

**May 11, 2010**  
**City of Erie, Pennsylvania**  
**ZONING HEARING BOARD**  
**1:00 P.M.**

The regular hearing of the Zoning Hearing Board was held on Tuesday, May 11<sup>th</sup>, 2010 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

**- MINUTES -**

**THE FOLLOWING APPEAL WAS HEARD:**

**Appeal #11,062 (4013-225) by Gannon University** concerning property located at **409 West 6<sup>th</sup> Street**. The appellant is proposing to convert a legal non-conforming use, a convent, into a combination boarding house and dormitory. The property currently encompasses two zoning designations: RLB and R-2. The boarding house is proposed for the RLB area, which is a permitted use in such a district. The dormitory is proposed for the R-2 area, which takes on RLB rules because of the convent being a non-conforming use. In RLB districts, dormitories are special exceptions; therefore the request for the conversion must come before the Board.

Additionally, the proposal violates the parking provisions of Section 305.16 (Dormitory) and 305.18 (Boarding House). Needing one (1) parking spot per four (4) residents, in addition to a required 5 (five) visitor spots, the dormitory of sixty-five (65) students would require twenty-two (22) parking spots to comply with the Code. Boarding homes require one (1) spot per boarder; five (5) boarders would require five (5) spots. Therefore, the combination of uses with the proposed occupancy levels would require twenty-seven (27) parking spaces. Gannon is requesting that the Board grant a variance to require only seven (7) spaces.

**Preliminary Matters**

Upon the hearing being called to order, and prior to the beginning of testimony, a member of the local neighborhood preservation committee, representing several concerned residents from the community, presented the Board with a petition signed by several neighborhood members, requesting a continuance on the consideration of the proposal until the neighbors have had a chance to prepare a formal opposition to present to the Board. The neighbors claimed that they had only first heard about the proposed changes when they received mail from the Zoning Office in the afternoon of the Thursday prior to the meeting, and that they have not had enough time to properly mount an opposition.

In response to the request for a continuance, Board Chairman Richard Wagner inquired of the Zoning Office officials whether the neighbors had been given proper notice. Chief Zoning Officer Armand Chimenti informed the Board that the usual notice was provided in this case, and that there were no delays in publishing notice of the hearing. Whereupon the Board chairman took a vote from the full Board on the request for continuance. By a unanimous decision, the Board voted to deny the petition for a continuance and to proceed with the scheduled hearing.

### **Findings of Fact**

1. Gannon University was represented at the hearing by their legal counsel, Attorney Joseph Messina. Attorney Messina gave the Board a brief history of the property. For the past sixty years has been used as a convent. Mr. Messina explained that the part of the facility facing West 7<sup>th</sup> Street would be the proposed dormitory, and that part facing West 6<sup>th</sup> a boarding house.
2. Dr. Antoine Garibaldi, president of Gannon University, testified before the Board. Dr. Garibaldi explained to the Board that, with the exception of five priests and one resident advisor, the proposed site would be used to house freshmen only. It is the policy of the university that freshmen not be allowed to own their own cars during their first year of study. This is to encourage the students to focus on their academic pursuits, and not have any unnecessary distractions. This, Dr. Garibaldi said, is the main reason why the appellant is asking for the variance to exempt Gannon from installing the total number of parking spaces that the Code requires. This policy is not unusual, as Mercyhurst College, for example, has a similar restriction against first-year students owning cars.
3. Also appearing on behalf of the appellant was Ms. Linda Wagner. Ms. Wagner testified as to the planning aspects that led the university to pursue the course which they are proposing. Part of the reason why the university does not want to build the new parking spaces is to preserve the “green” space that currently makes up much of the property. In addition to the ample lawn area surrounding much of the complex, there are also several religious statues and trees that Gannon would prefer to remain untouched.
4. Ms. Wagner explained that the plan is to have seven parking spaces on the Chestnut Street side, intended for use by the priests and resident advisor. She said that there would be no other changes, including none to the exterior of the structures, except to install an entrance way on Chestnut Street for the seven parking spaces. The goal, she said, was to keep the area surrounding the buildings as pristine as possible, with only a minimum of parking spaces marring the “green” area that is so desirable in the downtown city region.
5. Ms. Sheline Buehler, one of the architects who helped prepare the site plan presented to the Board, appeared to testify that the plan is accurate to scale. Upon questioning, Ms. Buehler testified that there would be twenty-four feet from the street to the front of the building facing Chestnut Street.
6. Also appearing to testify in support of the request by Gannon was City Council members Pat Cappabianca and Jessica Horan-Kunco. Mr.

Cappabianca said that he feels that Gannon is too important a member of the downtown community to not allow them the requested expansion project. He said that Gannon, together with Erie Insurance and Hamot Hospital, provide the economic activity for a downtown region which has been devoid of business for more than a generation now. As both Erie Insurance and Hamot were given exceptions for projects which they undertook, he said that it is only fair that Gannon be given the same consideration considering the benefit they provide.

7. Ms. Horan-Kunco supported the proposed variance in part, she said, because it is important to maintain the architectural integrity of the buildings involved. Ms. Horan-Kunco also indicated that she is in favor of keeping as much “green” space as possible, and appreciates the way Gannon has taken this into consideration when drafting their proposal.
8. There were, however, several voices in opposition to the proposed project, including several neighboring home owners and several private business owners.
9. Attorney Zanita Zaks-Gabriel addressed the Board in opposition to Gannon’s plan. Attorney Zaks-Gabriel’s law office has been on the northwest corner of West 6<sup>th</sup> and Chestnut Streets for several years. She said the small business owners along West 6<sup>th</sup> Street have as much right to be considered as Gannon or the other large businesses do. As Gannon has grown over the years, she said the parking situation has become a nightmare, especially during the odd-even alternate parking months. It has reached a point where her clients have no place to park. It has become common for some students to block her driveway, take up two or three spaces, and leave their cars parked in the same location for several days on end. The proposed addition would create a parking problem that would be so bad, she said, that even if Gannon did pave over all the “green” space, she doesn’t think that it would solve the problem it would create. Finally, Attorney Zaks-Gabriel pointed out that the other downtown businesses (Erie Insurance and Hamot) built their own parking ramps to address the parking shortage that their expansion projects created.
10. Two other neighbors, Ms. Janet Davis and Mr. Craig Lussier, both living within a few doors of the convent, expressed similar concerns regarding the proposed transition. The beauty of the area, they agreed, is due to the care given by the neighboring home-owners. All of the residents who addressed the Board in opposition agreed that the addition of the dormitory into the otherwise predominantly single-family dwelling area would depreciate property values. Mr. Lussier in particular expressed concerns about Gannon’s long-term plans for the area, wondering if the converted convent is just the beginning of a larger expansion project.
11. Other neighbors Mr. Dan Wolf, Mr. Gary Hanlon and Mr. Mark Adams similarly all expressed that they did not have adequate notice to present a thorough case in opposition to the plan. In particular, they all reiterated the inadequate parking situation in the neighborhood, and expressed their concerns regarding how another sixty-five (65) students would further impact the situation. Gannon, they said, has shown a poor record of dealing with

student parking in the past, and they feel they have no reason to believe that their behavior would get any better under the current circumstances.

12. Speaking as a local resident in opposition to the proposal, Attorney A.J. Adams expressed what he believes is a fundamental unfairness to the non-conforming use Code. He said that the neighborhood people who pay the taxes and use their own money to invest in the area are the ones who have little or no say in the changes proposed; meanwhile, non-profit entities like Gannon receive all the benefits of the Code while being responsible for creating hardships on the residents and altering the character of the neighborhood.
13. The remaining residents who spoke in opposition to the proposal, Ms. Paula Wineberg, Ms. Ann Nesgoda, and Ms. Heidi Miles Wertz, all likewise expressed their concerns about the traffic/parking problems, the safety problems posed by unruly college students, and the overall negative effect that the proposed dormitory would create for the neighborhood. The dynamics of the close-knit community would be disrupted, they said, by replacing a quiet, peaceful convent with a large college dormitory.
14. In response to the several opposition witnesses, Gannon's Attorney Joseph Messina offered a rebuttal to the several negative comments regarding the proposed dormitory. He pointed out that the neighbors themselves presented inconsistent statements with respect to the parking situation: half of them, he said, wanted to retain the "green" space surrounding the convent, and the other half seemed to indicate that their main concern was the lack of adequate parking, implying that the neighbors wanted Gannon to pave over the lawns and "green" space. Messina further expressed that Gannon complied with all the non-conforming use requirements as outlined in the City Zoning Ordinance.

### **Conclusions**

1. Section 301.20 of the City Zoning Ordinance allows for Non-Conforming Uses of Structures, such as the one proposed by the appellant. The Code permits the R-2 District to allow the permitted uses, special exceptions, or conditional uses of an RLB District. Dormitories are a Special Exception in a RLB District, pursuant to section 305.16 of the Code.
2. Lack of adequate parking is a major concern in the already congested neighborhood.
3. Dormitories, a special exception in an RLB District, have a parking provision under section 305.16(c) under the Code, which requires one (1) off-street parking space per four (4) residential occupant, plus an additional five (5) spaces for visitors

### **Decision**

The Board held two separate votes: 1) to permit a dormitory as a special exception; and 2) Gannon's request for a variance to allow fewer parking spaces than that required in the Code.

1. By a unanimous decision, with member Lisa Austin absent, Board members Richard Wagner, Ron Desser, Mike Hornyak and Glenn Duck all agreed that the ordinance allows the legal non-conforming use requested by the appellant. Gannon is permitted to convert the convent into a combination dormitory and boarding house.
2. By a unanimous decision, the Board rejected the appellant's request for a variance to have fewer parking spaces. Each member provided similar rationales for their votes. Ron Desser pointed out that putting in the required 27 spaces would use up less than a quarter of the available land. Members Mike Hornyak and Glenn Duck both agreed that parking is too important of an issue in this case, and that Gannon should be required to take some steps to address the parking shortage. Similarly, Chairman Richard Wagner indicated that Gannon must try to be a good partner in this matter, and attempt to relieve some of the anticipated congestion with the parking problem.

**It is So Ordered.**

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