

July 12, 2011
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held on Tuesday, July 12th, 2011 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

- MINUTES -

PRELIMINARY MATTER:

Responding to a request by the City Solicitor's Office, the Board agreed to hear testimony and offer an Advisory Opinion on the issue of whether a "townhouse" can be considered a single family dwelling in a planned residential development located in an R-1 District.

Ms. Schelene Buehler of Buehler & Associates, the real estate company that is seeking to develop the property, testified before the Board and indicated that her company is currently seeking to develop six properties in a land-locked area near West 54th and Washington Streets. The proposed structures would be in the form of Townhouses, which are not a permitted use in the R-1 District where the development is located. However, Ms. Buehler cited several portions of the Code which she hoped would allow the Board to approve the development.

ADVISORY OPINION:

After listening to the witness' testimony, the Board unanimously offered a non-binding advisory opinion indicating that they would deny the request for a Townhouse in the R-1 District. Each member agreed that their reasoning for denying the request is that the Code specifically allows "Townhouses" in R-2 Districts, but does not list them as permitted uses in the R-1 area.

THE FOLLOWING APPEALS WERE HEARD:

Appeal #11,086 by Gannon University concerning property located between 4th and 5th Streets between Peach and Sassafras in a C-3 District. Section 305.56 of the Zoning Ordinance requires that dormitories have parking within the same block. Gannon is proposing a long-term parking plan with a lot across the street from the dorm.

Finding of Facts

1. The applicant Gannon University was represented at the hearing by their new president, Dr. Keith Taylor, who explained to the Board that the school's request for the variance is after they have conducted a thorough seven month negotiation with the City and

Administration officials. The school's original request (which was opposed by the Administration and denied by the Zoning Hearing Board) has since been revised, and now seeks to complete the residential "Quad" in its original intended site, and have the parking across the street. The original plan failed for several reasons, he said, with Gannon not having recognized all of the issues that would eventually crop up as the project was put into place. Therefore, Gannon, with the cooperation and input from City officials, is now presenting a revised plan to the Board.

2. Dr. Taylor presented Gannon's new master plan to the Board for their review. Using the plan for illustration, Dr. Taylor showed the Board how the construction is proceeding. He said that the first of the planned residential buildings is now ninety percent complete. Dr. Taylor described how it is impossible for the school to have the parking on the same block as the "Quad" (the eventual four building housing development that Gannon is now building), given the limited space. As an acceptable alternative, the school has negotiated the purchase – pending the Board's approval of a variance – of the vacant lot across the street from the development presently owned and used by U.P.M.C.-Hamot, as a parking lot for the dormitory. The lot is large enough to provide up to 88 parking spaces, more than enough to satisfy the students who will occupy the building that is now ninety percent completed.
3. The hardships that Gannon sites as reasons for the Board to approve the variance are mostly safety related. There is not enough space on the city block to house the Quad and the parking. As a result of the limited space, and the topography of the block, any entrance and exit points would create hazards for students who would have to negotiate the congested downtown traffic. This, Dr. Taylor said, would be avoided by placing the parking lot on a separate block with several entrance and exit points.
4. Dr. Taylor went on to discuss the future of the project. When the second building in the Quad is erected, he said, another 78 parking spots would be required. Eventually a third and fourth building will then require additional parking spaces. The only reasonable alternative, given the land-locked area that Gannon University occupies, is to eventually build a ramp. The ramp, he said, would have the additional benefit of having commercial appeal in the downtown area. This, he said, was all part of the long-range planning that was discussed between Gannon, the City, and downtown business officials.
5. Several Board members questioned Dr. Taylor about Gannon is seeking in this variance request – in other words, is the school planning to recognize this variance as permission to eventually build the ramp. Dr. Taylor indicated that he understands that the current request is to only build a parking lot to satisfy the dormitory that is 90% complete (the building identified as "Residential 3" on the master plan). Any future development or expansion will be treated separately, and Gannon will apply for any permits as required.
6. Several people addressed the Board in support of Gannon's request. The City's chief Zoning Office official, Mr. Armand Chimenti, read a prepared statement into the record that expressed the current Administration's position in support of the project. Likewise, Mr. Fred Rush, appearing as both a concerned citizen and neighborhood spokesperson, expressed his support now for the project that he strongly opposed the previous time that Gannon petitioned the Board. Mr. Rush indicated that he presently supports the plan because there is new leadership at Gannon, and that their new officials have demonstrated a recognition, along with City and Erie County officials, for the many complex issues regarding the downtown area. Mr. Luigi Pasqual, the manager of procurement of

facilities for Erie County, also appeared to express the County's support of the new proposal. Mr. Pasqual reiterated what he had told the Board at the previous Gannon hearing; specifically that it is very important to keep the entrance and exits on the north side of the Erie County Courthouse (facing West 5th Street) free from excessive traffic. Additionally, he said that the long-range plan to build a ramp also has the support of County officials.

7. The lone opposition witness was Ms. Chris Kitter, the owner of a bed and breakfast on 4th and Peach Streets. Her facility would be next door to the proposed lot, and she said that she has had no previous opportunity, or in fact any prior notice, to express any opposition to the project. Ms. Kitter said that she is not opposed to the expansion per se, but does have concerns about problems associated with a large number of students coming and going at all hours. Addressing Ms. Kitter's concerns, Board members including Lisa Austin and Richard Wagner expressed their opinions that Gannon is working as a good neighbor, and that everyone downtown will benefit from the school's effort to find long-term solutions to the anticipated problems.

Conclusions

1. Gannon has a master plan, which was revised as problems to their previous plan arose. The plan addresses problems which may occur during future development phases.
2. The new plan is presented after a long negotiation with City and downtown business officials. Both the City and Gannon's downtown neighbors had previously opposed Gannon's plan; however, they now support the school's expansion proposals.
3. Gannon's present request for a variance is only to build a parking lot that will satisfy the needs for the dormitory that is ninety percent completed (the dorm that is identified on the master plan as "Residential 3"). The school will make all required applications for permits and/or variances as necessary in the future to convert the lot into a parking ramp.

Decision

By a unanimous 4-0 vote, the Board approved the applicant's request for a variance to construct a new parking lot across the street from the "Quad", which will be large enough to satisfy the required 78 parking spaces. Board member Ron Desser said that he understands the many problems associated with the development of the area, including the pending parking situation on the campus, and that he feels that the present plan is much better than the previous plan proposed by Gannon. Member Lisa Austin said that she is basing her vote on the understanding that Gannon is receiving the variance to build a parking lot for the near-completed dormitory only; for any future development, including a ramp, the school must apply for the required permits. For the same reasons as expressed by Mr. Desser and Ms. Austin, members Glenn Duck and Richard Wagner likewise voted to approve the variance request.

It is So Ordered.

Appeal #11,087 (6116-107-108) by Passport Realty concerning property located on Royal Avenue. The appellant proposes to construct a parking lot on two properties adjacent to a proposed restaurant. Parking lots are not a permitted use in an R-1 District.

Finding of Facts

1. Mr. Daryl Tarella represented the applicant, Passport Realty; he presented the Board with a preliminary site plan drawing and photographs of the property to follow along as he read a prepared statement into the record.
2. Mr. Tarella indicated that the property is presently owned by Northwest Savings Bank, having obtained the site from an auto dealership in a foreclosure action. Northwest also owns adjacent properties, similarly obtained through foreclosures. The bank has an interested buyer for the properties in Mr. Sam Covelli, who intends to sub-divide and redevelop the properties as a Panera Bread franchise. Mr. Tarella said that the group headed by Mr. Covelli has committed a substantial investment in the \$1.5 to \$2 million dollar range.
3. The development group is planning to build a Panera Bread which would require an estimated 75-80 parking spots. Before continuing, however, the project planners must obtain a variance to allow parking on two vacant lots on Peach Street which are currently zoned R-1. The hardship, Mr. Tarella explained, is that they cannot expand the size of the adjacent, commercially-zoned Peach Street properties (for various reasons) in any direction. The variance request is for parking only, Tarella stressed, showing on the site plan how there will be no access onto the residential Royal Avenue. Where the parking area abuts residential parcels, he said, the planners intend to screen the area with landscaping and green space, and fencing if necessary. This landscaping and green screening would provide an attractive buffer for the benefit of the neighbors.
4. Mr. Tarella stressed to the Board the economic benefit of the project. He pointed to the other two Panera Bread locations in the city as models of a high quality enterprise. In addition to providing potentially 40-60 new jobs on three different shifts, the project would revitalize an important economic area of the city that has become abandoned, and somewhat of an eye sore at the present location. Upon questioning from Board member Lisa Austin and others, Mr. Tarella said that this new Panera location is planned to have drive-through service, something that the two present locations do not have. This, he said, is why the building is as far back from the street as it is proposed, and why it requires so much space. Responding to Ms. Austin's questions, Mr. Tarella reiterated that the request for a parking variance is first and foremost a safety issue; if parking is not provided by the business, customers and employees would park on the adjacent streets.
5. There were several neighborhood residents who appeared to speak in opposition to the proposed parking lots. Ms. Scott Bishop, who lives adjacent to the lot, is the coordinator of the neighborhood crime watch group. As crime watch coordinator Mr. Bishop provided the Board with a petition of property owners and neighbors who are concerned about how the heavy business traffic and late night hours could present a safety concern. Mr. Bishop's main concern, however, was how the new construction and parking lot may create excessive water run-off that could flood the low-lying neighborhood. He said that in 2009 there was a terrible rain storm that flooded his basement, and much of the neighborhood. Two other residents also expressed concerns about the water run-off. In

addition to the water problem, Ms. Denise Blair who lives directly across from the proposed lot, and Ms. Valery Bukowski of Balboa Street, also expressed concerns about the parking lot lights, headlights, and general commotion that a late hour business would present.

6. Other neighborhood residents also testified about their concerns with the water run-off situation, and general concern about the problems associated by a project of this type and size. Mr. Daniel Kelly, Ms. Barbara Macek, Ms. Autumn Bennett and Mr. Robert Rocki all expressed their opposition. They all remember the storm and subsequent flooding of 2009 and fear that the construction will make another such flood likely. They also expressed a desire for their neighborhood to remain as it is, and not have the encroachment of businesses from Peach Street ruin that residential environment.
7. In rebuttal to the opposition from the several neighborhood residents, Mr. Tarella told the Board that the storm sewer problems already exist without the proposed construction, and that the drainage that would be installed in the new parking lot could actually help with the run-off problems. He reiterated that the lighting of the site would be placed so as to not present a nuisance to the adjacent property owners. He added that he has no objection to adding a condition to the variance in the form of a restriction that would prevent access to Royal Avenue. He reminded the Board that Northwest Bank has given the investment team a short time frame for the project; among other things, he added, the investors still need to consult an engineering company to draft the formal plans - something that they must await the approval of the variance request before proceeding.

Conclusions

1. Parking lots are not a permitted use in R-1 (residential) Districts. The proposed project would encroach on the residential area that abuts the commercial properties on Peach Street.
2. The drainage and run-off problems already exist in the neighborhood.
3. Passport Realty has drafted a comprehensive site plan to erect a Panera Bread franchise on the property, and the proposed expanded parking would include extensive drainage.

Decision

By a three to one vote, the Board rejected the applicant's request for a variance to build a new parking lot that would in part cut into an R-1 District. Member Ron Desser said that of the neighbors who testified, there were only two whose proximity to the lot are relevant. He said that the flooding is not a good reason to deny the variance, as it would have the effect of denying the right of the property owners to develop their own properties. Instead he said that he is basing his vote on the fact that the proposed lot would be unnecessarily cutting into an area that is a pure residential, R-1 district. Likewise, member Lisa Austin said that while she sympathizes with the flooding issue, she believes that proper engineering could help that situation. Rather, she too bases her vote on the fact that the substantial character of the neighborhood would be altered if the project goes forward. Board chairman Richard Wagner said that he would like to see a new Paneras there. If they could reduce the number of parking spaces, he said, the plan would be feasible.

The lone dissenting vote was member Glenn Duck. Mr. Duck voted to approve the variance saying that with the proper screening and adherence to the Code restrictions, the neighbors would not be negatively affected by the construction of the new business.

It is so Ordered.