: No

Floodplain: No

ZONING APPROVAL

This document verifies the receipt of a Zoning Application and the fulfillment of all Zoning Code (Title Nine) requirements.

Date Approved: January 04, 2022

Zoning Plan Reviewer: William Gregory

Zoning Approved Scope: NEW CONSTRUCTION OF FOUR STORY MULTI-UNIT DWELLING WITH FOUR UNITS AND ONE PARKING SPACE AT REAR

USE OF FOUR STORY STRUCTURE AS MULTI-UNIT RESIDENCE (FOUR UNITS) WITH 8' X 25' FIRST FLOOR COVERED PORCH AT FRONT AND CONTINUED USE SINGLE UNIT (DETACHED) DWELLING OF ON SAME LOT. AS ACCESSORY, USE OF FIVE PARKING SPACES, ONE VAN ACCESSIBLE SURFACE STALL AND FOUR PARKING SPACES IN DETACHED GARAGE AT REAR. 3' 6" TALL RETAINING WALL ALONG SITE'S WESTERLY SIDE.

ASSOCIATED APPROVALS

Zoning Board of Appeals:

Planning Commission:

Art Commission:

Pre-application Review Meeting:

EXHIBIT B



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 Ridgville 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.

1 BEFORE THE CITY OF PITTSBURGH
2 ZONING BOARD OF ADJUSTMENT

3 - - -

4 IN RE: Zone Case No. 80 of 2022 -
5 6633 Northumberland Street
6 PROTEST APPEAL

7 - - -

8 ZONING BOARD:

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

15 The within meeting of the City of Pittsburgh
16 Zoning Board of Adjustment, Reported by
17 Dylan C. DiRenna, a Notary Public in and for the
18 Commonwealth of Pennsylvania, was convened via
19 Zoom teleconference, on Thursday, April 14, 2022,
20 commencing at 10:33 a.m.

21 - - -

22 NETWORK DEPOSITION SERVICES
23 SUITE 1101, GULF TOWER
24 PITTSBURGH, PENNSYLVANIA 15219
25 412-281-7908

26 - - -

1 PRESENT:

2 On behalf of the Protestant:

3 Adam Long, Esquire
4 Long & Long
5 305 West Pittsburgh Street
6 Greensburg, Pennsylvania 15601

7 On behalf of the Applicant:

8 Kevin F. McKeegan, Esquire
9 Meyer Unkovic & Scott
10 535 Smithfield Street
11 1300 Henry W. Oliver Building
12 Pittsburgh, Pennsylvania 15222

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1 PROCEEDINGS

2 MS. MITINGER: We do have one last
3 case of the day which is not on the original
4 agenda. It's continued from last week. That
5 is the protest appeal with respect to 6633
6 Northumberland Street. I understand we have
7 Counsel for both the Protestant and the
8 Applicant. We will call them the Appellant
9 and the Applicant.

10 Mr. Long, you're here?

11 MR. LONG: I am.

12 MS. MITINGER: Mr. McKeegan, you're
13 here on behalf of the Applicant?

14 MR. MCKEEGAN: It's a protest appeal.
15 I'm here on behalf of the owner, correct.

16 MS. MITINGER: The original Applicant?

17 MR. MCKEEGAN: The original Applicant,
18 yes. Thank you.

19 MS. MITINGER: I am going to ask you
20 each, Mr. Long, who is appearing on behalf of
21 the Appellant?

22 MR. LONG: I am actually a neighbor.
23 I just happen to be an attorney. I am
24 appearing today in my personal capacity and
25 to the best of my knowledge will be the only

1 witness.

2 MS. MITINGER: Thank you very much.

3 We may have others joining you. I'm trying
4 to figure out who I am swearing in.

5 Mr. McKeegan, will you have witnesses
6 as well?

7 MR. MCKEEGAN: I have the property
8 owner available to the extent questions come
9 up. I was planning on making most of the
10 presentation today if not all of it.

11 I would add at this point, if Adam is
12 amenable, I had sent an e-mail to staff late
13 last night with a factual stipulation that I
14 believe we are in agreement with. I don't
15 know what the Board's pleasure is regarding
16 whether you want it read in or whether you
17 will accept the e-mail and we can move to the
18 argument.

19 MS. MITINGER: Mr. Long, have you
20 accepted Mr. McKeegan's description of the
21 facts? Or are there additional facts that
22 you would like to present to the Board?

23 MR. LONG: I have accepted his
24 stipulation. I do think there are additional
25 facts above that stipulation.

1 MS. MITINGER: I think, from the
2 Board's perspective, it would be helpful to
3 get some background as to what the issue is
4 here. If there are others who would like to
5 participate in the hearing -- it seems to me
6 that it is likely to be a pure legal question
7 that we are being asked to review.

8 While we have you here, I would like
9 to understand each of your position with
10 respect to the project.

11 Mr. Long, where is the property? What
12 is the problem?

13 MR. LONG: Yes, Madam Chair. It is in
14 Squirrel hill it is on Northumberland Street.
15 It is right near the cemetery. There is a
16 picture of the proposed development on the
17 slide right now. It is the construction of a
18 four unit, multi-unit residential condo
19 development.

20 MS. MITINGER: It is in an RM-M;
21 right?

22 MR. LONG: Correct.

23 MS. MITINGER: Okay.

24 MR. LONG: The developer owns two lots
25 which are separately recorded lots. However,

1 he is treating them as one zoning lot for the
2 purposes of this submittal.

3 MS. MITINGER: Is there anything that
4 would prevent the lot consolidation?

5 If you're building across property
6 lines, parcels the would have to be
7 consolidated.

8 MR. LONG: I don't believe there is
9 anything that would prohibit the lot
10 consolidation, other than the fact that there
11 is a single-family residential on one of the
12 two recorded lots.

13 If we can, go to the next slide. This
14 is an overhead submittal that was submitted
15 as part of the Applicant's package. As you
16 can see on the right, that is the proposed
17 new development on the vacant lot with the
18 existing single-family residential on the
19 left. That is Northumberland Street in front
20 of the development. My house is the one
21 directly to the rear of the single-family
22 house.

23 MS. MITINGER: You're not on
24 Northumberland. What street is that?

25 MR. LONG: Ridgeville.

1 If we could, go to the next slide.

2 This is a survey that was submitted as part
3 of the submittal on the right. This is the
4 property on the left as it exists today. You
5 can see the existing single family house with
6 the vacant lot. Both lots were purchased
7 together by the developer in October of 2019.

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

10 This is the special warranty deed to
11 the developer in 2019. As you will note on
12 the right, that is the original Hamnett plan
13 of lots recorded in 1908, showing two
14 separate lots, Lots 25 and 26. I conducted a
15 title search. To the best of my knowledge, I
16 have never found a lot consolidation plan.

17 MS. MITINGER: Again, you're saying
18 that there is nothing that would prevent
19 consolidation?

20 MR. LONG: I don't believe so, other
21 than there is still the single-family issue.

22 MS. MITINGER: The original plan of
23 lots predates the Zoning Code. This is
24 currently in an RM-M district?

25 MR. LONG: That is correct.

1 MS. MITINGER: Are there any
2 residential districts in the immediate
3 vicinity that would impose residential
4 compatibility standards that would change the
5 nature of what's permitted on the site?

6 MR. LONG: The RM-M district there,
7 Madam Chair, is very small. I think it's
8 only a couple streets wide. It's a very
9 unique, little district. I don't know what
10 would be permitted outside of the RM-M.

11 MS. MITINGER: There are residential
12 compatibility standards in Section 916. A
13 parcel in an RM-M district that is close to a
14 different R district, there are some
15 restrictions that apply through the
16 residential compatibility standards. Those
17 aren't at issue. As far as I know, those
18 aren't at issue.

19 To get straight the protest appeal,
20 this development was proposed on this
21 property. It didn't come before the Zoning
22 Board except as a protest appeal. I'm
23 assuming that it was approved through the
24 Planning Department. Is that correct?

25 MR. LONG: That is correct.

1 MS. MITINGER: Mr. Long, could you
2 summarize what your legal position is with
3 respect to why that Planning Department
4 approval was in error.

5 MR. LONG: Absolutely.

6 Daniel, if you could, skip ahead a
7 couple slides.

8 Originally we were under the
9 impression it was being -- right there, that
10 would be great.

11 Go back one more, please.

12 It is being treated as one zoning lot.
13 The developer presented at the Squirrel Hill
14 Urban Coalition, otherwise known as SHUC.
15 Attached is a slide from that presentation
16 where he described it as a five-unit
17 condominium development, four units being in
18 the proposed new residential structure, the
19 fifth unit being the single-family house.

20 If you would, scroll down, Daniel,
21 please.

22 Here is a copy of the table set forth
23 at 911.02. Clearly multiuse residential is
24 defined as the use of a zoning lot for four
25 or more dwelling units that are contained

1 within a single building.

2 We do believe that the Zoning
3 Department was in error when they granted the
4 approval to develop the property, the zoning
5 lot with the fifth unit being the, with the
6 fifth unit being the single-family house that
7 is obviously not part of a single building.

8 Additionally, I would point out that
9 even if allowed to construct this, then the
10 Applicant would violate single-unit detached
11 residential, which means the use of a zoning
12 lot for one detached housing unit.

13 MS. MITINGER: You're not disputing
14 that a four-unit building would be permitted
15 in an RM-M district?

16 MR. LONG: Not if the house is not
17 there.

18 MS. MITINGER: I'm saying, assuming
19 all other site development requirements were
20 met, a four-unit structure would be permitted
21 in an RM-M district?

22 MR. LONG: That is correct. It
23 specifically violates the contained within a
24 single building clause.

25 MS. MITINGER: I understand your

1 position. Is there anything else from an
2 evidentiary standpoint that you want to point
3 us to while we are here, Mr. Long?

4 Then I am going to let Mr. McKeegan
5 respond.

6 MR. LONG: Daniel, if you could scroll
7 down.

8 I don't believe that I had anything
9 else. Everything else tends to be legal I
10 would ask the Board to note there were two
11 Zoom calls that in the interest brevity --
12 that were recorded -- I have not played.
13 Daniel does have copies of those. I would
14 ask that they be added to the record should
15 further appeals be necessary.

16 MR. MCKEEGAN: I am going to object to
17 that.

18 MS. MITINGER: I was going to say, I
19 don't know that we can make Zoom calls part
20 of our ZBA record for hearsay reasons, among
21 everything else.

22 MR. LONG: The developer was present.
23 Therefore, it's the developer's own words in
24 those cases that I would be seeking to
25 utilize.

1 MR. MCKEEGAN: I wasn't there. I
2 don't know what the relevancy of it is among
3 other things. I would like to note an
4 objection on that. Obviously the Board is
5 going to rule on it.

6 MS. MITINGER: The Board will rule on
7 that particular request as part of our
8 decision, Mr. Long. If you want to reiterate
9 that in posthearing submission, I think that
10 would be helpful. We will review that.

11 Was there anything else that you
12 wanted us to understand before we hear from
13 Mr. McKeegan?

14 MR. LONG: Simply that I don't dispute
15 he has the right to develop the property. He
16 can build a duplex unequivocally on that lot
17 as a separate zoning lot. I think to build
18 it as it is currently proposed violates the
19 use table.

20 I thank the Board.

21 MS. MITINGER: Thank you very much.
22 Thank you for the succinct presentation.
23 Thank you for agreeing to the stipulation of
24 facts.

25 Mr. McKeegan, do you want to respond

1 to any of the evidentiary issues?

2 MR. MCKEEGAN: Yes, I do.

3 Daniel, I had submitted a presentation
4 probably about two weeks ago. Thank you,
5 Daniel.

6 If we could, go to the first slide,
7 Daniel.

8 MS. MITINGER: Mr. McKeegan, let me
9 stop you for a second.

10 Do the stipulation of facts that you
11 submitted to Mr. Long include sort of a
12 compilation of exhibits that the Board would
13 review?

14 MR. MCKEEGAN: The stipulation is
15 based on these exhibits. I think, if I can
16 run through, we will kill two birds with one
17 stone, the so to speak.

18 MS. MITINGER: Okay. Thank you.

19 MR. MCKEEGAN: The first slide is a
20 zoning map of the area. The subject property
21 is outlined in red. Responding a little bit
22 to the residential compatibility standard
23 question, you can see essentially everything
24 in the immediate vicinity is also zoned RM-M.
25 We are well beyond the distance at which the

1 residential compatibility standards would
2 come into play.

3 The next slide, I think Mr. Long has
4 already presented these, just the use table.
5 We can skip past those.

6 If we could, go to the next slide,
7 Daniel.

8 This is a block and lot map of the
9 property which shows the subject property,
10 126-N-56, again outlined in red. As you can
11 see, and as Mr. Long indicated, this really
12 amounts to a double lot in terms of how the
13 neighborhood was originally laid out.

14 Next slide, please, is the information
15 from the county assessment website. The
16 important point here is that the lot area is
17 described as 9,600 square feet. If we go to
18 the next slide, that's consistent with a
19 survey which shows the property as 80 by 120
20 square feet of dimension, which, if my
21 calculator is correct, adds up to 9,600
22 square feet.

23 Next slide, please, Daniel.

24 Again, Mr. Long presented this. This
25 is the proposed site plan for the condominium

1 development. Four units in the building in
2 grey on the right-hand side of the screen,
3 one unit in the existing building in white on
4 the left-hand side of the screen.

5 The surveyor has provided a summary of
6 the RM-M site development criteria. You can
7 see, with respect to lot size per unit, which
8 is typically the important question in cases
9 like this, we are below what the requirement
10 is. The requirement is 1,800 square feet per
11 unit. We are actually providing 1,920 square
12 feet per unit.

13 If we could, go quickly through the
14 next two slides, Daniel.

15 Those are just a recapitulation of the
16 criteria.

17 Now we come to the legal argument.

18 MS. MITINGER: Mr McKeegan, again, we
19 let Mr. Long summarize what his legal
20 argument is. This is not oral argument
21 before any panel. We are going to let you,
22 both of you make legal argument in briefs.

23 If you could, summarize your position
24 with respect to the four units in one
25 structure and one in another.

1 MR. MCKEEGAN: Sure. Three critical
2 points.

3 Number one, this project was approved
4 as an as of right use by the Zoning
5 Administrator. As the Board is well aware,
6 the Zoning Administrator's interpretation of
7 the code is to be given a significant amount
8 of deference.

9 Secondly, while I don't believe there
10 is any ambiguity in the code regarding these
11 points, to the extent there is any, that
12 ambiguity should be resolved in favor of the
13 property owner/original applicant.

14 I have up on the screen a
15 definitional, part of definitional sections
16 of the code. I would like the Board to pay
17 particular attention to the definition of lot
18 zoning.

19 Lot zoning means a parcel of land that
20 is to be used, developed or built upon as a
21 unit under single ownership which may consist
22 of -- then if you go down to Subpart C -- a
23 combination of complete recorded lots.

24 What we have here is a combination of
25 complete recorded lots, namely Lots 25 and 26

1 in the Hamnett plan of lots, which was
2 recorded back in 1908.

3 The condominium project itself -- if
4 we could, go to the next slide -- constitutes
5 a unit group development, which is permitted
6 under the code in this district. A unit
7 group development means two or more related
8 primary buildings or uses on one zoning lot.

9 We have one zoning lot with a unit
10 group development, which is clearly permitted
11 by the code.

12 I won't go through all of the
13 remainder of the exhibits in the package.
14 What I have is a copy of the deed, which
15 Mr. Long has already given to the Board; a
16 copy of the plan of lots, which Mr. Long has
17 already given to the Board; and then copies
18 of deeds going all the way back to when the
19 plan was recorded, confirming that this
20 particular parcel of land has always been
21 treated as two lots adjoining and adjacent to
22 each other, combined for all title purposes
23 out of the Hamnett plan of lots.

24 The last point I would make is to
25 refer the Board to Section 3106 of the

1 Pennsylvania Uniform Condominium Act, which
2 essentially provides that condominiums are
3 not to -- how do I want to say this.

4 Condominiums are not supposed to be
5 discouraged or found impermissible on account
6 of subdivision rules. In other words, there
7 is no necessity to further subdivide this
8 property in order to create on it a five-unit
9 condominium project, as proposed by the
10 Applicant.

11 We will be happy to summarize all of
12 this in written form and answer any questions
13 the Board might have.

14 MS. MITINGER: I think that would be
15 helpful. It really is a question of code
16 interpretation and legal argument. It seems
17 like you do pretty much agree on the facts
18 here.

19 I have two questions. One for Daniel.
20 Does the Zoning Administrator want to
21 weigh in on this?

22 MR. SCHEPPKE: Zoning Administrator
23 Layman is on the call.

24 MR. LAYMAN: I am here

25 MS. MITINGER: Mr. Layman, do you have

1 anything in addition factual basis of this?
2 Or are you going to let the Applicants argue
3 about your interpretation of the code with
4 respect to this matter?

5 MR. LAYMAN: I can speak directly to
6 my interpretation of the code.

7 I don't disagree with any of the facts
8 as presented. The basis for the approval,
9 specifically to point of there being two
10 legal uses on a single lot, was under the
11 code's definition of unit group development
12 within that citation of unit group within the
13 definition of lot, as Mr. McKeegan presented.

14 I attended a great deal of, I attended
15 a public meeting on this with the Council
16 office and attended to a great deal of
17 correspondence with neighbors around here. I
18 am sympathetic to the fact that this is a
19 pretty acontextual development within the
20 current context and the current fabric of the
21 street.

22 As Zoning Administrator, first and
23 foremost, I need to assess whether or not a
24 development complies with the code. If it
25 does comply with the code, by right I don't

1 have any authority to hold up or deny that
2 development.

3 MS. MITINGER: Thank you for your
4 input, Mr. Layman. We appreciate it.

5 MR. LONG: Madam Chair, may I in 30
6 seconds address Mr. McKeegan's unit group
7 development.

8 MS. MITINGER: Mr. Long, I am going to
9 come back to you.

10 I want to understand if there is
11 anybody else attending who wants to offer any
12 comment or participation. We have two people
13 who do.

14 Mr. Long, we will hold yours until we
15 hear from the others.

16 We have Shimon. We have Ben Antin.

17 MR. SCHEPPKE: Ben Antin, I have given
18 you permission to speak.

19 MR. ANTIN: Good morning.

20 (Witness sworn.)

21 MS. MITINGER: Go ahead.

22 MR. ANTIN: Thank you for letting me
23 speak this morning, Madam Chair. My name is
24 Benjamin Antin. I represent Dr. and
25 Ms. Antin, who are the owners of 6630

1 Northumberland Street, which is located
2 directly across the street from the proposed
3 project.

4 I would like to voice my support for
5 Mr. Long's protest. Certainly I'm in
6 agreement that by the developer's own
7 presentation, this is a five-unit condo
8 development in violation of the use table.

9 I would like to briefly add, I view
10 this project, certainly in light of
11 Mr. Layman's comments, in violation of
12 Section 901.03 of the Zoning Code, which sets
13 forth the purpose of the code, among other
14 things, to maintain and strengthen City
15 neighborhoods. Certainly Mr. Layman called
16 it acontextual for the street. I would add
17 that a 50 foot tower built in the middle of a
18 single-family home neighborhood certainly
19 does not maintain nor strengthen --

20 MS. MITINGER: Mr. Antin, may I ask
21 one question.

22 Is the property at 6630 also in the
23 RM-M district, which would have a different
24 height limitation than for a single-family
25 residential district?

1 MR. ANTIN: I believe that the
2 proposed project and 6630 Northumberland
3 Street are in the same zoning district.

4 MS. MITINGER: It's an RM-M district,
5 which has a different height limitation than
6 would be for an R-1 district.

7 I appreciate your position that this
8 would not be consistent with the height of
9 existing structures on the street. An RM-M
10 district would allow a different height.

11 MR. ANTIN: Certainly I acknowledge if
12 the Board finds that this is technically in
13 compliance with the code. Certainly it does
14 not serve the purpose of the code.

15 MS. MITINGER: The purpose of the code
16 is to create zoning districts. This is in an
17 RM-M district. There are development
18 standards that go with RM-M districts which
19 don't apply to R-1 districts. That is the
20 purpose of the code, to create different
21 districts.

22 To the extent that you are supporting
23 Mr. Long, perhaps you could coordinate with
24 Mr. Long. If you would like to present
25 anything in accordance with the deadlines we

1 are going to establish in a moment, we will
2 let you do that.

3 I apologize, Mr. Antin. Do you have
4 anything else you want to add?

5 MR. ANTIN: No. I don't have
6 Mr. Long's contact info. I haven't received
7 any notices or anything else on this matter.
8 Dan has my e-mail address. If he doesn't
9 mind, make sure I get notices or contact
10 information.

11 MS. MITINGER: All right.

12 (Discussion off the record.)

13 MS. MITINGER: We have Shimon raising
14 his hand. Could you identify yourself for
15 the record, please.

16 MR. ZIMBOVSKY: This is Shimon
17 Zimbovsky with Indovina and Associates
18 architects. We are the architect on this
19 project.

20 (Witness sworn.)

21 MS. MITINGER: Do you have anything
22 add to what Mr. McKeegan has presented?

23 MR. ZIMBOVSKY: Just contextually, I
24 would like to add two point if I may.

25 MS. MITINGER: Okay.

1 MR. ZIMBOVSKY: The one question
2 regarding the lot consolidation was something
3 that we extensively worked through with
4 zoning. That was something that was
5 discussed on multiple occasions. I want to
6 bring to the record that this isn't something
7 that happened arbitrarily.

8 MS. MITINGER: Mr. Layman testified to
9 that. Is there anything else you would like
10 to add?

11 MR. ZIMBOVSKY: The other point is
12 contextual. We did go through a design
13 review process. With respect to the RM-M
14 district, we definitely tried to make sure we
15 were developing a project that was consistent
16 and sensitive to the neighborhood.

17 That's my only statement.

18 MS. MITINGER: Mr. Long, I did say we
19 would go back to you briefly.

20 MR. LONG: I will try to be as brief
21 as I can, Madam Chair. I want to address
22 unit group development.

23 Unit group development is nothing more
24 than a defined term within the code. Just
25 because something is defined doesn't mean

1 it's permitted in every zoning district, unit
2 group development is a definition. It's not
3 included in a permissible use within the
4 RM-M. It violates the single building.

5 The code elsewhere, for example the
6 Golden Triangle District at 910.01,
7 specifically says unit group developments are
8 permitted in this district.

9 The unit group development definition
10 does not give carte blanche to approval
11 throughout the City of Pittsburgh. It's just
12 designed to make it easier for the language
13 of the code.

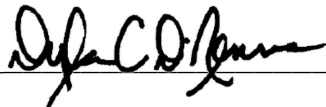
14 MS. MITINGER: We are not on court
15 hearing oral argument. I appreciate your
16 thoughts on rebuttal. The Board is going to
17 consider the legal arguments that you present
18 in whatever materials you submit to the
19 Board.

20 I would like to set a schedule for
21 that. It sounds like you have thought about
22 this fairly thoroughly. I would rather
23 require submissions sooner rather than later.
24 (At 11:02 a.m., the hearing concluded.)

25

1 REPORTER'S CERTIFICATE

2 I, Dylan C. DiRenna, the undersigned, do
3 hereby certify that the foregoing twenty-five
4 (25) pages are a true and correct transcript
5 of my stenotypy notes taken of the
6 proceedings held via Zoom teleconference,
7 Pittsburgh, Pennsylvania 15219, on Thursday,
8 April 14, 2022.

9
10 

11 Dylan C. DiRenna, Notary Public in
12 and for the Commonwealth of Pennsylvania
13 My Commission Expires October 7, 2025.