

August 9, 2011
City of Erie, Pennsylvania

ZONING HEARING BOARD

The regular meeting of the Zoning Hearing Board was held on Tuesday, August 9, 2011 at 1:00 p.m. in the City Council Chambers, Municipal Building, 626 State Street.

- MINUTES-

THE FOLLOWING APPEAL WAS HEARD:

Appeal #11,088 (6116-107-108) by Passport Realty concerning property located on **Royal Avenue**. The appellant is proposing a new and different parking plan for a proposed restaurant. Parking lots are not a permitted use in R-1.

Finding of Facts

1. Prior to taking testimony, Board Chairman Richard Wagner made an opening statement to the Board and concerned citizens in attendance. Mr. Wagner pointed out that this is the same appellant who unsuccessfully filed a variance application at the previous Board meeting. However, as the new and revised application has significant changes to the proposed use of the land, including a reduction in the number of parking spaces that were intruding into the zoned residential area in the previous plan, both he and the Zoning Office believed that the immediate re-application is permissible.
2. Speaking on behalf of Passport Realty (who are representing an investment group hoping to construct a Panera Bread restaurant on the Peach Street location) was again Mr. Daryl Terella. Mr. Terella began his remarks by stating that the applicants listened to the concerns of the neighbors at the previous hearing, as well as the concerns and advice given by the Board in rejecting the previous request. Mr. Terella went on to indicate that his office has worked closely with the Erie City Zoning Office in drafting this new, less intrusive plan.
3. Mr. Terella told the Board and gathered neighbors that the plan that his company is re-submitting represents a significant reduction in the requested parking area, and therefore would be intruding much less into the R-1 zone. He indicated that the petition signed by several neighbors that was introduced in opposition to the proposal at the last hearing was perhaps misunderstood by many of those who signed it, as it incorrectly stated that the applicants were seeking a "re-zoning." This, he said, was incorrect; the majority of the plan is in a commercially-zoned area. It is only a small portion of the parking lot (a portion which was intended to be for employee parking only) that would intrude into the adjacent residentially-zoned district. He reiterated that the proposal will not alter nor

- negatively affect the neighborhood, but rather should energize the north side of upper Peach Street which has been without any thriving businesses for some time now.
4. Also appearing on behalf of the applicant was the chief architect for the site plan, Mr. Timothy Phillips. Mr. Phillips first provided a scale drawing of the site plan to the Board, and passed around copies to the concerned neighbors. He then fielded several questions from Board members Ron Desser and Lisa Austin, primarily about the changes that this plan represents from the first proposal. Mr. Phillips stated with specificity that the planned development is going to be 66.9 feet from Royal Street, which represents a significant reduction in the number of parking spaces that were proposed in the first plan. The distance from the Averlon Street property line to the building will be 44 feet. When questioned about the six foot fence that is to be installed as a screening wall to protect the neighbors from noise and other intrusions caused by the business, Mr. Phillips said that the company plans to install a decorative cedar wood fence. This type of fence, he said, has been used in other projects he has been involved in, but he cannot quantify the reduction of noise that the cedar fence will provide. However, he pointed out that the drive-up ordering system that will be installed should produce minimal audibility, and should not affect the neighbors with the fence installed. Mr. Terella added that while the fence is intended to be sound blocking, not sound eliminating, there are many other drive through, fast food restaurants in the commercially-zoned area; what makes this proposal unique is that Panera's facility is larger than all the other establishments along Peach Street.
 5. Also appearing to testify was City Engineer, Mr. Jason Sayers. At the previous hearing there were many neighbors who pointed out to the Board that their primary concern was the water run-off created by the construction of a large facility and parking lot, on an already poorly drained area of the city. Mr. Sayers indicated to the Board that the drainage in the Panera's parking lot will mark an improvement for the area. He said that under state and local guidelines, the new parking lot could reduce the run-off into the adjacent neighboring properties by up to 70%. He indicated that he could be more specific as to the improvement after he reads the plan that Panera will be required to submit to the City Engineer's Office prior to building the new lot.
 6. After hearing Mr. Sayers' report concerning the run-off, and after reviewing the site plans that representatives for the applicant passed around to those in attendance, many of the same neighbors who had initially opposed the plan now expressed to the Board that they feel that their concerns have been addressed, and most said that they are no longer opposing the proposal. To reassure the neighbors who had been opposed to the plan, the Board agreed to attach three conditions to the variance request – conditions which, for the most part, represent the changes from the previous proposal which was rejected last month. The conditions are: 1) all parts of the development maintain a minimum distance of 66.9 feet from Royal Avenue; 2) no vehicle access will be permitted from the development onto Royal Avenue; and 3) Panera will install the six foot fence along the entire landscaping frontage on Royal Avenue.

Conclusions

1. Parking lots are not a permitted use in R-1 Districts. While the majority of the proposed development will face Peach Street (a commercially-zoned area), a small portion of the

- project's parking area will encroach onto the residential area adjacent to it. The extent of that encroachment, however, has been significantly reduced from the previous site plan which was rejected by the Board at the July, 2011 hearing.
2. The water run-off problems which already exist in this area will actually be improved by the installation of a parking lot with required drainage.
 3. The residential street nearest to the proposed site (Royal Avenue) will not be negatively affected by the development; it is one of the three conditions that the Board added that no vehicle access onto Royal Avenue will be permitted.

Decision

By a unanimous four to zero vote, the Board approved the variance request - with the three conditions attached - to allow the appellant to build a Panera Bread restaurant on the proposed site. All the Board members expressed their approval with the changes that the applicants made to the initial proposal which had been rejected, and applauded the cooperation between the various parties in this important project, who presented a revised plan, with the necessary changes, working under the short time frame that they had.

It is So Ordered.