

**March 24, 2009**  
**City of Erie, Pennsylvania**  
**ZONING HEARING BOARD**  
**1:00 P.M.**

The regular meeting of the Zoning Hearing Board was held on Tuesday, March 24<sup>th</sup>, 2009 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

**- MINUTES -**

**THE FOLLOWING APPEALS WERE HEARD:**

**Appeal No. 11,030 (1108-102) by Erie Renewable Energy** concerning a property located at the **1600 Block of East 10<sup>th</sup> Street** in an M-2 zoning district. This is a continuation of the February, 2009 hearing, where the Board heard E.R.E.'s challenge to the validity of the Zoning Ordinance for its alleged exclusion of power plants in the City of Erie.

**NOTE:** Minutes to Come

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**Appeal No. 11,038 (3015-106, 107, 108, 109) by Cathedral Prep** concerning property located at **9<sup>th</sup> and Myrtle Streets** in an RLB zoning district. The appellant wishes to construct a parking lot and omit screen planting strips, which would be a violation of Section 305.11 of the Code.

**Findings of Fact**

1. The appellant, Cathedral Prep, was represented by its headmaster, Father Scott Jabo. Fr. Jabo indicated that the school is attempting to pave the parking lot on the corner of 9<sup>th</sup> and Myrtle Streets. Similar variances, he said, have been received by Prep in the past.
2. According to the ordinance, constructing a lot in a residential area requires that Prep erect a six foot high screening barrier. The barrier could be in the form of a fence, or trees/shrubbery, so long as it shields adjacent residents from headlights in the parking lot.
3. Father Jabo cited several potential hardships that Prep would incur if not granted the variance. As it currently exists, the lot has seventy-five spaces. Erecting the six foot high headlight barrier on the lot would reduce the number to sixty-five; ten valuable parking spaces. If it were a fence that was erected, the diminished

visibility would create a security issue for Prep; shrubbery would likely die from the salt and other run-off from the parking lot.

4. As an alternative proposal, Prep offered to plant trees, approximately thirty feet apart, along 9<sup>th</sup> Street.
5. The lone property owner on the block where Prep, and the proposed parking lot, reside is Mr. Louis Colussi, who owns the lot where a house was formerly located, at 247 West 9<sup>th</sup> Street. Mr. Colussi appeared and addressed the Board, recounting a tense relationship he claims has existed for many years between him and the Prep community.
6. Mr. Colussi presented the Board with a memorandum stating his opposition to the proposed variance. According to Mr. Colussi, Prep would not suffer any hardships that would warrant the requested variance, and indicated that his property would suffer if the shrubbery were not built; namely, that his dirt property would be subject to the water and snow run-off from the paved parking lot, if there were no shielding there to prevent it.

#### Conclusion

1. No structure is currently on the property owned by Mr. Colussi. The house that had been on the site was torn down several years ago.
2. The ordinance calling for the shielding is intended to protect adjacent property owners from lights, noise and other nuisances that may result from a neighboring parking lot.
3. The appellant would plant trees along the street that would provide some natural growth in the area where the parking lot is proposed to be built.

#### Decision

By unanimous decision, Board members Ron Desser, Dale Niemenski, Lisa Austin, Richard Wagner and Sal Parco voted to grant the variance. The Board added on condition to their vote; if the adjacent property is ever developed residentially, then the appellant will have to put in the shield as required by the ordinance.

#### It is so Ordered

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**Appeal #11,039 (6010-206) by Thomas Scalise** concerning property located at **311 West 20<sup>th</sup> Street**. Section 205 of the Zoning Code requires 3,000 square feet per dwelling in an R-2 district, and 1,755 square feet is requested.

#### Findings of Fact

1. Appearing for and representing the appellant was Attorney Schmidt.
2. Attorney Schmidt indicated that the property in question has been used as a two-unit dwelling for the past thirty-four years. The city sewer and other municipal service departments have been collecting fees for two sites, and the tax bureau assesses it as a two unit dwelling. Attorney Schmidt also indicated that the appellant owns the property adjacent to 311 as well.
3. Mr. Scalise purchased the property last fall. The surrounding neighborhood comprises about 10-12 similar two-unit dwellings. The property was listed by

the real estate broker as a two-unit, and that there were tenants living on both floors when Mr. Scalise purchased the property. He is seeking the minimum allowance for the variance.

#### **Conclusions**

1. The City will benefit if it were able to receive tax and water/sewer revenues from a two-unit property, as the appellant claims it has been doing all along.
2. The property is one of many two-unit dwellings in the neighborhood in which it is located; therefore the nature and character of the area will not be changed if the variance is granted.

#### **Decision**

By a vote of three to two the request for a variance was denied. Board members Ron Desser, Dale Niemenski and Richard Wagner formed the majority, while members Sal Parco and Lisa Austin dissented. The chair indicated that the variance was not granted because the appellant was going to combine the properties, and therefore no variance was necessary. If the situation were to change, the appellant could re-file his request for a variance.

#### **It is So Ordered.**

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**Appeal #11,040 (1122-227) by Gerald Chase** concerning property located at **1948 East Lake Road**. The appellant wishes to open a tattoo parlor which is not a permitted use in a C-1 district.

#### **Findings of Fact**

1. Representing the appellant Gerald Chase was a business colleague, Mr. Stephan Jones.
2. Mr. Jones offered a summary of the business environment that the two have carefully considered in choosing the location that they did, and why they need the variance. According to Mr. Jones, the property has been vacant for the past five years. The two partners seek the variance to allow a business in a C-1 district; there is no history of non-conforming use for this property. Mr. Jones claimed that there are several other tattoo parlors already operating in C-1 districts.
3. According to Mr. Jones, any other location would be in competition with existing businesses; this was the only property that was both cost effective and provided a desirable business location. He claimed that they are experiencing a hardship in that there are no locations in C-2 districts that are within their price range, and did not already have existing tattoo parlors.

#### **Conclusions**

1. Tattoo parlors are not a permitted use in C-1 districts; they are permitted uses in C-2 districts, however.
2. The appellant conceded that there are other locations within the city where the business could establish residence.

3. Business considerations are the primary reason that the appellant is seeking the variance.

#### **Decision**

By a vote of three to two, the appellant was denied the variance. Board members Ron Desser, Richard Wagner and Lisa Austin formed the majority, while members Sal Parco and Dale Niemenski voted to grant the request.

Speaking for the majority, the Board chairman stated that it would be usurping the power of City Council if it were to grant a use variance for business reasons only. Further, the appellant demonstrated no hardship; there are other places within the city where the appellant could establish their business.

#### **It is So Ordered**

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**Appeal #11,041 (1122-212) by the Gertrude Barber National Institute** concerning property located at **405 Sanford Place**. The appellant has a group home which constitutes a special exception in an R-1 district. All special exceptions must be brought before the Board.

#### **Findings of Fact**

1. Appearing on behalf of the Barber Center was Attorney Jeffrey Jewell, and an official at the Home, Ms. Carry Konzus.
2. Attorney Jewell indicated that the property was formerly the personal residence of Gertrude Barber, founder of the Barber Center, and her sister. Upon the deaths of both (the sister survived Gertrude by several years), the property was passed by will to the Barber Center. It has been converted to a group home for six people – all the changes were interior. Since it will always require only one or two staff people, two parking spaces are adequate.
3. Ms. Konzus, one of the staff members, stated that the Home currently houses four people – all women, and that as a result of funding restrictions, there are no plans to expand the capacity.
4. According to Ms. Konzus, there have never been any complaints from neighbors over the years, and that the Barber Center's continuing goal is to assimilate into the community.

#### **Conclusions**

1. Group homes qualify as a Special Exception in an R-1 residential district (305.01).
2. The property has already undergone all renovations that were needed to convert it to a functioning group home. There have been no complaints from neighbors; therefore, granting the exception at this point would not alter the character of the area.

#### **Decision**

By a unanimous 5-0 vote, the Board agreed to grant the Special Exception request. The only condition is that the facility remains in full compliance with city codes, any other applicable state or federal regulation(s), and the federal Fair Housing Act.

**It is So Ordered**