

November 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, November 8th, 2011 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

- MINUTES -

THE FOLLOWING APPEALS WERE HEARD:

Appeal #11,093 by Mata Bhago, LLC (5113-218) concerning property located at **1505 Buffalo Road** in an RLB zoning district. The appellant is proposing a convenience store with fuel pumps at this location. According to Section 305.43(a) of the Erie City Zoning Ordinance, fuel pumps are not permitted with convenience stores in the RLB districts.

Finding of Facts

1. Representing the applicant Mata Bhago, LLC was Attorney John Mehler, who began by providing to the Board a recent photograph of the building and property in question – a service garage and used car lot. Attorney Mehler indicated that he recently visited the location, and that the photo (which was obtained from a real estate website) is current, and is an accurate representation of how the building appears. He said that the building was formerly a gas station, and that the former fuel tanks have been removed. As neither car sales lots nor gas stations are permitted uses in the district, Attorney Mehler indicated that the appellant is seeking a variance based on the legal, non-conforming use status of the property.
2. Attorney Mehler told the Board that the applicants are hoping to open a convenience store at the location, which lies at the northeast corner of Buffalo Road and Camphausen Street, just east of Broad Street, in a mixed area of residential and commercial properties. When questioned by the Board, Attorney Mehler said that he was not sure whether the applicants would try to convert the current building into a store, or if they would demolish the current structure and erect a new one. In either event, he said the new business would be a welcome addition to the economically depressed neighborhood. The upkeep of the property would improve the area as well; for example, there are used tires stored behind the building which will be cleaned up and properly disposed of.
3. Attorney Mehler admitted that this case does not present a traditional hardship, but he reiterated several issues involving convenience stores and gas stations which the Board has heard and discussed in previous hearings. Convenience stores are a permitted use in the RLB District. Most convenience stores now sell gasoline, and according to Attorney Mehler Pennsylvania Courts have consistently ruled that modern convenience stores are considered quasi-gasoline stations. When questioned about this matter by Board member Lisa Austin, Erie Zoning Office

- officials indicated that the current zoning ordinance was passed by City Council in 2004. The Zoning officials said that they are not aware of the intention of Council as to why they chose to make convenience stores a permitted use, but to not permit gas stations in the same district.
4. The application for the variance to open a store at this location is a site specific, one-time request, Attorney Mehler said, and not an effort to establish precedent about what constitutes appropriate locations for gas stations in a modern economic landscape. Attorney Mehler indicated that the applicant evaluated the location and determined that it is an undervalued property; however, he reiterated that the project is only feasible if the store can sell gasoline. The applicant is the principle owner and operator of three similar stores at other locations in the Erie area, all of which are clean, well maintained, and an asset to their neighborhoods.
 5. There was one party who testified in support of the proposal. Mr. Jim Duchini, a long-time resident of the area and eastside business owner. Mr. Duchini said that this part of Buffalo Road is similar to Peach Street, where local businesses and residential areas are closely intermixed. Addressing the question of whether gas stations should be located so close to residential neighborhoods, he said that there are several other gas stations on Buffalo Road (some operating, some closed). He described the neighborhood as an economically undervalued area and applauds the effort to build it up. Mr. Duchini welcomes the investment for the betterment of the neighborhood, and said that such efforts typically promote other businesses and deters crime.
 6. In opposition to the proposal was Jason and Audrey Cardinelli, nearby residents and business owners. Dr. (Jason) Cardinelli opposes building the gas station in this location, saying that the neighborhood is already served by two stations 9/10 of a mile to the east, on the corner of Buffalo Road and McClelland Avenue. Both of these stores have been robbed several times in the past year, and the late hours of operation of the proposed new store would provide a lucrative target for thieves. Mrs. Cardinelli added her concern that if the new business fails, a new, more suitable business could not be set up on the same site for many years to come.

Conclusions

1. Convenience stores are a permitted use in RLB Districts; however, gas stations are not.
2. In the modern economic landscape convenience stores are generally recognized as quasi-gasoline stations.
3. The applicants are owner/operators of several other convenience stores with gas stations in the Erie area. The proposed Buffalo Road project is only feasible to the investors if this store likewise offers fuel pumps.

Decision

By a three to one vote, the Board approved the applicant's request for a variance to open a new convenience store and gasoline station. Member Ron Desser said that while he does not necessarily believe the argument that convenience stores must sell gasoline in order to be profitable, he does nonetheless recognize that most stores do offer gasoline, and therefore new stores would be expected by the public to offer gas as well. He said that this variance request does not provide the traditional hardship, but the store would be an improvement for the neighborhood. Mr. Desser also indicated that he agrees that the applicant has a case for a continuous, legal non-conforming use in this location. Member Mike Hornyak likewise indicated that since convenience stores are already a permitted use, to open a store without the installation of gasoline pumps would be considered a bad business model in the modern environment. Board chairman Richard

Wagner also voted to approve the application, but stated that his rationale was different than what he said the last time the Board voted on this issue. He indicated that since convenience stores have become gas stations in most cases, perhaps the Code should be updated. He said that his the fact that there was no site plan presented, his vote to approve the variance is done so reluctantly. The lone dissenting vote was cast by member Lisa Austin. She said that since most convenience stores today are also gas stations, we are seeing more and more gas stations in close proximity to residential areas. She expressed her concern that the more the Board approves convenience stores to sell gasoline, the harder it will be in the future to reject a variance for stores wishing to sell gas, no matter how close the establishments may be to residential areas.

It is so Ordered.

Appeal No. 11,094 by James Duchini (5949-105) concerning property located at **2143 McKinley Avenue** in an M-1 District. The appellant is proposing to use the facility at this address for a commercial recreation business. As per Section 204.19 of the Erie City Zoning Ordinance, a commercial recreation business is not permitted in the M-1 District.

Findings of Fact

1. Appearing to testify on his own behalf was the applicant, Mr. James Duchini. Mr. Duchini told the Board that for the past several years he has been purchasing properties up and down McKinley Avenue, from East 26th and Broad Streets to McKinley Park. These are largely older, industrial-type buildings, he said, which are becoming increasingly difficult to rent out in the recent troubled economy.
2. Mr. Duchini said that the offer he has to rent the building to a recreational business that plans to install indoor batting cages is the only prospective tenants he has. He said that the building in question is fairly new (rebuilt about five years ago), and has an indoor capacity of '50 X '100. It was formerly used as an indoor parking garage for large trucks. The facility will be equipped to serve approximately 10-15 people at a time, and would have ample parking.
3. Upon questioning by Board member Lisa Austin, Erie Zoning Office officials indicated that the area is not zoned for this type of recreational or commercial business largely because of pressure from the Manufacturer's Association, who wants to keep the area exclusively for traditional companies. In response, Mr. Duchini said that he has ruled out converting any of the properties along McKinley into storage units, and that the building he plans to rent can be converted back into a manufacturing facility if the variance is granted and the recreational business does not stay.

Conclusions

1. The area along McKinley Avenue is an M-1 District, and has several vacant, industrial-type buildings that are difficult to rent out as they are.
2. If the variance is permitted and the building is converted into a recreational business, it can be converted back into a manufacturing facility if necessary.

Decision

By a unanimous decision all four Board members voted to approve the requested variance. Speaking on behalf of the entire Board, member Ron Desser said that the proposed use is such that the vacant building would be put to use. Its use would not prevent future manufacturing use, thereby not violating the spirit of the Ordinance.

It is So Ordered.