



Office of the Zoning Hearing Examiner

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**OFFICE OF THE ZONING HEARING EXAMINER
CITY OF CINCINNATI
REPORT AND DECISION**

DATE OF DECISION: 03/10/2009

Steven A. Kurtz
Zoning Hearing Examiner

APPLICANT: ROTH PARTNERSHIP INC.

**CASE TYPE: CU & VAR
CASE NO.: ZH20090001
RE: 2981 MONTANA AVE**

SUMMARY OF REQUEST:

The applicant is requesting Conditional Use approval to construct an addition to an existing school. The applicant also is requesting Variances for fence height, fence opacity & signage.

SUMMARY OF RECOMMENDATIONS AND DECISION:

Hearing Examiner-----Disapproval

PUBLIC HEARING:

After reviewing the documents submitted, examining available information on file with the application and visiting the subject property and surrounding area, the Zoning Hearing Examiner, Steven A. Kurtz, as required by SEC. 1443-05 of the Zoning Code and Chapter 113 of the Cincinnati Municipal Code, conducted a public hearing on the application, prior notice of the time and place of the hearing having been published in *The City Bulletin* and mailed to the applicant/petitioner and owner in this application and to all abutting property owners and other interested parties. The hearing was opened on 01/28/2009 at 9:30 am and continued until 03/04/2009.

SUMMARY OF MINUTES:

A tape recording was made of the hearing and is available for review and transcription.

FINDINGS:

1. SEC. 1400-13 and SEC. 1400-17 of the Zoning Code and map designate the property in question to be in the SF-6 Zoning District.
2. The Zoning Hearing Examiner (ZHE) conducted three separate hearings and garnered close to three hours of testimony, in addition to written submittals that were reviewed and considered prior to issuing this decision.
3. Applicant states their design team has worked closely with the community and school planning team to fit the addition to the existing building site. Applicant does not anticipate adverse impacts due to the design of the addition. Applicant cites fewer students, the Hope Lane bus pullout and noise control measures as mitigating factors toward any potential adverse impacts on the neighborhood.
4. Applicant states the community has had extensive involvement in the design and location of the proposed addition. Placing the addition on the Harrison Ave. side of the building will significantly reduce the impact on surrounding residential streets.
5. When comparing the Epworth Ave. location to the Harrison Ave. location, applicant states the Harrison Ave. location is preferable due to operational and functional considerations. The Epworth Ave. location presents traffic and child safety concerns, playground deficiencies and additional costs.
6. The Cincinnati Preservation Association, the City of Cincinnati Office of Historic Conservation and the Westwood Civic Association (Opponents) testified in opposition to the Harrison Ave. location. Opponents state the proposed addition creates adverse impacts to the visual and aesthetic quality of the National Register Historic District and the addition's relationship to the historic school building, to the site itself and to the street.
7. The addition is obtrusive and compromises the integrity of the surrounding structures in the Historic District. The proposed addition interrupts the building line along Harrison Ave. and partly blocks the open vistas looking south across the school site. Moreover, it alters the relationship of the school building to the street by placing a large addition in close proximity to the street creating an overbearing presence in an area that currently has an open feel.
8. In an effort to address some of the Opponents concerns, the applicant changed the design by reconnecting public pathways from along Harrison Avenue to the original main entrance at the north side of the building and offered improved landscaping.
9. The ZHE finds the proposed enhancements, while possibly improving the addition's relationship to the existing building, will not adequately mitigate the concerns related to streetscape, or site lines of the school from existing prominent views.
10. Applicant's attorney (Counsel) states the project is in compliance with the Public Interest requirements of §1445-13 of the zoning code. The ZHE finds that meeting the Public Interest criteria is only the first layer of review for consideration of administrative modifications to the code. Once a determination of public interest is made, the specific standards for granting variances, special exceptions, conditional uses, etc. must be applied by the ZHE prior to issuing a decision. It is conceivable that a project could meet the criteria for public interest and still be denied for not meeting the specific standards of the requested modification.

11. Counsel states Opponents testimony is subjective and was offered without any objective standards or plan for the area to guide their thought.
12. The ZHE finds the extensive experience of the Director of the Cincinnati Preservation Association and the Federal Certification granted by the Secretary of the Interior to the Urban Conservator more than qualify them as experts in their field and finds the absence of a plan does not negate their expert testimony.
13. The ZHE finds while the applicant's operational, functional and economic reasons offer some justification for the chosen location, they do not address, nor attempt to mitigate the adverse impacts as identified by the Opponents. Furthermore, the applicant has not provided sufficient documentation to refute the findings of the opponents by showing the adverse impacts previously stated do not exist.

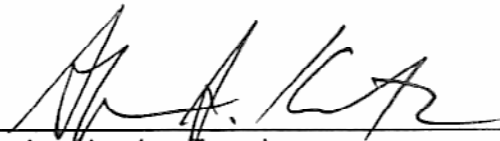
CONCLUSIONS:

It is the opinion of the Zoning Hearing Examiner that approval of the application for a Conditional Use and Variances at 2981 MONTANA AVE is not in accordance with the applicable provisions of SEC. 1445-21 of the Zoning Code and that approval would be contrary to the intent and purpose of the code and would be injurious to the properties in the vicinity of the premises in question.

DECISION:

Therefore, it is the decision of the Zoning Hearing Examiner, as empowered by SEC. 1445-07 and SEC. 1443-09 of the Zoning Code, to disapprove the application for development permission at 2981 MONTANA AVE.

ORDERED THIS 10 day of March 2009.



Zoning Hearing Examiner

APPEALS:

This decision may be appealed to the Cincinnati City Council, pursuant to Chapter 1449 of the Zoning Code. Appeals must be filed within 30 days of the date of this decision.

TRANSMITTED this 10 day of March, 2009, by certified mail to:

ROTH PARTNERSHIP INC.
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TRANSMITTED this 10 day of March, 2009, by interdepartmental mail to:

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