

**June 8, 2010**  
**City of Erie, Pennsylvania**  
**ZONING HEARING BOARD**  
**1:00 P.M.**

The regular hearing of the Zoning Hearing Board was held on Tuesday, June 8<sup>th</sup>, 2010 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

**- MINUTES -**

**THE FOLLOWING APPEALS WERE HEARD:**

**Appeal #11,063 (3125-1280)** by **Klein Plating** concerning property located at **1624 West 21<sup>st</sup> Street**. The Appellant is proposing to construct a parking lot, which is not a permitted use in an R-1 District.

**Findings of Fact**

1. Appearing on behalf of Klein Plating were the company's C.E.O. Mr. Larry Dudenhofer, and President, Mr. Joseph Dudenhofer. Larry Dudenhofer explained to the Board that the company is requesting the variance with the hopes of providing additional parking, which has always been a problem, for their current employees and for those they hope to hire in the near future.
2. Joseph Dudenhofer indicated that the company as it is currently situated is land-locked, and when the opportunity to purchase the adjacent property came up they jumped at the chance. The property had an abandoned, dilapidated house on it, which the company had demolished shortly after purchasing the property, at a cost of approximately six thousand dollars.
3. Klein Plating currently employs 52 people, and they hope to hire an additional five to eight more. They presently have 43 parking spaces, as required by the Code, and hope to use the additional space to create parking for the additional employees.
4. Both representatives for the Appellant addressed the issue of how the lights from the new parking would affect the company's neighbors. They indicated that their plans include constructing a screen, likely in the form of a tall shrubbery, to protect the adjacent home owners from the lights and noise created by the new parking area.
5. In addition to expressing concerns about the screen, Board member Lisa Austin also inquired of the Appellants why they went ahead and demolished the house prior to receiving the variance. Mr. Larry Dudenhofer responded by pointing out that the house was an existing problem in the unattended state that it was in. Joseph Dudenhofer added that when the opportunity to

purchase the property, and then to have the abandoned house razed, came up, the company decided to act before the chance was lost. He indicated that if the variance for the parking is denied, then the vacant land can be used in other ways by the company.

6. With respect to the negative effect on the neighbors, Mr. Dudenhofer said that the company went door to door to speak to as many neighbors as they could, and received no objections. Additionally, Mr. Armand Chimenti, Chief Zoning Officer for the City Zoning Office, told the Board that he sent out approximately sixty-five letters to neighbors informing them of the planned parking lot project. There were no witnesses in opposition who appeared to testify against the plan.
7. Board Chairman Richard Wagner and member Lisa Austin proposed a condition on the granting of a variance that the company protect as much “green space” as possible. Zoning officials informed the Board that a barrier between the lot and the adjacent residence is a requirement of off-street parking, as are barriers along the frontage except where a driveway exists. These requirements were agreed upon as acceptable by the Board.

### **Conclusions**

1. According to the Erie Zoning Ordinance, any parking lot that borders a residential property must have screening.
2. The Appellants have indicated to the Board that they have a well designed landscape that will adhere to the Code and maintain adequate green space in the partially residential area.

### **Decision**

By a split two to one vote, the Board approved the request for the use variance to construct a parking lot, with the condition attached. Board members Richard Wagner and Mike Hornyak, both citing the “green” barrier strip condition, voted to approve the Appellant’s request. Member Lisa Austin, not convinced that the Appellant’s landscape design was adequate, dissented.

**It is So Ordered.**

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**Appeal #11,064 (1012-224) by Rick Konkol and Dung Pham** concerning property located at **201 German Street**. The Appellants propose to open an art gallery / tattoo parlor. Tattoo parlors are not a permitted use in a W-R District.

### **Findings of Fact**

1. Mr. Rick Konkol appeared to testify about his proposed business. Mr. Konkol and Mr. Pham are attempting to open what they describe as an “art gallery” and tattoo parlor. He indicated that they have been looking for a suitable property to purchase for their unique business; the site at 201 German is perfect for their business, and they believe benefits the artistic community in Erie.
2. Both Mr. Konkol and Mr. Pham indicated that theirs would not be a traditional tattoo parlor, where the focus of the industry today is attracting a wider audience than in the past. Instead, their business would be seeking a more discriminating clientele, who they would screen carefully and take only by appointment. This exclusive clientele, Mr. Pham said, would primarily consist of people who are looking for what he referred to as “art work”, and not a conventional tattoo.
3. Their intention is to keep the neighborhood in as nice a condition as it is in now. They have not yet leased the building, and only will if they receive the variance.
4. Appearing in support of the Appellants was the property’s landlord, Mr. Dan Serafin. Mr. Serafin told the Board that his family has been invested in and concerned about the upkeep of the neighborhood for generations, and still own and operate a soup market there. He indicated that his family will only rent their properties to tenants/businesses that will maintain the high standard of the neighborhood.
5. Board member Lisa Austin questioned the Appellants regarding the reaction they have received from neighbors, and what other sites they may have considered. Mr. Konkol admitted that although they have made attempts to contact their prospective neighbors, the Appellants have not had much success reaching them, and have actually spoken to very few. He also admitted that they have not looked for comparable sites in commercially-zoned districts because of the particular qualities of the building at 201 German. Mr. Pham added that they deliberately have avoided seeking a site in a strip or other congested area.
6. Several neighbors appeared to speak in opposition to the proposed variance. Neighbors Joseph Koehle and Judy Alex both applauded the Appellant’s determination and enthusiasm for the business, and both favored renovation efforts in the area. However, they both felt strongly that the zoning restrictions should be honored, and that the tattoo parlor would be better suited downtown or in some other commercial area.
7. Ms. Kristi Lewonas indicated to the Board that the location has a history of troublesome tenants, and believes that this has made it hard for neighboring landlords to find suitable tenants. Mr. Max Gerlach, speaking for himself and

for the Church of the Holy Trinity on East 3<sup>rd</sup> and Holland Streets, likewise expressed a concern with how a tattoo parlor would affect prospective tenants for neighboring property owners.

8. The local neighborhood watch coordinator, Mr. Del Birch, indicated to the Board that he did not believe the Appellant's assertions that they have done due diligence in attempting to contact neighbors, police and other representatives of the area who may not have been supportive of their efforts. Mr. Birch also expressed concern about the blacksmith aspect of the gallery (Mr. Konkol indicated that he also produces metal art objects), and the environmental and health concerns the blacksmith activity may create.
9. Mr. Thomas Smith of Niagara Real Estate Company testified that the Appellants were made aware of the fact that the location was non-conforming, and that if they purchased the property they would be doing so with the risk of getting special permission to open their business there.
10. In response to the criticisms and concerns, Mr. Konkol said that their business would have no negative affect on the neighborhood. They plan to keep client's appointments to a minimum at any given time, and that there would be no traffic or parking problems arising from the new business. Additionally, he said that neither the blacksmith art work (which he said would be contained to the basement area), or any other aspects of the business would create any noise, fumes or other disruptive or dangerous conditions to the other neighbors.

### **Conclusions**

1. The Appellant's business description is very subjective; it seems to be best described as a specialized boutique tattoo parlor in an art gallery setting.
2. Tattoo parlors are not permitted uses in a RLB district. The property is zoned W-R but as a legal non-conforming use, it takes on the characteristics of RLB per Section 301.20 of the Zoning Ordinance 80-2005
3. The Appellants did not consider alternative sites in suitable commercially-zoned areas.

### **Decision**

By a unanimous three to zero decision, the Board rejected the requested variance. Board member Mike Hornyak indicated that since tattoo parlors are restricted by the Code he could not vote for the request, even though art galleries per se may not be restricted. Member Lisa Austin and Chairman Richard Wagner both agreed that the Appellants should have better investigated suitable sites in C-2 districts. Mr. Wagner adding that in failing to do so the Appellants have effectively created their own hardship.

### **It Is So Ordered.**