

**December 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, December 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 #11,077 by Christopher Kaschak**, concerning property located at **301 Ross Street (1032-122)** in an R-2 District. The Appellant proposes to build a 24' X 28' garage, which is in violation of several zoning provisions. R-2 allows for 50% lot coverage – 60% is requested. Detached buildings are to be 6 feet from dwellings – 3 feet is requested; garage doors shall be 20 feet from property lines – 4 feet is requested.

**Findings of Fact**

1. The Appellant Christopher Kaschak appeared to testify on his own behalf, and described to the Board the reasons why he is proposing to build a garage which is larger than the Code allows on his property. Mr. Kaschak indicated that when he purchased the house the remains of a previous garage were still on the property. He later discovered that the property was being taxed as though a garage was still present.
2. Mr. Kaschak told the Board that he purchased the property because he received a good price, and because of the location – the property is close to Mr. Kaschak's mother, who is currently suffering from cancer, and needs his assistance and care. Mr. Kaschak said that he needs a spacious enclosure to store many items of personal property that he has, including two full size trucks, a snow blower (which he uses for himself and his mother's property), an ATV and accompanying trailer, ladders and other large items. He has been storing the items at friend's houses, which is becoming increasingly inconvenient. Most of the items are large, and in nice condition. Mr. Kaschak said that he would prefer not to keep the items outdoors, because they would be damaged by the elements, and they may become targets for thieves and vandals.
3. In addition to several letters from neighbors, one neighbor, Mr. Pasquale Raucci, appeared to testify on behalf of Mr. Kaschak's efforts to build a garage. Mr. Raucci said that he has lived at the site for about thirty years, and has seen a noticeable depreciation in the neighborhood in recent years. He indicated that in large part most of the houses are now used as rental properties. Mr. Raucci appreciates the effort that Mr. Kaschak is making to renovate the property. When questioned about how

the aesthetics of the neighborhood would be affected, Mr. Raucci said that he did not believe the new garage would be noticeable, and he was not concerned.

4. Mr. Kaschak was questioned by Board members on two general issues of concern: whether the garage door would be too close to the sidewalk so as to pose a safety hazard, and whether the new structure would aesthetically alter the alignment of homes on East 3<sup>rd</sup> Street. Mr. Kaschak indicated that he could not build a garage on the other side of the house, as there is a fire hydrant that would prevent the installation of a driveway there. Additionally, Mr. Kaschak said that he would make sure that the garage lines up properly with the houses on Third Street so as to not affect the character of the houses in the neighborhood. Mr. Kaschak also said that if necessary, he would tear down a small room and/or deck attached to the rear of his house so as to accommodate the Board's concerns.

### **Conclusions**

1. There was a garage previously erected on the site; local records indicate that the property is being taxed as though the garage was still there.
2. The largest garage that the Appellant can build and stay within the Code is approximately 400 square feet. This would be too small to accommodate his needs.
3. The erection of a new garage would present a diminimus violation of the City Ordinance.

### **Decision**

By unanimous decision, the Board voted to permit the Appellant to build the garage on his property. The Board included a condition to the variance: the garage must line up with the other homes on East 3<sup>rd</sup> Street – the garage front must not extend past the front of the houses. Member Glenn Duck said that while he does have some concern about the setback (whether the garage door would be too close to the sidewalk), he feels that this potential hazard could be addressed by posting a sign warning oncoming pedestrians. Member Mike Hornyak pointed out that there was a garage on the site previously, and that the new garage would be an improvement to the neighborhood. Member Ron Desser said that it was literally impossible for the Appellant to build his garage and still comply with the setback restriction. Additionally, he said, the variance is diminimus, and will not affect the character of the neighborhood. Members Lisa Austin and Richard Wagner both indicated that they were partially persuaded by the support from neighbors, and both were willing to allow the variance with the condition included.

**It is So Ordered.**

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**Appeal #11,078 by Gannon University** concerning property located between **West 4<sup>th</sup> and Sassafras Streets (4006-122, -126, -127, and -136)** in a C-3 District. The Appellant proposes to create a 78-spot parking lot for its new dormitory. Section 305.56 of the Zoning Ordinance requires dormitories located in C-3 to have all parking within the same block – placing all the parking across the street is requested.

### **Findings of Fact**

1. The Appellant, Gannon University, was represented by their counsel, Attorney Joseph Messina, who introduced several witnesses, including officials from the University, to testify in support of the proposed project. Prior to introducing the witnesses, however, Mr. Messina provided some background for the Board. According to Attorney Messina, the property in question had previously been designated as an RLB, which had a restriction on the height of dormitories. Gannon discussed the matter with City Council in late 2009, and earlier this year Council passed an ordinance that rezoned the property from RLB to C-3 in order to allow the University to build the dormitories in excess of 35 feet. In doing this, however, Gannon was subject to the parking regulations of C-3. As a compromise, the ordinance passed with the requirement that parking be on the same block as the dormitories. At the time Gannon agreed with the terms because they needed the dormitories and believed that this plan would provide them enough space to meet the student's parking requirements. Gannon has since discovered that the topography of the site creates a situation where only one entrance/exit can be built. This, Attorney Messina contends, presents a safety hazard and potential traffic conflict with the northern entrance of the Erie County Courthouse.
2. Ms. Linda Wagner, Vice President of Finance and Administration for Gannon University, addressed the Board and indicated that the school owns properties on adjacent blocks. Ms. Wagner said that the new proposal – to install a parking lot across the street from the dormitories and keep the space in between the dorms as green space – is part of Gannon's long range plan; one which will eventually include three dormitory buildings in all. She said that the proposed lot across the street is already partly paved. This long range plan that Ms. Wagner discussed includes replacing outdated housing units, and, perhaps most importantly, to build some sort of ramp or other large parking facility. She presented the Board with a conceptual drawing of the completed plan. Under the current structure, she said, there will never be enough space to build a sufficient size lot and still comply with the City Ordinance. She indicated to the Board that Gannon has already begun discussing the building of a parking ramp with Hamot Hospital, Erie Insurance Company and other important downtown interests.
3. After the Board was presented with a master copy of the long-term development plan, Attorney Messina said that in the first building (the one currently under construction) is expected to house 292 students; the other two buildings will also be expected to house 250-300 students each. Attorney Messina then introduced Dr. Garibaldi, President of Gannon University. Dr. Garibaldi also stressed the important safety concerns at issue here. He said that a number of students will have to park in the lot, and that the advantage here is that the proposed lot is directly across the street

and could provide easy access at any time of the day or night. The surrounding area, he said, would have ample lighting. If the parking were restricted to the same block (as is the case now), there would only be one entrance, and it would be on the 5<sup>th</sup> Street side; the variance, he said, would allow students to enter on the 3<sup>rd</sup> Street side, where the traffic from the Courthouse would not be an issue.

4. The Manager of Procurement and Facilities for Erie County, Mr. Luigi Pasqual, addressed the Board next. Mr. Pasqual said that he was there representing Erie County, and that they support Gannon's efforts. Mr. Pasqual agreed with the concerns made by Gannon officials about the traffic problem on 5<sup>th</sup> Street if the current project is completed. He said that he is concerned about the safety of various County employees going to and coming from the Courthouse. He indicated that both the Sheriff's Department and the Probation Department routinely shuttle prisoners using the 5<sup>th</sup> Street garage at the Courthouse.
5. Mr. Ray Massing, Executive Director of the Erie Parking Authority, confirmed that his agency has been in discussions with Gannon regarding the building of a parking garage, tentatively planned for the corner of West 5<sup>th</sup> and Sassafras Streets. Mr. Massing said that they are not yet at the point of conducting a feasibility study, which would itself cost approximately twenty-five thousand dollars, but he did say that the Authority previously considered a ramp at the corner of 5<sup>th</sup> and State, but has since determined that Gannon's needs were more pressing, and the likely location of a new ramp would be at 5<sup>th</sup> and Sassafras. Upon questioning from the Board, Mr. Massing said that the ramp on East 10<sup>th</sup> and French Streets utilizes 495 spaces; a ramp this size on 5<sup>th</sup> and Sassafras should accommodate Gannon's needs.
6. Several Board members had questions for Gannon officials. Specifically Board members Mike Hornyak and Lisa Austin inquired as to why the school, which knew or should have known about the topography, still submitted a site plan. The plan was approved by the Erie City Zoning Office, and now Gannon is attempting to change their own plan and proposes the new parking lot. Attorney Messina admitted that the school did know about the slope on the current site, but had no alternative but to build on that block. Since that time, he said, the property across the street became available, and the school purchased it. Messina again stressed that the new proposal is safer, and should be temporary, as the long-term plan is to build a ramp.
7. Board member Lisa Austin questioned Linda Wagner about Gannon's current policy with respect to housing and parking. Ms. Wagner said that Gannon's long-term plan is to increase enrollment to about 5000 within the next decade. Until now the school has utilized every opportunity, albeit temporary, to address the parking needs of their students. Gannon staff and resident students currently park at the downtown ramps, and receive a subsidy from the school. For the new parking area, resident students will be charged \$40.00 per semester.
8. Appearing to testify in opposition to the proposed lot was Mr. Fred Rush, a lower West side resident. Mr. Rush said that he has enjoyed a long history with Gannon, having attended as a student, worked for the school and served on the committee that helped develop the long range plan. He said that he is opposing the plan for two reasons: first, the safety hazards that would be created by having more students crossing the street, and secondly for the parking problems that have been discussed. Mr. Rush said that granting a variance would only provide a temporary solution, and

that he has witnessed the constant moving of temporary parking lots over the past several years. Mr. Rush agreed that what is required is a long-term, comprehensive plan; he stressed that cooperation between the Parking Authority, City and County officials and Gannon is crucial to the long range development of the area. Mr. Rush said that he was not testifying as a City official, but that he was present with other City officials at the discussions that the City had with Dr. Garibaldi and Attorney Messina regarding the ordinance change.

9. In rebuttal to Mr. Rush's comments, and in response to Board questions about why Gannon is changing their original plan, Attorney Messina reiterated that there have been problems with the design phase of this project from the beginning. He said that at the time the site plan was originally proposed to the Zoning Office, the new lot was not available to the University. The site plan was designed with seventy-eight parking spots, meeting the regulation for C-3 Districts. Attorney Messina said that they did know about the hazards (including the slope), but had no alternative at the time but to build on the site that was available at the time. However, that situation has changed now, after Gannon was able to acquire the new lot. The new plan offers important safety features, he insisted, including having three entrances instead of the present one. Additionally, as a result of utilizing the new lot the school will be able to increase the number of parking spaces, and provide a green space between the two dormitories (the area of the slope).

### **Conclusions**

1. Gannon and the City of Erie had previously discussed the area in question. As a result of the previous negotiations the City changed the designation of the property from an RLB to a C-3, in order for Gannon to build the dormitories to the height they required. The revised ordinance stated that both dormitories and the parking for them must be located on the same city block.
2. Gannon knew about the topography at the time they devised the original site plan, however, at the time they were not able to acquire the adjacent lot, and had no alternative but to include in their site plan the area with the slope.
3. County officials, nearby businesses and community leaders all agree with Gannon about the need for additional, long-term parking in the downtown area. Preliminary discussions have been held about building a parking ramp on the corner of West 5<sup>th</sup> and Sassafras Street. Presently, however, there is no official plan to build the ramp.
4. Gannon's long-range expansion will eventually require the proposed lot to be replaced, when a formal, permanent plan is adopted.

### **Decision**

By a unanimous decision, the Board voted to deny the request for the variance. Each member expressed similar reasons for their votes. Member Glenn Duck said that he does not believe that the slope qualifies as a hardship. He said that by erecting the buildings in the location they are, Gannon has created their own hardship to some extent. Member Mike Hornyak also said that when the buildings and original design were in the planning stages, the school was aware of the topography of the site; if they felt it was feasible to go ahead with the plan, then the proposed

changes have as much to do with financial concerns as they do safety. Additionally, he said that he believes the safety consideration was overstated – that having the students cross the street is also a safety concern. Likewise, member Ron Desser and Chairman Richard Wagner both said that they believe that by putting the lot across the street causes more of a safety hazard than the current proposal. Finally, member Lisa Austin took the opportunity to applaud Gannon’s efforts for the long-term master plan they presented to the Board. However, she said that she could not vote to approve the variance because it only provides a temporary solution; the master plan does not address Gannon’s long range parking problem.

**It is So Ordered.**