

**January 11, 2011**  
**City of Erie, Pennsylvania**  
**ZONING HEARING BOARD**  
**1:00 P.M.**

The regular meeting of the Zoning Hearing Board was held on Tuesday, January 11, 2011 at 1:00 p.m., in the City Council Chambers, Erie Municipal Building, 626 State Street.

**- MINUTES -**

**PRELIMINARY MATTERS:**

Prior to the first case the Board held election of officers for the new year. Upon motions made, and by unanimous votes, Board member **Richard Wagner** was re-elected for another one year term as Chairman, and **Lisa Austin** re-elected for another term as Vice Chairman.

**THE FOLLOWING APPEALS WERE HEARD:**

**Appeal #11,076 by Mercyhurst College** concerning property located between **East 35<sup>th</sup> Street, Wallace Street, East 36<sup>th</sup> Street and Ash Street (5373-300)** in an R-1 District. This is a continuation from the November, 2010 hearing. The appellant proposes to create a softball field, which is a Special Exception as a “school use”, and must therefore be presented to the Zoning Hearing Board for approval.

**NOTES:**

The Findings of Fact section summarizes the witness testimony from both the November 11, 2010 hearing (which was continued by the Board in order to give the appellants time to prepare a visual site plan for the project), and the January 11, 2011 hearing. Some of the witnesses appeared at both hearings.

Board member Ron Desser disclosed to the Board that he is recusing himself from the hearing because of a potential conflict of interest; Mercyhurst College is in partnership with the Erie Civic Center to host a hockey tournament in March, and Mr. Desser is part of the administration of the Civic Center.

**Findings of Fact**

1. Appearing to testify on behalf of Mercyhurst were Mr. Joseph Kimball, the Athletic Director, and Ms. Sara Headley, women’s softball coach and the school’s Assistant Athletic Director. Mr. Kimball indicated that Mercyhurst has adequate facilities for all its sports teams and programs, except for women’s softball. The College owns the

- city block between East 35<sup>th</sup> and 36<sup>th</sup> Street, between Wallace and Ash; this property is presently unused, and as a vacant lot has served as an informal recreational area for several years, being used for pick-up games and intramural events by both Mercyhurst students and neighborhood residents. The property has been a “green” space – remaining undeveloped – until now. According to Mr. Kimball, the College currently has no other location to use for the softball field, and has determined that the vacant property could be utilized for a softball field. They have an agreement with the neighboring church to use the church’s parking lot and indoor restroom facilities during games.
2. Ms. Headley informed the Board about the status and recent history of the women’s softball program. The team has been using the boy’s baseball field at 41<sup>st</sup> and Old French Road, which the College has been leasing from the City of Erie for nominal rent, with the understanding that the school keeps up the maintenance of the field. For several reasons, the current arrangement is not suitable. The field is not built to college specifications, and there has been an ongoing problem with vandals. Additionally, the field does not have lights, speakers or adequate parking.
  3. Upon questioning by several Board members Ms. Headley indicated that the new field, if constructed, would have dugouts, a home run fence, and bleachers large enough to seat approximately fifty people. The team normally schedules five or six double-headers (10-12 games), plus practice times, all in March and April. The College has allocated one hundred fifty thousand dollars (\$150,000) to erect the new field. Ms. Headley said that the Athletic Dept. does not feel that it would be practical to spend a large amount of money attempting to renovate the little league field on Old French Road. Rather, they feel that building a new field would better suit their needs, and be a welcome addition to the women’s sports programs at Mercyhurst.
  4. Mr. Kimball provided the Board with conceptual drawings of the completed field. He indicated that the location of the field itself is in the least intrusive area of the property, minimizing the potential for damage from foul balls to neighboring houses, cars, and other property. Attached to the architectural prospective was a statement of issues that had been raised by neighbors, and how the College plans to address these concerns. Specifically, the College has an agreement with the neighboring church for parking and the use of indoor restroom facilities on game days. There would be no lights erected at the site, and no night games. The property will be monitored by the Mercyhurst Police and Safety. The entire facility will be enclosed by a fence, with trees, shrubbery and flowers added to the surrounding landscape for aesthetic purposes. Mr. Kimball confirmed that the budget for the field is one hundred fifty thousand dollars, and that about half of that amount will be used to install a sidewalk around the entire block. Erie Zoning Office representative Steven Fabian confirmed that the City’s Engineering Office is requiring that the sidewalk be installed if the property is developed.
  5. Ms. Headley told the Board that the College is aware of the concerns of the neighbors to the proposed ball field, and has made the attempt to address those concerns by holding neighborhood meetings. Ms. Headley said that she has met with neighbors twice in recent months to go over both the short term and long range plans that Mercyhurst has for the location. However, neighborhood opposition notwithstanding, Ms. Headley reiterated that the options for the College are limited. She

- informed the Board that federal Title IX requirements (governing men's and women's college sports programs) are at issue here; if the College does not receive permission to build they will be forced to find a new location for the facility.
6. There were several neighbors who appeared in opposition to the project. Mr. Carl Palotas, who lives at the opposite end of the block from where the softball field will be built, expressed concern over several issues related to the proposed facility. Mr. Palotas said that this project is not a "park" in the sense of a playground-type facility for children to play – like the park that was recently completed at nearby Jefferson grade school. The vacant lot as it is now, he said, already is used by Mercyhurst students to play pick-up football, lacrosse and Frisbee, and the neighbors have had to put up with offensive language, broken bottles and other negative behaviors from those students, Palotas said. Until now, he says that Mercyhurst has done little to police the area, especially on weekends, and he fears that with the new facility the situation would get worse. Mr. Palotas also expressed his concerns with Mercyhurst's use of the unused part of the block after the softball field is built. He believes that if allowed to build this field, Mercyhurst will eventually install lights, signs, intercom systems and at some point build yet another facility on the west section of the block.
  7. In addition Mr. Palotas, Mr. Robert Nelson appeared to express his concerns that Mercyhurst will not complete the project on budget, and that the half-completed project will eliminate the trees and other aesthetic measures put into the architectural plan. Mr. Nelson would also like to see more specifics about how the unused part of the block will be developed in the future. Other neighbors, including Mrs. Angela Porfillio and Mr. Carl Polatas the son expressed concerns about property values after the project is completed. Almost all the neighbors who spoke against the proposal indicated that they have come to appreciate the "green" space in their neighborhood, and will miss it and the benefit it provided to the area - like giving neighboring children a safe place to play.
  8. In response to the neighbor's objections Board members questioned Mr. Kimball about some of the specific concerns raised. Mr. Kimball said that he is not aware of any athletic-related long range plans for the property other than what is contained in the architectural proposal. He told the Board that he is not Mercyhurst's provost or dean, and that he is not in the position to address any long-term development plans that the College may have. He did say that as far as the Athletic Department is concerned, all other sport's programs are able to use the land satisfactorily at Mercyhurst College and are not in need of expanded facilities. Mr. Kimball believes that the \$150,000.00 budgeted for the softball field is adequate, and that all of the protective and aesthetic features (like the fences and trees along the sides of the field) will be included in the finished proposal as designed. He said that the College plans to begin work on the project in late spring, early summer of 2011. He did, however, add the disclaimer that the architectural prospective was drafted by a Mercyhurst professor, who did an independent study and concluded himself - without independent input by real estate appraisers - that the field would increase property values in the area,.

### **Conclusions**

1. In the City Zoning Ordinance, “Schools” are a Special Exception in R-1 Districts (305.20).
2. Mercyhurst College currently leases the little league field where its women’s softball team plays its home games. The field is not up to specs, and it is no longer feasible for the team to play there. The College has allocated the money to build a new, up to specification field.
3. Mercyhurst was asked by the Board to present an architectural plan for the proposal. The College has made accommodations with the neighboring church for parking and restroom and other indoor facilities, addressing the regulations contained in section 305.20 of the Code.

### **Decision**

By a unanimous vote of three to zero, with member Ron Desser abstaining, the Board approved the Special Exception to allow Mercyhurst to build a field for its women’s softball team at the requested location. Member Glenn Duck said that he would like to see some type of sign to control the anticipated increased traffic during games. Member Lisa Austin said that she was troubled by the opposition voiced by the neighbors, but was obliged by the Code to approve the Special Exception. Finally, Board Chairman Richard Wagner addressed the concerns raised by the neighbors by pointing out that City’s Code enforcement will redress any non-compliance by the College in the building and maintenance of the project.

### **It is So Ordered.**

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**Appeal #11,079 by PNC Bankk** concerning property located at **2153 Robin Drive (3140-118)** in an R-1 District. The appellant proposes to use this property as a parking lot, which is not a permitted use in R-1.

Prior to taking testimony, Board member Ron Desser recused himself from voting on this application. Mr. Desser’s employer is closely linked with PNC, and he wanted to avoid a potential conflict of interest.

### **Findings of Fact**

1. The applicant/petitioner, PNC Bank, was represented by Attorney John Mehler, who began by providing the Board with several drawings showing the design of the lot and the flow of traffic. Attorney Mehler said that currently the only access to the West 8<sup>th</sup> Street and Robin Drive branch is on 8<sup>th</sup> Street, and that this will not change with the

- additional parking area. He emphasized that what is being requested is a plan for additional parking on an auxiliary property, and that this new lot will not disrupt the residents on Robin Drive with increased traffic.
2. Attorney Mehler indicated that PNC has a contract to purchase the property behind the bank – at 2153 Robin Drive - pending approval of the variance request. Attorney Mehler presented the Board with a letter showing that PNC, through their attorneys, contacted the owner of the property, Dr. Gregory Gensheimer of Bath, Maine, requesting that he join in the application for the variance. Mehler then introduced a signed document indicating that Dr. Gensheimer acknowledges, consents and joins in the application for the variance to “...permit the construction of parking facilities...on the property.”
  3. The PNC branch on West 8<sup>th</sup> and Robin Drive is desperately in need of additional parking. The bank has been investigating its various alternatives, given the location of the building. The bank has a residential neighborhood to its south, and busy Pittsburgh Avenue to its west. There is a large mental health facility on 8<sup>th</sup> and Pittsburgh; previous attempts to lease parking from that facility in a nearby lot have been unsuccessful. If the variance to convert the property at 2153 Robin Drive into a parking lot is denied, then PNC will have to investigate other options. However, according to Attorney Mehler, the bank has concluded that this proposed design is the most expedient way. Attorney Mehler told the Board that PNC has a contract to purchase the property from Dr. Genseheimer pending approval of the variance.
  4. The proposed parking lot will provide PNC an additional fifteen spaces. It will not affect traffic on Robin Drive, as the only entrance and exit points to and from the bank will remain on 8<sup>th</sup> Street. According to Attorney Mehler, the hardship was not created by PNC, and the new lot will not impair traffic on Robin Drive nor alter the character of the neighborhood.
  5. PNC contacted the Erie City Zoning Office in advance of their filing for the variance. According to Zoning Official Steve Fabian, PNC contacted neighborhood residents and invited them to an informational meeting that was held December 16, 2010. Attorney Mehler told the Board that overall the plans for the proposed parking lot have been favorably received by neighborhood residents.
  6. Several neighborhood residents appeared to testify on behalf of the proposed lot. Mr. James Layden told the Board that he was pleased that PNC designed a plan that would ensure that Robin Drive would remain residential, and not turned into a commercial extension of the bank. Ms. Ann Marie George said that while she has no objection to the project, she is concerned that the sidewalk and trees are installed properly.
  7. Two people who work near the location offered testimony confirming PNC’s problem with lack of parking, and their previous efforts to acquire more space. Mr. James Prior runs a real estate office adjacent to the back of the bank, and Ms. Cindy Espy works for a company directly north from the bank. Both confirmed that the bank is in need of additional parking; Mr. Prior added that his and other nearby businesses have already used up all the space not used by Stairways (the mental health facility on the corner of 8<sup>th</sup> and Pittsburgh).
  8. Testifying in opposition to the proposal was Mr. Jeffrey Gentile and his wife, Ms. Gail Gentile. The two are currently residing in the house at 2153 Robin Drive – the

- house scheduled to be sold and turned into a new parking lot for PNC. Mr. Gentile told the Board that PNC was incorrect in claiming that they made attempts to lease space elsewhere. Mr. Gentile had several complaints about how PNC has maintained the area in the four years in which he has lived on Robin Drive. He also claimed that his wife has a life estate to the property. Mrs. Gentile claimed that she has been living at the site since 1960, and that she has been granted a life estate by will. However, upon questioning by Board members, Mrs. Gentile did not have any documentation for review, and she was unable to explain why the owner of the property would have signed an agreement to sell the property.
9. In response to the Gentile's claims, Attorney Mehler indicated that he is not personally aware about any life estate, but said that he does not believe that PNC would not have come this far along in the planning, and invested so much money in the project, unless they knew for certain that the property was available to them.

### **Conclusions**

1. The applicants have investigated several different options to address the need for additional parking at the West 8<sup>th</sup> Street and Robin Drive location; none of them have been successful.
2. The only entrance and exit points to and from the bank will be on West 8<sup>th</sup> Street; the lot will not be accessible from Robin Drive.
3. If completed the bank will be subject to all City ordinances, including those intended to protect the neighboring residents from negative effects of the parking lot.

### **Decision**

By a unanimous vote, with one abstention, the Board voted to approve the variance request and allow PNC bank to build a new parking lot on the property south of their West 8<sup>th</sup> Street and Robin Drive branch. Board members Lisa Austin, Glenn Duck and Chairman Richard Wagner all were persuaded that the bank had a legitimate hardship, not of their own making, and have drafted a concise design to build a new parking lot. Member Lisa Austin added that she was pleased that the design keeps the only entrance on 8<sup>th</sup> Street, not disrupting traffic on Robin Drive. Member Ron Desser abstained.

**It is So Ordered.**

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**Appeal #11,080 by Samuel Valentin** concerning property located near **West 18th and Hickory Streets (6009-212)** in a C-4 District. The appellant proposes to use this property as an automobile sale and repair business, which is not a permitted use in C-4.

### **Findings of Fact**

1. The Applicant Mr. Samuel Valentin appeared to testify on his own behalf, asking for a variance to allow the lot he currently rents at 333 West 18<sup>th</sup> Street to be used as a car dealership. Mr. Valentin currently rents the property from Mr. John Sementilli. The property currently has a paved lot on it, and a building across the alley which Mr. Valentin would use at his office.
2. Mr. Sementilli appeared to testify on Mr. Valentin's behalf, and told the Board that for the past several years he has run his construction company from the site. However, due to decreased business his needs for the property have changed, and he is now able to rent out the lot. Mr. Sementilli said that he can move the few vehicles of his that are still on the site, and since most of his construction jobs are out of town parking for his employees at the 18<sup>th</sup> Street site is no longer an issue. Mr. Sementilli feels that Mr. Valentin could make good use of the property. Mr. Valentin currently rents the property for his landscaping business, and Mr. Sementilli would like to make use of the vacant lot with someone who has already proven to be a good tenant.
3. According to Mr. Sementilli a fence would be put up to prevent children or trespassers from having access to the lot. He thinks that the size of the lot (approximately 33 feet wide) can be configured to meet the modestly sized dealership that Mr. Valentin proposes. Mr. Sementilli has noticed that Valentin's workers seem very busy, and that a new dealership would likely enable him to hire new workers or re-hire people laid off. Further, Mr. Sementilli said that he noticed that the cars Mr. Valentin has on his lot are nice, modestly priced cars, not junk.
4. Upon questioning from Board members Glenn Duck and Richard Wagner Mr. Sementilli said that he would give Mr. Valentin a six month lease to begin; this would allow for Mr. Valentin to get his dealership up and running, but would allow for the flexibility of changing if developments in the neighborhood required it. The building currently rented by Mr. Valentin for his landscaping business – facing 19<sup>th</sup> Street - would instead be used for the preparation and maintenance of the cars for sale.
5. Mr. Valentin formerly operated a similar lot and repair business on the corner of 18<sup>th</sup> and Parade Streets, but the owners chose to go in a different direction and his lease was not renewed. Mr. Valentin appeared before the Zoning Hearing Board previously, seeking a variance for the property at 1613 Hickory. He has since moved his landscaping company to the current location on West 19<sup>th</sup> Street. Mr. Valentin's most immediate problem remains his car sales operating license, which will expire soon if he does not find another suitable property to re-locate his sales lot.
6. Mr. Valentin addressed several questions posed to him by the Board. He said that he expects to have five cars on the lot at any time. He admitted that he would eventually like to re-locate the sales lot to a larger venue and expand his business. He currently has no plans to inspect cars, and is not equipped to do so.

7. Once again Mr. Valentin cited his inability to find a suitable location in a business-zoned area. His hardship, he maintains, is financial feasibility. This location, he said, is the most cost-effective way for him to start a small lot. Mr. Valentin still has the license to run a dealership, however, it will expire soon if he cannot find another location.
8. Several neighborhood residents appeared to testify in opposition to the requested variance. Mr. Wally Brown, representing the Sisters of St. Joseph Little Italy Neighborhood Watch, once again presented the Board with photographs of the site, and told the Board that he believes that there are more appropriate locations in the city that do not require a variance or re-zoning.. Mr. Brown indicated his concerns over parking and with the accessibility of emergency vehicles, especially in winter, if the car lot was there. Problems which he said the neighborhood is currently experiencing with the recently developed Bethesda, a low income housing facility.
9. Other opposition voices included Mr. Larry Bossolt, from the Erie Redevelopment Authority. Mr. Bossolt provided the Board with a map of the neighborhood. He said that they encourage small businesses in Little Italy, like Mr. Valentin's, but feels that the current proposal presents safety concerns, and is not feasible given the small size of the lot. The property, Mr. Bossolt said, could be used for more suitable businesses. Two other neighborhood residents, Mr. Robert Hess and Mrs. Susan Juliano, both expressed general opposition to commercial establishments in an area where residential redevelopment is needed.
10. Mr. Matthew Good representing H.A.N.D.S., also addressed the Board, and described the cooperative relationship his agency has had with the residents of Little Italy in recent years. Mr. Good said that the revitalization effort in the neighborhood is not by accident, but rather is part of a carefully planned project by concerned citizens who meet regularly. H.A.N.D.S. is currently providing single-family homes on 17<sup>th</sup> and 18<sup>th</sup> Streets in addition to the large new apartment building recently constructed on 18<sup>th</sup> and Hickory Streets. Mr. Good said that Mr. Valentin has not met with the any of the co-operative groups in an effort to find a suitable location. At the very least, Good said, his agency and the neighborhood groups would like to know what Mr. Valentin's business plan is before they can provide support for him.
11. In rebuttal to the opposition witnesses, Mr. Sementilli told the Board that the proposed car lot operation is not standing in the way of neighborhood development. Mr. Valentin reiterated that he only plans to run a small operation on the site, and will begin with a short term lease. If the business is not successful, then he is willing to re-evaluate later whether to stay on the site.

### **Conclusions**

1. The location of the proposed car lot is in a C-4 District; however, it is directly across the street from an R-2. Automobile sales lots and/or repair shops are not a permitted use in either C-4 or R-2.
2. The applicant/petitioner admitted that he has chosen the site for economic reasons; that other suitable sites elsewhere in the city are not in his price range. He must find a new lot soon or his license to operate will expire.

### **Decision**

By a unanimous decision, the Board voted to deny the appellant's request for a variance to operate a car lot and repair business. Member Glenn Duck cited the Code, which is very specific about what types of businesses are permitted, and that automobile sales lots are not one of them. Also, he questioned the size of the lot, and whether it would be sufficient for the appellant's business. Member Lisa Austin said that although she is voting to deny the variance in this case, she was impressed with the general support that the applicant received from the concerned residents, and expressed the hope that the two will continue to speak for the good of the neighborhood. Member Ron Desser discussed the long troubled redevelopment effort on 18<sup>th</sup> Street; he said that now that it is finally making some progress it would be a mistake to begin to commercialize the area. He said that he would not want to see this progress reversed. Finally Chairman Richard Wagner reiterated that there are locations available to the appellant in C-1 and C-2 Districts; the fact that those other locations are out of the appellant's price range does not constitute a hardship.

**It is So Ordered.**