

August 10, 2010
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held on Tuesday, August 10th, 2010 at 1:00 p.m., in the City Council Chambers, Erie Municipal Building, 626 State Street.

- MINUTES -

THE FOLLOWING APPEALS WERE HEARD:

Appeal #11,066 by Nicole Ebisch concerning property located at **2220 Eastlawn Parkway (5142-310)** in an R-1A District. The appellant is proposing a home occupation for a medication consulting business and requests client traffic, which is not permitted.

Findings of Fact

1. Appearing to testify on her own behalf was the appellant, Nicole Ebisch. Ms. Ebisch described herself to the Board as a licensed pharmacist who has most recently worked at WalMart and the Veteran's Administration Hospital pharmacies. She said that in the course of her duties she has identified a need in the community, primarily among the elderly and low income patients, for assistance with medicine- related issues.
2. Ms. Ebisch's business plan is to meet with clients at her home, scheduling appointments there so as to keep the overhead costs down by not having to rent a facility. Examples of the issues she would discuss with the clients included counseling them about their medications, adjusting their medications, identifying potential dangerous interactions, and finding cheaper, comparable medications, etc... Ms. Ebisch would provide a comprehensive medication review with the client, working in conjunction with their physicians, health care providers and insurance companies. She anticipates referrals from existing pharmacies where she is known, from health care providers, nursing care facilities, etc...
3. As for the facility itself, Ms. Ebisch stressed that in order for her plan to be successful, and make sense economically, she would almost have to use her home itself. She said that under some circumstances she could meet more than one client at a community facility (like a church auditorium), but it would be more convenient and cost effective for her to work from home. She said that she does not foresee ever having more than four clients in a day; she could meet people in the evening or on weekends, but for the most part expects to keep regular business hours.
4. The Board questioned Ms. Ebisch about the parking situation in her home and street. Ms. Ebisch said that she had a driveway that could be used by clients. She said that

- she has three people living at her home full time, and five occasionally. She also indicated that she will likely keep her part-time job, so she does not believe that her business proposal will present a parking problem at any point during the week.
5. In opposition to appellant's request was neighbor Mike Connelly, who lives across the street. Mr. Connelly stated that there are more likely five, not three people that he thinks live at the home. He said that when all the people are there the driveway is usually full, and the parking spots on the street are usually occupied as well. He described the parking situation in the winter as a nightmare. Mr. Connelly claimed that the additional parking and foot traffic would definitely cause a disturbance to him and other neighbors. In response, Ms. Ebisch claimed that there is never five cars belonging to people staying at her house, and reiterated that the proposed business will not produce any new parking problem.

Decision

By a unanimous 4-0 vote, with member Glenn Duck abstaining, the Board voted to deny the appellant's request for a variance. The Board applauded the idea that Ms. Ebisch has, but felt that she did not provide adequate rationale, under Section 508(9) of the Code, necessary to grant the variance. Board member Ron Desser said that he did not see any hardship or unique circumstances that would allow for a variance. The same reasoning was given by members Richard Wagner, Lisa Austin and Mike Hornyak, all voting to deny the variance.

It is So Ordered.

Appeal #11,067 (1052-100) by the Filippi Partnership concerning property located at **138 West 13th Street (3008-216)** in a C-3 District. The appellant is leasing property operating as a tattoo parlor, which is not a permitted use in C-3 according to Section 204.17.

Findings of Fact

1. Filippi Partnership was requesting a variance for the tattoo parlor operating on their property, claiming that the existing law is unduly restrictive in that it permits "tattoo shops" only in C-2 districts. This, Filippi claimed in their application, amounts to exclusionary zoning, as it severely limits the number of potential sites for such a business with "no rational or reasonable basis" for the restriction. Further, Filippi claims that granting the variance will not alter the character of the neighborhood nor impair the development of adjacent properties.
2. Appearing on behalf of the appellant was Attorney Richard Filippi, who opened his remarks by orally amending the appeal, claiming that what the appellant is really seeking is a vote on whether tattoo parlors should be classified as a permitted use in the C-3 district. Tattoo parlors are Permitted Uses in C-2 Districts, and under Section

- 305.40, Filippi claimed, it is a matter for the Zoning Hearing Board to determine whether tattoo parlors should be considered a Permitted Use in the C-3 District.
3. Attorney Filippi claimed that the Ordinance itself needs clarification, specifically because “tattoo parlors” are not defined in the Code. Other businesses, such as massage parlors, operate under “conditional uses” in C-2 Districts because there are definitions in the Code for these type businesses. Likewise, according to Atty. Filippi, other businesses like adult book stores have existed in C-3 Districts for years, because these businesses have well defined definitions in the Code. However, since the Code fails to define what a tattoo parlor is, Filippi is asking the Board to interpret the Act (as the Board is permitted to do under Section 305.40).
 4. Another ambiguity, Atty. Filippi said, is that tattoo parlors routinely provide other goods and services, such as selling art works and t-shirts. Therefore, tattoo businesses may be classified under other headings in the Code.
 5. Since the appellant’s tattoo parlor business has been at its present location there have been no incidents or violations. The hardship for the business would be the cost and expense of relocating the business outside the city; a hardship which the Appellant claims is not of their making.
 6. Speaking in favor of the Appellant was Mr. Don Sornberger, who runs the day to day operations of the tattoo business. Mr. Sornberger said that it is not just a tattoo business. Answering questions from the Board, Mr. Sornberger said that anywhere from 10-20% of their business comes from the sales of other merchandise, or other services like piercing. They hope to expand that percentage by offering more goods, such as soda and candy, for patrons and their guests.
 7. In addition to Mr. Filippi and the other speakers who testified, several Board members themselves expressed the opinion that the law, as it currently exists, is outdated. It was stated by Board Chairman Richard Wagner that the remedy for this should be with City Council, and it was expressed by several, including some Board members, that this issue is expected to be brought before City Council again soon

Conclusions

1. Tattoo parlors are not defined in the Code, and are not Permitted Uses in C-3 Districts.
2. Under the Municipal Code, a Special Exception exists in C-3 districts for “Business Uses Similar to Permitted Uses in this District not Otherwise Specified (305.40)”. Section 305.40 states that “Commercial Uses Similar to Permitted Uses in “C-2” and “C-3” Districts Not Otherwise Specified *shall be referred to the Zoning Hearing Board for interpretation and approval.* Tattoo parlors are Permitted Uses in C-2 Districts.
3. The nature of the tattoo service industry has changed dramatically in the last several years, and the Code as written may be amended.
4. The categories of Personal Services and Professional Services are Permitted Uses in C-3 Districts, and are both defined in the Code; however, in neither definition does the business of “tattoo parlor” appear.

5. Several parties have indicated to the Board that they plan to petition City Council to amend the City Ordinance with respect to tattoo parlors; therefore the Board is anticipating that Council may consider new or amended Codes in the near future.

Decision

The Board unanimously denied the request for the use variance. Board member Ron Desser said that while he agrees the ordinance does not recognize that tattoo parlors provide a personal service that is mainstream in modern society, he disagreed with the appellant that the ordinance was ambiguous. To the contrary, he said that the Code is specific, and tattoo parlors are not listed as Permitted Uses in C-3 Districts. Likewise, members Glenn Duck and Mike Hornyak concurred with Mr. Desser, indicating that they had to vote to refuse the variance, but they felt that the proper procedure is to change the Code as part of the public debate. Citing the same reasons, members Richard Wagner and Lisa Austin also both voted to deny the variance.

Mr. Desser suggested, and the Board unanimously voted to approve, a recommendation for City officials to issue a temporary stay which would allow the appellant to remain open pending a proposal by the appellants to City Council to amend the Code. The Board believes the petition to Council will spark a public debate that could produce a curative amendment which would allow tattoo parlors to operate as unregulated as other personal services.

It is So Ordered.

Appeal #11,068 by Wellie & Ida Yaple concerning property located at **735 West 26th Street (6041-129)** The appellant is operating a tattoo parlor, which is not a permitted use in C-1 according to Section 204.15.

Findings of Fact

1. Mr. Wellie Yaple appeared to testify on his own behalf as the appellant. He is not the operator of the tattoo parlor, but the owner of the building where the business is located, on the southeast corner of West 26th and Liberty Streets. Mr. Yaple indicated that the operator of the tattoo business, Mr. Douglas Flores, is the first person to attempt to rent the location since the previous tenant left in 2009.
2. Mr. Yaple indicated that he does not want to change the zoning laws, nor alter the character of the neighborhood, and believes that this business would do neither. The location, a corner house with businesses across the street on both sides, would still have other residential dwellings in the location. The location also provides ample parking, as there is a parking lot in the back of the property (facing Liberty), which Mr. Yaple indicated provides enough space for any overflow traffic the tattoo business produces.
3. Mr. Douglas Flores addressed the Board and testified that he has been in the tattoo business for about ten years. Previously, he worked at another tattoo parlor down the

street, and rents from Yapple in part because Mr. Flores believes the location is excellent for the purpose. He indicated that it is a very small business, and therefore requires that he use moderately priced rental property. If he had to locate a property in a more heavily oriented business area such as C-2, it would be cost prohibitive.

4. Mr. Flores said he employs two other people, both of whom, like himself, are fully licensed to operate as tattoo artists. Board chairman Richard Wagner commented that while he sympathized with the difficulties associated with opening a new business, and he supports Mr. Flores' efforts, this is the third time in the last two hearings where people did everything necessary for the business (e.g. approved funding, received proper licensing, etc...), but failed to secure a properly zoned business location. Mr. Wagner said that this should be the first, not last step that a prospective business owner takes, but for some reason has been the crucial step that everyone seems to ignore.

Conclusions

1. Tattoo parlors are not a Permitted Use in a C-1 District.
2. The term "tattoo parlor" is not defined in the Code.
3. Both Personal Services and Professional Services are listed as Permitted Uses in C-1 Districts, however, tattoo parlors are not among the services listed in the definitions for either in the Code.
4. Several parties have indicated to the Board that they plan to petition City Council to amend the City Ordinance with respect to tattoo parlors; therefore, the Board is anticipating that Council may pass new or amended Codes in the near future.

Decision

The Board, citing similar reasons as the previous case, unanimously rejected the requested variance. Board members Ron Desser, Glenn Duck and Mike Hornyak all indicated that there was no good reason presented to ignore the law, and that they could not ignore the restrictions that do not list tattoo parlors as permitted uses. Members Lisa Austin and Richard Wagner, while also using the same rationale, added that the proximity of the building to residential neighborhood (on 26th Street to the east, and on Liberty Street to the south) also factored into their decision.

Similar to the previous decision, the Board by a four to one vote (with member Lisa Austin dissenting) approved a recommendation for City officials to issue a temporary stay of enforcement to allow the tattoo shop to remain open pending a pursuit by the appellant of another remedy through City Council.

It is So Ordered.

Appeal #11,069 by Carla Ihli and John Higham concerning property located at **1405 East Lake Road (1105-209)** in an RLB District. The appellant is operating a tattoo parlor, which is not a permitted use in RLB according to Section 204.14.

Findings of Fact

1. The appellants are landlords and part operators of the building in question that houses, in addition to the tattoo parlor, a martial arts academy and pest control and exterminator.
2. Appellant Carla Ihli appeared to testify and read into the record the statement/letter that was submitted with the appellant's application. The important points in the statement are:
 - a) Many other businesses operate in the immediate area, including a pharmacy, gas station, car wash, tavern, etc...;
 - b) The building is located on a state highway which serves as a major transportation corridor – it is across the street from the former Hammermill Paper site, and has operated as a commercial enterprise for over fifty years;
 - c) The business has the total support of the neighborhood watch group. A signed petition from neighborhood residents was presented. The neighborhood group credits the tattoo parlor with reducing acts of vandalism from youth gangs who frequent the area in the early evening hours;
 - d) The Pennsylvania Dept. of Labor and Industry has certified the property as a certified commercial building.

For all the foregoing reasons, the appellants assert that granting the variance would not alter the character of the neighborhood nor substantially impair the appropriate use or development of adjacent properties.
3. The appellants have invested their life savings into improving this business, and stand to lose valuable time, money and advertising. Additionally, the tattoo shop employs other people as artists, maintenance and custodial personnel etc...;
4. In addition to Ms. Ihli, the other appellant, John Higham, testified about the nature of the business. He said that about 55-60% of the income is derived by the pest control business and martial arts school. Their hopes are to expand the tattoo business by increasing the volume of clients, but also by selling more t-shirts, candy, etc....;
5. Mr. Jeffrey Fenno, a tattoo artist at Erie Eclectic (the tattoo parlor in question), appeared to testify that this tattoo business is his sole means of support. Mr. Fenno helped the landlord Mr. Higham open the shop in November, 2009, and indicated that the neighborhood as a whole benefits from the tattoo business being there.
6. Mr. Darrell Fisher, Ms. Judy Smith, Mr. Dillon Higham and Mr. Jason Timlin all addressed the Board in support of the appellant's request. Mr. Higham, like Mr. Fenno previously testified, indicated that he works at Erie Eclectic part-time, and that the income is helping him pay for college. Ms. Smith is a neighbor and customer of the business, and said that she hopes the tattoo parlor stays both because they are good neighbors, and because the service they provide is top quality. Mr. Fisher and Mr. Timlin both spoke generally about allowing tattoo businesses to operate without excessive regulations. Mr. Fisher pointed out that the appellants refurbished an unusable, non-productive building, transforming it into a solid business in the neighborhood. Mr.

Timlin testified that he has been in the tattoo business for seventeen years (moving here three years ago), and that no place else that he has lived has the business environment for tattoo parlors been so hostile. He said that tattoo businesses in this area suffer from outdated ideas, and that generally they are a good investment that are thriving in other locations. Upon questioning from Board member Ron Desser, Mr. Timlin did acknowledge that in other places where he set up tattoo parlors he investigated the zoning requirements prior to purchasing and setting up the business.

7. The appellant John Higham indicated to the Board that he believes the site is improperly zoned. He said that for decades the location was across the street from one of the largest manufacturers in the area. There are businesses across the street, and on either side of his property on East Lake Road. Mr. Higham asked that the Board take this into consideration when making their decision.

Conclusions

1. Tattoo parlors are not defined in the Code, and are not Permitted Uses in RLB Districts.
2. The appellant's business combines the tattoo parlor with an exterminator service and a martial arts school. As a result of the other businesses, other Permitted Uses in RLB Districts may apply.
3. The nature of the tattoo business has changed dramatically in the last several years, and the Code as written may be amended to include tattoo parlors as personal services.
4. Several parties have indicated to the Board that they plan to petition City Council to amend the City Ordinance with respect to tattoo parlors; therefore the Board is anticipating that Council may pass new or amended Codes in the near future.

Decision

By a four to one vote the Board denied the appellant's request for a variance. Board chairman Richard Wagner said that once again, the appellant did not investigate whether the area was properly zoned for tattoo parlors prior to undertaking the business. Likewise, Board member Ron Desser said that while he believes the law probably does not recognize tattoo parlors as mainstream services, the law nonetheless is clear, and the property owners had not only the opportunity but also the responsibility to investigate the law prior to opening the business. For the same reasons, members Glenn Duck and Lisa Austin both voted to deny the variance. Member Mike Hornyak dissented, and voted to grant the variance. Mr. Hornyak stated two reasons for his vote: that he believes that the property is improperly zoned, and that the appellants are operating three businesses, not just a tattoo parlor.

Once again the Board voted unanimously to recommend a stay that would allow the appellants to continue to operate their tattoo business pending the expected petitions to City Council, and possible changes in the law by Council regarding tattoo parlors.

It Is So Ordered.