

September 14, 2010
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held on Tuesday, September 14, 2010 at 1:00 p.m., in the City Council Chambers, Erie Municipal Building, 626 State Street.

- MINUTES -

THE FOLLOWING APPEALS WERE HEARD:

Appeal #11,070 by Housing and Neighborhood Development Services (H.A.N.D.S.) concerning property located at **502 East 12th Street (2027-121)** in an R-2 District. The appellant proposed a 10-unit dwelling, which is not a permitted use in R-2 according to Section 204.12.

Findings of Fact

1. Appearing on behalf of the Appellant was Mr. Matthew Good, manager of Housing and Neighborhood Development Services (H.A.N.D.S.), the sponsor organization for the Flagship City Apartments. H.A.N.D.S. seeks to provide modern, low-income housing for a full spectrum of disabled persons, and in particular make an attempt to place people with chronic mental health problems.
2. Working from a federal H.U.D. grant, H.A.N.D.S. is proposing the conversion of a current office complex at 502 East 12th Street into a low-income residential building consisting of ten 1-bedroom apartments. According to Mr. Good, the size of this particular parcel is unique to the neighborhood and offers a particular opportunity for people with disabilities in the area. The proposed location is an office building with approximately fifteen employees on site, and four maintenance vehicles in use each day. By reducing the number of employees and staff, Mr. Good said that the planned renovation would diminish traffic in the area, with the added benefit of increasing the amount of “green” space.
3. Mr. Good believes that authorizing the variance will not alter the neighborhood or change the character of the district in which the building is located. The building itself will undergo only a small addition, needed to accommodate some of the proposed units. This additional space is expected to be achieved through the demolition of several existing garage structures on the property.
4. In addition to Mr. Good, the chief architect for the project Jeff Kidder testified in support of the project. Mr. Kidder presented the Board with a site plan drawing, which illustrated the plan’s compliance with zoning requirements for setbacks, square footage and parking. Overall, parking problems and traffic will be diminished, as the commercial spaces are replaced by residential spots and the

maintenance staff is reduced, thus creating more natural green area. According to Mr. Good, the green space would be more aesthetic in nature, and would not be used for playgrounds or other facilities.

5. Mr. Kidder explained to the Board that H.A.N.D.S. is only requesting a use variance at present. He believed that all other zoning requirements (height, density, footage, etc....) are being met, though the Zoning Office had not yet reviewed the site plan. He said that he has spoken with officials from the Zoning Office, but neither he nor Zoning Official Steve Fabian are aware of whether the site has ever received any variances in the past.
6. Mr. Good was questioned about the make-up of the operating staff if the building and project were completed. Mr. Good explained that while there would be no H.A.N.D.S. offices or professionals on site, there would be a full-time property manager and staff supervisor as well as counselors available to the residents. Although not living on site, Mr. Good assured the Board that the manager would be on call twenty-four hours.
7. Appearing to testify in opposition to the project was Ms. Estella Sansom. Ms. Sansom is a landlord who owns and operates a two-unit property on the same block. She is concerned about the type of tenants that the new building is likely to attract, indicating that in the past, Stairways and other community developers have not followed up on promises to police their tenants properly. Her concerns were that if nobody were in place to supervise a disruptive group, her tenants may have reason to leave.
8. In response to Ms. Sansom's concerns, Mr. Good reiterated that a full-time manager would be on duty at all times, and that neighbors could contact the manager anytime. He said that while there is no formal policy for dealing with disruptive tenants, H.A.N.D.S. does investigate all complaints on a case by case basis. Additionally, Mr. Good said that all prospective tenants undergo an intensive screening process, including credit checks, prior history etc... Mr. Kidder added that in the previous projects that he worked on using federal grants like this, there were regular six, nine and twelve month inspections that have never revealed any problems.

Conclusions

1. One, two, three, or four unit dwellings are permitted uses in R-2 Districts. The proposed residential building would house ten one-bedroom apartments.
2. The Appellant is requesting a use variance only; the chief engineer for the project believes that the building will be in compliance with all other dimensional zoning regulations in the City Ordinances.
3. The residential facility should not alter the character of the neighborhood, and will actually reduce traffic at the location.

Decision

The Board unanimously approved the use variance to build the 10-unit building. Board members Glenn Duck and Mike Hornyak both indicated that they voted as they did because it was for a use variance only; the project is still subject to approval of all the other dimensional

ordinance by the Zoning Office. Member Ron Desser said that while he understands that there are still a few changes that must be made to the proposed site plan, the new use for the location would be less intrusive than the current occupants. For all the same reasons, members Lisa Austin and Richard Wagner also voted to approve the appellant's request.

It is So Ordered.

Appeal #11,071 by Cold Victory LLC concerning property located at **2508 Peach Street (6004-107)** in a C-4 District. The appellant has a unit operating as a massage parlor, which is not a permitted use in C-4 according to Section 204.18.

Findings of Fact

1. Appearing on behalf of the Appellant was Mr. Chris Gerhart, one of the partners in Cold Victory, a company that purchases and renovates buildings in the mid-city area. He is appearing to testify on behalf of one of his tenants who operates HMS Northcoast, a massage parlor at the 25th and Peach Street location.
2. Mr. Gerhart testified that his company's mission over the past several years has been to locate and identify depleted properties in the mid-town section of the city, and renovate these buildings. He said that after learning about the nature of the HMS Northcoast business he was prepared to evict the tenant and further renovate the property. This changed, he said, after he met the proprietor.
3. Mr. Gerhart presented an overview photograph of what he referred to as the "Big Picture". In the photograph Mr. Gerhart identifies six different known massage parlors or similar businesses. His contention was that HMS Northcoast is being improperly targeted, as there are so many similar businesses operating in nearby commercial districts of the same zoning or others that also do not allow massage parlors. This, he said, amounted to discriminating enforcement of the Code because those businesses remain open despite being in the wrong zone.
4. Attorney Jay Shimek of the law firm of Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc. appeared on behalf of their client, St. Vincent Health Center, and submitted a legal brief to the Board in opposition to the variance request. Attorney Shimek was allowed by the Board to question Mr. Gerhart, as well as presenting two witnesses from St. Vincent.
5. During questioning by Attorney Shimek, Mr. Gerhart testified that he purchased the building in January, 2010, and that HMS Northcoast had been in that location for about three years. He acknowledged that the business is a massage parlor, and does not claim to provide legitimate massage therapy; the business operates daily from 10:00 a.m. to 10:00 p.m. He is not aware of how many employees the business has. Mr. Gerhart admitted that the massage parlor is not the only use for the location, and that he could find other tenants who operated different businesses that would be suitable for the property.

6. Mr. Shimek presented Mr. Dennis O'Brien, vice president of St. Vincent Health Center for 21 years. Mr. O'Brien presented a plot plan for the St. Vincent corridor, which includes the area where the World War II memorial is located. He testified as to the negative effect that HMS Northcoast has on this area.
7. Also appearing was Ms. Arlene McMahan, director of the child care center for St. Vincent Health Center for the past five years. The facility has been in its current location on West 25th Street, behind HMS Northcoast, since 1992. The center provides day care for roughly 60 children, ranging in age from six weeks to five years, and operates from 5:30 a.m. to 6:00 p.m. daily. She indicated that the child care center is what is known as a Star 4 facility, and provides more than traditional day care operations. The facility provides child development and an educational setting for the children.
8. Ms. McMahan presented several photo exhibits to show the day care facility and how it is affected by HMS Northcoast. She testified that in just the past year there have been broken beer bottles and used condoms in the children's play area, and bee-bee shots fired into the facility. Upon questioning by Mr. Gerhart, Ms. McMahan admitted that there is no direct evidence that the dangerous conditions and troubling behavior originated only from patrons of the massage parlor.
9. In addition to the witnesses presented by Attorney Shimek, Father Larry Richards, from St. Joseph Catholic Church on West 24th and Sassafras Streets, appeared to testify in opposition to the proposed variance. Father Richards said that there are five massage parlors in the area around St. Joseph's parish, which he claimed was "bringing the neighborhood down." He indicated that St. Joseph's parish has spent over two million dollars for neighborhood improvement, and that the presence of HMS Northcoast and the other similar businesses are defeating those improvement efforts. Father Richards said that he has people coming to the church to pray at all hours, and that some parishioners have expressed their fear to him of being harassed by Northcoast's clientele.
10. The Board allowed both Mr. Gerhart and Attorney Shimek to make closing remarks summarizing their positions. Mr. Gerhart reiterated that his willingness to invest in and efforts to renovate properties have improved the area. Attorney Shimek summarized his client's (St. Vincent Health Center) reasons for opposition to the variance request. He added one other reason why the massage parlor should not be permitted to operate in its location - specifically that there are schools within 750 feet of the property. This, he said, violated the City Ordinance governing the restrictions on massage parlors.

Conclusions

1. HMS Northcoast is operating exclusively as a massage parlor, and is in a C-4 District. Massage parlors are not a permitted use in C-4 Districts.
2. Representing the Appellant, Mr. Gerhart admitted that he would have no problem finding another suitable tenant other than a massage parlor for the property at 2508 Peach Street.

3. The Appellant did not demonstrate any hardship that the Ordinance requires in order for the Board to grant the variance request.

Decision

By a unanimous vote, the Board denied the request for a variance to allow the Appellant to continue to operate a massage parlor in the property in question. Members Glenn Duck and Mike Hornyak both said that they did not believe that the Appellant established a hardship, and that there are other districts where they could move to in order to continue to operate their business. Member Ron Desser likewise indicated that the business is in the wrong zone. Board chairman Richard Wagner and member Lisa Austin both applauded the Appellant (Mr. Gerhart) for the renovation efforts he has undertaken; however, for the same reasons as stated by the other members, they too voted to deny the variance.

It is So Ordered.