

**March 8, 2011**  
**City of Erie, Pennsylvania**  
**ZONING HEARING BOARD**  
**1:00 P.M.**

The regular meeting of the Zoning Hearing Board was held on Tuesday, March 8, 2011 at 1:00 p.m., in the City Council Chambers, Erie Municipal Building, 626 State Street.

**- MINUTES -**

**THE FOLLOWING APPEALS WERE HEARD:**

**Appeal #11,081 by Stillwater Property Management** concerning property located at **223-227 West 16<sup>th</sup> Street (3011-310)** in an R-2 District. The appellant requests a density variance to increase the number of allowable residential units at the property. Historically this has been a combination 4-unit apartment with a 5-room rooming house. Currently five units are allowed – seven are requested.

**Findings of Fact**

1. Ms. Debra Goetz, manager of Stillwater Property Management appeared to testify on her own behalf. Ms. Goetz, a professional property manager, indicated that she purchased the property in January, 2011. It was marketed and sold as a 7-unit building. She said that the building has passed inspection as a 7-unit dwelling for the rental registration program, and that it is up to code. Her research has indicated that the property has in fact been used as a 7-unit property for the past several years.
2. Ms. Goetz described the building for the Board; she said that all seven apartments are small, efficiency-type units. She said that the apartments are ideal for people who live alone, and are often rented by those on fixed incomes. Currently five of the seven apartments are occupied.
3. Both Ms. Goetz and Erie Zoning Officials said that the building was probably originally built as a boarding house. It has not been used as one for years. Ms. Goetz said that if the variance is granted there would be four units on the first floor and three on the second; currently there are four occupants on the ground floor and one upstairs. Board members questioned Erie Zoning Office officials regarding the dimensions of the units. The Zoning Code does not govern the size of an apartment. In the RLB district, the density standard is to have 1,500 square feet of lot per dwelling unit. Ms. Goetz testified that the size of the lot is 7,620 feet. Therefore, the City Ordinance would limit the building to only five apartments. Ms. Goetz said that she realizes that the apartments are on the small side, but insisted that she takes good care of her properties, and plans to renovate these apartments to make them nice, affordable units for prospective tenants.

4. Ms. Goetz acknowledged that the property was in deplorable condition when she purchased it, and still needs several improvements. Her long-range renovation plans will make the building a welcome addition to the neighborhood. When questioned about the parking requirements (at least one space for each unit), she said that the rear of the building can provide space for six vehicles, and that if permitted she will pave the spacious front of the building to fit another two spaces. She said that the parking layout that she suggested in the rear of the building is feasible because there are driveways on both sides of the building, making access to the rear easier.

### **Conclusions**

1. Under the City Zoning Ordinance, a 7-unit apartment building would require a minimum of 10,500 feet of lot area (1,500 feet per unit). Additionally, the property would have to provide at least seven parking spaces.
2. The building was advertised and sold as a 7-unit property, and has been used as a 7-unit for the past several years.
3. The area of the City where the building is located has been undergoing a redevelopment effort in recent years, and a well maintained property will enhance the character of the neighborhood.

### **Decision**

By a vote of two to one, with member Glenn Duck abstaining, the Board approved the variance to permit the appellant to keep a 7-unit dwelling. Board Member Mike Hornyak said that the applicant did her due diligence when purchasing the building, and should not be penalized for the seller misrepresenting the property. He added that the building has been in operation as a 7-unit for awhile, and that there does not seem to be any problems; this, he said, is evident by the lack of any opposition witnesses. Board Chairman Richard Wagner said that since the applicant is a professional property manager she could be relied upon to maintain the property, and added that the improved building is consistent with the overall renovations being made to the area. Board member Lisa Austin was the lone dissenting vote. She said that the small size of the apartments influenced her decision, and that she was not satisfied that the property would provide the ample parking spaces that the applicant indicated it would.

**It is So Ordered.**

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**Appeal #11,082 by Emanuel Harmon** concerning property located at **606 East 10<sup>th</sup> Street (2031-126)** in an R-2 District. The appellant proposes to use this non-conforming property as a convenience store and must appear before the Zoning Hearing Board because the previous business use had been abandoned by exceeding two years of non-activity.

### **Findings of Fact**

1. The applicant/petitioner, Emanuel Harmon, appeared to testify on his own behalf. Mr. Harmon, a Sudanese immigrant, has been in this country for about ten years. As both a member of the Sudanese community in Erie (which numbers approximately four hundred), and the east side neighborhood where he lives, Mr. Harmon indicated that he was familiar with the needs of those two communities, and plans to tailor his business model to satisfy those needs. He plans to open a convenience store that would provide foods and products that the immigrant community cannot find elsewhere, and to provide a store in a neighborhood that needs one. According to Mr. Harmon, the closest convenience stores on East 10<sup>th</sup> Street are near Franklin Avenue to the east, and State Street to the west. He said that presently many low income residents of the neighborhood travel to Walmart and other distant locations because there is not a convenience store in the vicinity.
2. The building itself has been vacant for several years, although a clothing store had been illegally operating without authorization recently. The store is located on the corner of East 10<sup>th</sup> and Ash Streets. There are single unit apartments in both the rear and second floor of the store. It is directly across the street from the Multi-Cultural Resource Center (previously known as the Hispanic Center of Erie).
3. Mr. Harmon will lease the store from the owner of the building. Mr. Harmon said that he has already made some improvements to the store by fixing the floor and adding mirrors and signs on the walls. He said that the store is ready to open right away. When asked by the Board about security at the new store, Mr. Harmon said that he plans to install cameras both inside and outside the store. He added that the area around the building is normally very dark, and that the lights he plans to install will add an additional security measure to the corner.
4. Answering concerns the Board had about the likelihood of a store succeeding in this location, Mr. Harmon told the Board that he has a good business plan. He plans to market the store to the City's immigrant community, taking advantage of the proximity of the Multi-Cultural Center across the street. In addition to serving as a convenience store for the surrounding low-income neighborhood, Mr. Harmon also plans to offer goods to the Sudanese community that are not available anywhere else in town.
5. Mr. Harmon does not plan to hire anyone other than his family to operate the store. He plans to open at 8:00 a.m., and will stay open until 8:00 or 9:00 p.m. Mr. Harmon informed the Board that he has received support from the neighborhood. He presented the Board with a petition signed by eighteen neighbors who he claims signed to show their support of his proposed store.
6. There were several voices of concern, if not outright objection, to the new store. Mr. Joel Tuzynski, director of the Multi-Cultural Resource Center appeared to express his

- apprehension about installing a store at this site. Mr. Tuzynski said that he applauded Mr. Harmon's efforts as an immigrant entrepreneur, however, he said that the corner is a bad location for a store. He said that the corner is already congested with the Cultural Center serving as day care provider for over one hundred children daily. The daily traffic, narrow streets and history of criminal activity around the site makes Mr. Tuzynski very concerned about the safety of the neighborhood. He said that the store could become a magnet for loitering and increased illegal activity on the corner.
7. Additionally, Mr. Tuzynski said that he has been in contact with the local neighborhood watch group regarding the proposed store. The coordinator for the neighborhood watch group, Ms. Jerri Allen, also appeared to testify, and reiterated Mr. Tuzynski's concerns. Ms. Allen said that there are already several convenience stores in the general area to satisfy the needs of the community. Rather than a store, they said that they would prefer something like a food pantry or clothing distribution center; something that would benefit the community.
  8. Other concerned neighbors who appeared in opposition to the store included Ms. Ruth Thompson, owner and operator of a florist a block east of the proposed store. Ms. Thompson said that since the 10<sup>th</sup> and Ash Street location has been unoccupied the site has seen nothing but trouble. She said that at one time she even offered to purchase the property in order to prevent it from becoming a nuisance site, but that the owner never responded to her inquiries. She said that the owner of the building is not a resident of the neighborhood, and Ms. Thompson doubts whether he cares at all about what type of business occupies the site.
  9. Another opposition witness, Ms. Cheryl Stout agreed. Ms. Stout is a partner with Habitat for Humanity, and told the Board that they are building a home nearby, a few houses down on East 10<sup>th</sup>. She said that she has concerns that the family being moved in to the new home would be negatively affected by the new store, as would several residents who already live in the immediate area of the corner.
  10. As a result of the various issues involved in this case, including the Board members who support Mr. Harmon's efforts and the neighbors who opposed the proposed store, the Board proposed and accepted a motion to vote to make the variance conditional – if passed, the condition would be to make the variance temporary; Mr. Harmon would have to re-appear before the Board in two years at which time the Board would decide whether to make the variance permanent.

### **Conclusions**

1. The applicant proposes to use this property as a non-conforming use, as it had been used as a retail store in the past. However, testimony indicated that there had been no legitimate occupant in the previous two years.
2. Although the property lies in an R-2 District, it has been treated in the past as if it were RLB by virtue of being a non-conforming use in R-2. Also it is on a busy street (East 10<sup>th</sup> Street), where there are other retail establishments, and is adjacent to a community service agency.
3. The applicant has a unique business model, targeting an immigrant community who have no other local facility to purchase food, goods and products they need.

### **Decision**

The Board first voted on the motion to make the variance conditional. By a two to two vote, the motion failed. Board members Glenn Duck and Mike Hornyak felt that there was no objective way to determine if the applicant's business is successful, and that the Board should not be in the position of instructing someone how they should run their business.

The Board then voted three to one to approve the application for a variance. Board member Glenn Duck said that any prior problems with the property had nothing to do with this applicant, and should not be held against him. Mr. Duck said that a vacant, blighted property that the site is now is much more of a concern for the neighborhood than a well run store would be. Additionally, he feels that the store will benefit from its proximity to the Multi-Cultural Center. Member Mike Hornyak said that prior to the last few years the location has a long history of businesses, and he welcomes the economic benefit of a new store that targets an immigrant community will provide. Board Chairman Richard Wagner said that he would have preferred to have the condition that the applicant re-appear in two years to determine if the store is functioning well; however, he still voted to approve the variance because the site had previously been a store, and he thinks that it can be successful again. Member Lisa Austin was the lone dissenting vote. Ms. Austin felt that the concerns voiced by the neighbors who oppose the store are legitimate, and that she could only support the variance if it had the condition attached.

**It is So Ordered.**

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