

October 12, 2010
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held on Tuesday, October 12, 2010 at 1:00 p.m., in the City Council Chambers, Erie Municipal Building, 626 State Street.

- MINUTES -

THE FOLLOWING APPEALS WERE HEARD:

Appeal #11,072 by Carletta Tate concerning property located at **206 Liberty Street (4027-206)** in a W-R District. The appellant proposes to operate a group home, which is a Special Exception according to Section D under the definition of “Family” and Section 305.01 of the City Ordinance, and therefore must be presented to the Zoning Hearing Board for approval.

Findings of Fact

1. Appearing to testify on her own behalf was the applicant/petitioner, Ms. Carletta Tate. She lives at 206 Liberty Street, and currently operates what she describes as a “Personal Care Home” in that location. Ms. Tate is appearing before the Board requesting a Special Exception to allow her to expand the size of the group home from its present occupancy of three residents, to possibly as many as eight.
2. Ms. Tate read a prepared statement into the record, in which she described to the Board her qualifications, the general description of the group home, and the governmental regulations – federal, state and local – that governs it. According to Ms. Tate, a personal care home is a facility that provides food, shelter and personal assistance to adults for a period of time that exceeds twenty-four hours, but who do not require the services of a long term care facility. In particular, Ms. Tate said that her clientele would consist exclusively of adult individuals with serious mental disabilities, and senior citizens.
3. Currently Ms. Tate is working as a Habilitative Specialist through the Erie County Care Management and the Gertrude Barber Center. She indicated to the Board that she is qualified as a personal home care administrator and is awaiting licensing from the state Department of Public Welfare. If permitted, she plans to expand the house from a one to a two floor facility capable of caring for up to eight people (not counting herself; she would reside in the basement area). Ms. Tate said that she sent a letter of intent to all of her neighbors, and although there were some complaints, generally she has the approval of the residents in the area. In addressing the apprehension to the letter expressed by some of her neighbors, Ms. Tate indicated that in addition to her living on site, she plans to hire additional health care assistants;

- further, she said that all applicants would undergo a stringent background check prior to being admitted to live at the home.
4. All four Board members (member Glenn Duck recused himself from the case, as he is related to the applicant and wanted to avoid a conflict of interest) questioned Ms. Tate about the specifics of the living arrangements and layout of the home. Ms. Tate said that the current license that she holds permits her to care for up to eight individuals. If permitted, she plans renovations that would allow for four people on each floor. The residents would share two common kitchen and bathroom areas (one on each floor). There are now three bedrooms total, with room for two more; the bedrooms she believes are each about sixty square feet. Even with a full capacity of residents and staff, and allowing for visitors, Ms. Tate claimed that she does not anticipate any overcrowding or parking problems.
 5. At least three neighborhood residents appeared to testify in opposition to the project, each claiming that they spoke not only for themselves, but for other neighbors as well. Mr. Sal Buttice appeared and said that he never received any official notice from city officials, and only recently became aware of the proposed home. Indicating that while he is not opposed to a group home for mentally disabled people, Mr. Buttice expressed concern about the logistics of the project, claiming that from his knowledge of the neighborhood and homes in the area, the number of people that would be living on the site is unreasonable, and would lead to foreseeable trouble. In response to Mr. Buttice's not receiving notice, Board member Ron Desser questioned Zoning Official Steve Fabian, who indicated that the residence was properly posted, and that letters of notification of the hearing were sent to all the neighboring property owners in the required time frame. At this time, it was revealed that Mr. Buttice does not own the property he resides at, therefore no letter was directly addressed to him. Mr. Fabian indicated that he was not aware of Ms. Tate's letter, and did not know how many or to whom she sent her letters, but that the letters sent by the Zoning Office were in compliance with regular policy and practice guidelines.
 6. Also appearing in opposition were Mr. Philip Marnella and Mr. Jeff Gault. Mr. Marnella, who lives at 230 Liberty and owns another rental property on the block, said that he tends to keep to himself and does not generally involve himself in matters like this, but that he has such serious concerns about this project that he came to address the Board. In addition to thinking that the size of the home as described by Ms. Tate was not feasible, Mr. Marnella also said that he is concerned about the personal qualifications of Ms. Tate. Mr. Marnella indicated that all previous encounters that he has had with the applicant have been "combative." He expressed concerns that he would be unable to address Ms. Tate with any type of disagreement, which he feels are sure to come up if the project is enacted. Mr. Gault, in addition to another neighbor of Ms. Tate's, Mr. Adam Montie, both indicated that Ms. Tate has in the past been unwilling to control her aggressive dogs. These previous incidents, Mr. Gault believes, may be an indicator of how Ms. Tate is able to manage a group home when problems between the residents and neighbors arise. All of the neighbors appearing in opposition claimed that they were never asked by Ms. Tate to sign a petition of support; in fact, Mr. Gault introduced a letter in opposition from a neighbor who could not attend the hearing.

7. In response to the allegations and statements in opposition to the group home, Ms. Tate reiterated that she would be operating the home in strict compliance with state regulations, and provided phone numbers of state DPW officials that will be on file with the Zoning Office, where anyone could phone with complaints about any issues that may occur. Ms. Tate expressed the hope that this project would be successful as there is a great need in the community for care of the elderly and mentally ill citizens.

Conclusions

1. Two-family dwellings are conditional uses in W-R Districts. The proposed care home would be in a residential building housing up to eight residents (in addition to the administrator, who would occupy a separate space in the basement area of the house.
2. The proposed residence is subject to all applicable zoning ordinances (e.g. square footage, density, parking restrictions, etc...).
3. The occupants of the proposed care home meets one of the definitions of "Family" as defined in the City Ordinance, as well as the definition in the federal Fair Housing Act.
4. The applicant would be operating a facility that would be subject to regulations of and oversight from the Department of Public Welfare. In addition, the applicant is subject to licensing as a personal health care provider.

Decision

By a vote of three to one with one abstention, the Board approved the Conditional Use to allow the applicant/petitioner to expand the personal care home located at 206 Liberty Street to occupy up to eight residents. Member Mike Hornyak indicated that his experience in this case is unique, in that he has personally lived across the street from a similar group home for years. Mr. Hornyak approved the request indicating that he is basing his vote on the applicant's qualifications to operate the home; he felt that if the applicant is capable of administrating the home with three residents, then she should have the benefit of the assumption that she could administer to eight people. Member Ron Desser agreed, adding that the property is still subject to all the other building code regulations. Board Chairman Richard Wagner expressed his appreciation for the need for this type of facility in the community. However, he too expressed that his vote is contingent on the property meeting with all zoning and building code requirements. Mr. Wagner said that he did not think it likely that the renovated property, as described, would be capable of housing eight people while staying within the zoning requirements. He approved the application with the request that the Zoning Office provide the Board with compliance for the location in the future. The lone opposing vote was from Board member Lisa Austin. Ms. Austin felt that with maximum occupancy the proposal, as presented, was not feasible. Additionally, Ms. Ausitn indicated that the petition in support of the project that the applicant claimed to have was not presented into evidence.

It is So Ordered.

Appeal #11,073 by Samuel Valentin concerning property located at **1613 Hickory Street (3016-212)** in a R-2 District. The appellant proposes a use change from a landscape contractor office and vehicle parking storage space to automobile repair and sales of up to 12 vehicles. Any change of a non-conforming use to one not listed in RLB must be presented to the Zoning Hearing Board for approval.

Findings of Fact

1. The Applicant Mr. Samuel Valentin appeared to testify on his own behalf, asking for a variance to allow the garage and surrounding property at 1613 Hickory to be used as an auto sales lot and repair shop. Mr. Valentin has operated a similar lot and repair business on the corner of 18th and Parade Streets, but due to problems the owner is having with the property, Mr. Valentin is being evicted. In addition to owning the car lot, Mr. Valentin works as a landscaper, and the property at 1613 Hickory was most recently used as a landscaping company by others. However, his most immediate problem is that his car sales operating license will expire soon if he does not find another suitable property to re-locate his sales lot.
2. The property itself is currently occupied by a garage with one large overhead door, and, according to Mr. Valentin, a lot large enough to hold up to twelve cars. Mr. Valentin testified that if permitted, the business would be open daily from 8:00 a.m. to 6:00 p.m. All of the cars would be kept on the lot itself; no cars waiting for repair would occupy parking spots on the street, or intrude on the surrounding sidewalks.
3. Mr. Valentin addressed several questions posed to him by the Board. He indicated that he lives in the neighborhood, and while he admitted that he would eventually like to re-locate the sales lot to a larger venue, his long range plan is to keep the 16th Street garage as a repair shop. Under pressure to find a location as soon as possible, Mr. Valentin acknowledged that he would have preferred to find a larger, more suitable location. He expects to hire up to three more mechanics (it was never specified how large his work/sales force was at its former location); he himself would work as a salesman as well as part time mechanic.
4. In addition to business related matters, Mr. Valentin was questioned about several zoning issues. He indicated that he does not plan to install any elaborate signs or large lights more than that which are already there; the lights would not be bothersome to the neighbors. Mr. Valentin said that he understands he would have to install a screen to protect his neighbors; he indicated that he also plans to install a fence in the front of the lot in order to protect the property from trespassers and vandals.
5. Several conditions were discussed that would be attached to the variance. Mr. Valentin agreed to limit the number of cars for sale on the lot at any time to five, and reiterated that at no time would cars awaiting repair or placement on the lot for sale be stored on the street or sidewalks. In addition to the limited lighting, he also agreed to place some sort of shrubbery or plants along the fence in the front so as to make it compatible with the neighboring residential properties.
6. Two neighborhood residents appeared to testify in opposition to the requested variance. Mr. Wally Brown, representing the Sisters of St. Joseph Little Italy Neighborhood Watch, presented the Board with recent photographs of the narrow

- street. Mr. Brown indicated his concern with accessibility of emergency vehicles, especially in winter, if the car lot was there. Additionally, Mr. Brown expressed concern with fumes and noise from the auto body repair shop. Together with another neighbor, Mrs. Susan Juliano, Brown also expressed concern about the safety of children and other neighbors in the densely traveled street if the new business was installed in the location. Both opposition witnesses, however, indicated that there concern was entirely with the proposed business, and not with Mr. Valentin personally. Both said that they have high regard for Mr. Valentin as a neighbor, and wish him the best with his businesses. Mrs. Juliano even suggested that she would not be opposed to Mr. Valentin to keep the location as a landscaping service.
7. In response to the concerns of his neighbors, Mr. Valentin restated that he would limit any additional traffic, and always keep the vehicles on the lot area, and not in the street or sidewalk. Mr. Valentin argued that the real problem was with the previous businesses in the location, as they typically brought large vehicles such as backhoes. His business, he said, would not pose such problems for the neighborhood.

Conclusions

1. Automobile sales lots and/or repair shops are not a permitted use in an R-2 District.
2. The property in question has been operating as a legal non-conforming use (a landscaping company).
3. The applicant/petitioner admitted that he expects to find another more suitable site for his car sales business in the future; however, after losing the use of his current location, he must move his lot soon or his license to operate will expire.

Decision

Prior to voting on the variance request, the Board approved five conditions which will be attached to the use of the property: 1) no cars awaiting repair or for sale will be parked on the street or sidewalk; 2) the lot will not operate past 6:00 p.m. on days of operation (Monday to Saturday); 3) no more than five cars will be placed for sale on the lot at any time; 4) no more than eight cars will be on the site for sale and repair at any time; and 5) all body shop repairs will be limited to the inside of the garage.

By a two to two decision, with one member absent, the variance application was denied. Members Mike Hornyak and Richard Wagner voted to approve the variance both citing that they were impressed that the applicant lived in the same neighborhood, and that the property will be put to good use. Member Lisa Austin also expressed that she was impressed with the personal support that the applicant received from the neighbors who otherwise opposed the project. However, she indicated that she did not believe that a car lot was an appropriate use of the relatively small property space, and that it was not appropriate for the residential neighborhood in which it is located. Likewise, member Ron Desser indicated that the proposed use is too intrusive for a residential neighborhood within a small venue with narrow streets.

It is So Ordered.

Appeal #11,074 by Joseph King and Brian Lock concerning property located at **1102 West 20th Street (6033-100)** in an R-2 District. The appellants are operating a tattoo shop, which is not a permitted use in R-2.

Findings of Fact

Prior to taking testimony, the appellants, through their attorney, proffered a motion for continuance until the full Board could be present. Neighbors of the appellant, who had been waiting for some time already, protested, asking the Board that they not be made to sacrifice another afternoon to re-appear at a later date. The Board voted unanimously to deny the continuance.

1. The appellant/petitioner was represented by Attorney Vincent Nudi, who began by providing a packet to the Board, which included photographs of the site of Zari's Tattoo Shop, and nine letters from neighbors and business colleagues in support of the appellant's business operation.
2. Attorney Nudi began his remarks by indicating to the Board that he is aware of the three previous tattoo shops that were each denied similar variance requests (at the Board's August 12, 2010 hearing). Attorney Nudi argued that for several reasons the Board should evaluate this case differently. He said that the Board is empanelled for the protection of the community, and as such it is their duty to evaluate the applications before them on a case by case basis. The appellants in this case are not asking for a change in the ordinance, Nudi explained, but rather to keep the law as it is; and grant a variance to those cases that warrant one. For several reasons, he said, this is one of those cases.
3. The property in question was used for commercial establishments in the past. It had been the target of vandalism and graffiti prior to the tattoo shop, which, Attorney Nudi said, was a source of concern for the neighborhood, both because of safety reasons (e.g. broken glass) and as an invitation for loitering and illegal activity. The current owner and appellants are responsible for re-developing the property, which Nudi claimed was a great improvement to the neighborhood. He went on to say that there is an added benefit in having a minority-owned business in this largely minority neighborhood. Attorney Nudi claimed that the business has been very well received by the neighborhood overall, with minimal disruptions to neighboring residents. He said that to his knowledge there has not been any calls to the police by neighbors, and that the only official police involvement was a call made by the owners themselves about a disruptive customer.
4. Referring specifically about the hardship at issue, Nudi reiterated that the building had posed both a physical and aesthetic problem for the neighborhood. The owners were willing to spend a great deal of their own money, he said, to renovate that property and turn it into a productive asset for the area. The property would likely have been the target of a tax sale if the owners had not been willing to make the investment they did; it is unlikely that there would be another prospective buyer as the tax lien would probably be for more than the property is worth. Rather, the tattoo shop has proven to be a positive asset and influence in the community.

5. Attorney Nudi discussed briefly the previous retail establishments in the location, pointing out that there has not been a parking problem in the past, and that the tattoo shop has not experienced any parking related issues. While questioning Nudi about the occupants, past and present, Board member Ron Desser pointed out that what distinguishes this case from the previous tattoo parlor cases is that none of the prior cases were based on a change of non-conforming use, as this case is. Cases involving legal non-conforming use are under the purview of the Zoning Hearing Board.
6. Appearing in opposition to the proposed variance was neighborhood resident Fred Gordon. Mr. Gordon made very serious complaints to the Board about the tattoo shop, saying that the police have been called with complaints about the establishment probably “a hundred times”. He said that on some occasions during the nice weather months there were dozens of motorcycles revving their engines and causing a general disturbance late into the night. Additionally, Mr. Gordon said that young children congregate around the shop on bicycles, causing another nuisance for nearby residents. As for the support that the owners claim to have from the neighborhood, Mr. Gordon said that the proprietors selectively asked supportive neighbors to write letters; he indicated that many neighbors who wanted to appear in opposition as he was are either unable to attend the hearing, or afraid. When questioned by Mr. Desser, Mr. Gordon admitted that the number of times that he personally called the police was more like fifteen times. He reiterated, however, that during the summer the shop stays open sometimes until past 2:00 a.m. with people drinking and causing disturbances.

[In addition to Mr. Gordon, another neighbor, Mr. Don Sholtis, appeared to express his opposition to the variance request. Mr. Sholtis was not able to stay for the hearing, but was permitted to make a statement for the record earlier during a recess; Chairman Richard Wagner now allowed the earlier statement to be put into the record.]

7. Mr. Zachary Scott, owner of the tattoo shop, testified in rebuttal to the statements and allegations made by the opposition witnesses. Mr. Scott was rigorously questioned by the Board in response to the allegations made by Mr. Gordon, especially the charge that the shop is a magnet for young children from the neighborhood. In response Mr. Scott said that parents are comfortable with their children being around the corner where the shop is located because other areas of the neighborhood are crime ridden and dangerous. He said that the shop does not deliberately attempt to attract children, but when they are around the shop tries to help in watching them. Mr. Scott insisted that the testimony about motorcycles causing disturbances until 2:00 a.m., people loitering, and other illegal activities are all untrue. He said that he does not allow people to park motorcycles on the sidewalk outside the establishment, although he may have parked his own truck there on occasion. The business is typically by appointment, but does allow walk-in customers. They are open until 9:00 p.m., but will stay open to finish with customers who arrive before 9:00; however, on no occasion was the shop open past midnight, and there were never any late night parties. Mr. Scott said that the shop does not target bikers as their predominant customer base; he said that their typical customer is often a woman, usually a professional or service-sector employee. Any negative stereotype about a tattoo shop patron is completely inaccurate, he said.

8. In summation, Attorney Nudi said that news reports about violent incidents in the neighborhood are not related to the tattoo shop at all, and it is unfair to associate the shop with those incidents. He reiterated what he said previously, that he is not aware of any of the allegations made by opposing neighbors. The shop, he said, takes its responsibility to the area seriously, going as far as to provide ashtray cans outside, so that customers who smoke are not leaving their butts to litter the corner. Attorney Nudi once more expressed his position that his clients are not claiming that the ordinance is faulty; rather that each application should be evaluated on a case by case basis, and that in this case a variance is warranted.

Conclusions

1. The appellant's property is located in an R-2 District. Tattoo parlors (shops) are not a permitted use in an R-2.
2. Prior to the current occupants, the property in question previously housed several different retail establishments; making this a situation where there is a legal non-conforming use for the property.
3. Although alleged to be a neighborhood nuisance, it could not be definitively established during the hearing that Zari's was indeed a nuisance.

Decision

By a two to one vote, with two members absent, the Board voted to approve the variance request and allow the tattoo parlor to operate at its present location. Member Mike Hornyak believed that the appellants provided a hardship in that they would not be likely to find another suitable location, and that the property would not be productive. Member Ron Desser said that the conflicting testimony about the shop speaks to the character of the owners and operators, but did not change the issue at hand. He reiterated that this case presented a legal non-conforming use, and as such he felt that it was within the purview of the Zoning Hearing Board to grant a variance. The lone dissenting vote was from Board Chairman Richard Wagner, who indicated that the owners of a business have the responsibility to investigate the zoning restrictions that a property is subject to prior to purchasing that property.

It is So Ordered.