

# **McKownville Improvement Association**

## **Founded 1924**

To: The Guilderland Town Zoning Board of Appeals  
From: McKownville Improvement Association (contact: Don Reeb, president, 489-3909)  
111 Subject: Across the Street Pub  
Date December 9, 2005

The applicant—that is, the owner of the Across the Street Pub, 1240 Western Avenue--offered insufficient mitigating conditions to grant the greater than 50 percent parking variance which would be required if permission is to be granted to build the deck that the applicant requested. The Zoning Board of Appeals erred in not denying the requested variance.

The proposed 16 x 20 foot deck would adjoin the western side of the Pub and be constructed about four feet above the Pub's Arcadia Street parking lot. Two parking spaces in the Arcadia lot would be covered over by the deck. A four-person booth in the Pub would be removed and be replaced by the doorway onto the deck. Two sides of the deck would be surrounded by the Pub's parking lot and be visible from Arcadia Street and from Western Avenue while the fourth side would be a few feet away from the north wall of the older firehouse of the McKownville fire department. The nearest neighbor is on Arcadia Street, some forty feet away from the proposed deck, the single family home of Frank and Hilda Jasiewicz. Its property extends through to Hillside and about the latter 60 feet or so of the backyard borders the Pub's Hillside parking lot. Moreover, the firehouse does not cover its lot—about ten feet of the proposed deck will be visible from the back porch steps of the Jasiewicz home.

In addition to residences along Arcadia and Hillside, there are residential properties some fifty feet across Western Avenue from the Pub. Three or four of the Western avenue homes would be able to see the deck from their front yards and possibly their living rooms while one of these Western

Avenue homes has an upstairs front porch from which the deck would be easily visible. The noises from the expanded Pub will spread to the Western Avenue homes.

According to the applicant, the Pub has 41 parking spaces and seating capacity of 127. The new configuration would be 39 parking spaces and 147 seats. The Guilderland Zoning ordinance requires one parking space for every two seats plus one for each employee—that is, about 74 parking spaces for customers and six for employees, for a total of about 80.

The 39 parking spaces is less than 50 percent of the 80 required.

The neighbors and the Association requested that the variance be denied. In our presentations to the ZBA we complained about the increase in noise. Presently there is noise from the parking lots with slammed car doors and music blaring and from customers entering and exiting as well as smokers standing outside. The proposed deck will increase the noise—in effect, moving some of the inside noise outside. The increased noise from the deck users increases the hardship of the neighbors.

Overflow parking has been a continuing problem and the loss of parking and increased seating for customers makes the parking problem worse. Both Arcadia and Hillcrest are narrow streets with difficult geometry—hills and poor sight lines. Winter with its accompanying snow piles creates challenges for those driving on these streets. Increase in the number of customers makes the current problems with parking and driving on these streets worse and this was pointed out in our presentations to the ZBA.

The bar customers leave refuse in the vicinity-- the residential lawns have been littered with bottles, vomit and even human wastes. More seating for more customers means more refuse problems. These factors were mentioned in our presentations to the ZBA.

While the Pub is presently visible to walkers and car passengers along Western and Arcadia streets and by neighbors living on Western, the deck customers would add another element to what is visible

by these people, a sight that is not welcome, as was pointed out to the ZBA in our presentations.

As mitigating factors the applicant has offered to close the deck to service (but not to use) at 10:00 each evening, place four foot railings around the deck and add window boxes on the deck railings and in other spots.

The owner has indicated that, regardless of whether the deck is approved or not, ~~the~~ the building will be painted and the Pub will attempt to become more of a restaurant and less of a bar. No other mitigating actions were put forth.

The owner takes credit for changing the Pub from a college bar to a restaurant. He acknowledged that the changeover from a college bar occurred because of a change in the legal age for buying alcohol and long before the owner purchased the Pub. The owner said it was his intention to make the Pub more of a family restaurant. He provided no evidence that this can or will happen.

While the mitigation factors offered by the applicant were nearly nonexistent, the ZBA did not question the arguments put forward by the Association and the Arcadia street neighbors. The ZBA did not argue with the claims that there are too few parking spaces. It did not question that more cars entering and leaving parking lots make more noise. It did question that a deck filled with customers will add to the noise. It did not question that the noise from customers smoking and using the deck will add to the noise and that the door to the deck, each time it opens, will exude more noise from the Pub. It should be noted that the door to the deck will be closer to the Arcadia street neighbor's residences than the main entrance door for the Pub. Nor was there any question raised by the ZBA members about the problems with refuse being deposited by Pub customers on neighbors' lawns, other than to say that it is not known for sure that the refuse was deposited by Pub customers. Nor did anyone question that the deck's use would be unsightly to persons walking or driving in the area and for those having their residence on Western as well as for the Jasiewicz's.

The neighbors and the Association have repeatedly contested the accuracy of the claimed parking

spaces and number of seats. The former is thought to be 36 though three additional cars are commonly parked in non-striped areas near the Pub's kitchen in what appears to be a non-approved area. The owner objected to the Association's claim that a sidewalk needs to be built if the variance is granted—the present property has a sidewalk but halfway across the Western Avenue side and none on either the Arcadia or Hillcrest sides. But a Town sidewalk law does require a sidewalk on Western Avenue to be built if the deck is built. The Western Avenue sidewalk, if extended, would preclude the three cars from parking near the kitchen and one or two cars from parking on the corner of Western and Hillcrest, depending on where the curb, verge and sidewalk are located. The owner seemed surprised that such would be required and the Zoning Board members did not ask about the additional loss of parking spaces that would result from construction of the sidewalk and the ensuing parking problem.

The ZBA should have denied the request for a variance and should have refused to grant permission to build the deck.

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