

March 13, 2012
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held on Tuesday, March 13, 2012 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

- MINUTES -

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,004 by William Herbstritt (6044-234) concerning property located at **2929 Hazel Street** in an R-1A Zoning District. The appellant is proposing to convert a single family dwelling to a two family dwelling at this address. Per Section 204.11 of the Erie City Zoning Ordinance, two family dwellings are not a permitted use in the R-1A District.

Findings of Fact

1. The applicant Mr. William Herbstritt appeared to testify on his own behalf, and told the Board that he purchased the house in 1980 as a two-unit dwelling; he has only recently heard that it is in fact in violation of the City Ordinance. Mr. Herbstritt said that he has always considered having purchased a flat - a two apartment structure. His brother lived on the second floor until he moved out in 1994, and the apartment has been rented out ever since. From the time he purchased the house, Mr. Herbstritt said that there has always been separate plumbing, two separate gas and electric lines, etc... The only alteration that he ever made was to add another door; otherwise, the structure is unchanged from the way it was when he bought it.
2. Board chairman Richard Wagner asked Mr. Herbstritt about the 1977 zoning certificate for the house issued to a Mr. Ralph Cirello, designating the house as a "one-family" dwelling. Mr. Herbstritt said that he did purchase the house from Mr. Cirello, but that Cirello made no mention about the zoning status of the property. Mr. Herbstritt testified that from the time that he and his brother bought the house they always assumed that it was a permitted two-unit. He admits, however, that he has no documentation from 1980 to confirm why he believed that the property was properly zoned.
3. Mr. Herbstritt said that he still lives in the house with his two daughters, and indicated that he has no intention of selling it. He believes that the only reason the zoning violation came to the attention of city officials was because he registered the house as a rental unit recently.
4. The Board also had several questions for the Zoning Office. Responding to the questions was zoning official Armand Chimenti, who confirmed that if the Board

denies the variance the house would have to be converted to a one-unit occupancy, or risk being in violation of the City Ordinance. Mr. Chimenti explained that there are approximately two hundred similar properties in the City that are technically in violation of the Ordinance. The administration had proposed a general amnesty for all the good faith home owners, but City Council rejected the idea. Rather, Council required that each individual property owner must seek a variance, which would be decided on the individual circumstances of each case.

Conclusions

1. Two family dwellings are not a permitted use in the R-1A District. Many home owners in the city purchased their homes in good faith, believing that a two-unit flat was in compliance with the City Ordinance.
2. The appellant purchased the house more than thirty years ago, believing that it was properly zoned as a two-unit dwelling. From the time he bought the house it has been a two-apartment flat; he never made any alterations to convert the house.
3. The appellant and his family have lived in the house since they purchased it in 1980, and have no plans to sell the property.

Decision

Prior to the vote, Board Chairman Richard Wagner proposed a condition that the variance, if granted, would be in effect so long as the appellant, Mr. Herbstritt or his family, continues to occupy the house. When it is sold, it will revert back to a one-unit property to be in compliance with the Ordinance. Mr. Herbstritt agreed to the condition.

With the condition attached, the Board voted unanimously (three to zero) to grant the variance. Chairman Wagner, together with Board members Lisa Austin and Mike Hornyak all agreed that the appellant was an innocent, good faith purchaser of the property as a flat, believing that it was compliant with the City Ordinance. So long as it remains an owner occupied house, the variance will remain in effect. When Mr. Herbstritt (or his family) decides to sell the house, they will make any changes that may be required so that the house is compliant with the City Code.

It is So Ordered.

Appeal No. 12,005 by Cesar Hernandez (5300-112) concerning property located at **713 East 23rd Street** in an R-2 zoning district. The appellant is seeking a dimensional variance for a two family dwelling. Per section 205 of the Erie City Zoning Ordinance, two family dwellings require 6,000 square feet in the R-2. The lot is 4,050 square feet.

Findings of Fact

1. Mr. Cesar Hernandez (together with his son who was both a witness and serving as an interpreter for his father) appeared on his own behalf and testified that he purchased the house in either 1999 or 2000. A recent inspection by the City's rental registration office prompted the Zoning Office to intervene, as the square footage was in violation of the City Ordinance.
2. Board Chairman Richard Wagner observed that the facts of the case are very similar to the previous case just heard by the Board (Appeal 12,004). When the appellants purchased the house it was sold to them as a conforming two-unit dwelling. Mr. Hernandez and his wife have lived in the upstairs apartment since purchasing the house, with one of their children always living downstairs. As in the previous case, the appellants have made no alterations or changes to the property, believing that it was a legal two apartment flat since the time that they bought it.
3. Zoning official Armand Chimenti explained to the Board that this case differs from the previous appeal in that this is a request for a dimensional variance; two family houses are a permitted use in the R-2 zoning district. The issue here is the square footage; this house is only 4,500 square feet where the Code requires a minimum of 6,000. As with the previous case, however, once again the good faith purchasers were never made aware of the violation when buying the property.
4. Given the similarities to the previous appeal, Board Chairman Wagner then proposed to offer the same condition that was agreed to by the appellant in the previous case. Specifically, the Board will respect the fact that the appellant was an innocent good faith purchaser of what he believed was a conforming two family flat. If the appellant and his family continue to occupy the house, the Board will grant the variance. When Mr. Hernandez or his family decide to sell the house, however, they must disclose the violation – the variance will only remain in effect while the appellant and his family live in the house. Mr. Hernandez agreed to the condition.

Decision

By a unanimous three to zero vote, the Board approved the variance with the condition attached.

The variance only remains in effect as long as the appellant or his family continue to live in the house. If the appellant decides to sell the house, the variance will not extend to the new owners. The appellant must either make the house compliant with the Code, or disclose the violation to the prospective buyers at the time.

It is So Ordered.

Appeal No. 12,006 by Melissa Sulkowski (4016-210) concerning property located at **561 West 6th Street** in an R-2 zoning district. The appellant is proposing to convert a single family dwelling to a professional service at this address. Per Section 204.12 of the Erie City Zoning Ordinance, professional services are not permitted in the R-2 District.

Findings of Fact

1. The appellant Ms. Melissa Sulkowski appeared to represent herself. Before beginning her testimony she provided the Board with photographs of the house which she hopes to occupy, together with several letters of recommendation from clients and colleagues. Ms. Sulkowski said that she runs a family counseling practice, specializing in children and couples going through a divorce.
2. Ms. Sulkowski hopes to purchase the West 6th Street property and eventually expand her practice to include collaborative counseling to assist families coping with divorce, and the issues they are facing individually. She has previous experience working with troubled children in group homes like Abraxas.
3. Answering questions from the Board, Ms. Sulkowski indicated that she presently employs two therapists besides herself, and hopes to add two more plus a nutritionist – in all, with support staff up to eight employees total. She acknowledged that she would be required to provide a designated number of parking spaces, which she is prepared to do. However, Ms. Sulkowski added that the eight employees would not be working at the same time.
4. Ms. Sulkowski said that she has looked extensively on both West 6th and 10th Streets for a suitable location, but that everything she saw either required too much renovation to the buildings, or did not have enough adjoining property to install the required parking spaces. The only changes required on the requested site would be to add the parking spaces, which can be done given the additional property in the rear of the building. Ms. Sulkowski said that she could find no suitable locations in an RLB zoning district. She added that this location has a strategic importance, in that she is often required to attend legal hearings at the nearby Erie County Courthouse.
5. Also appearing on behalf of the appellant was Mr. Dan Collins of Collins Realtors. Mr. Collins represents both Ms. Sulkowski and Dan Dobmeier, the owner of the house who has lived at the location for twenty-nine years. Mr. Collins indicated that the building is along a stretch of West 6th Street known as “millionaires row.” He indicated that they intend to keep the exterior of the building as it is – remaining similar to the other buildings in the area. If the variance is granted then they plan to raze the garage in the rear of the building and install the required parking spaces.
6. Mr. Collins went on to say that the mansions in the area are no longer the traditional, family-used homes they once were. Instead the homes in the area have been replaced by law offices, group homes, a bed and breakfast and many other type businesses. All of these old mansions have been reconstructed or adapted for these new business purposes, he said, or converted into apartment buildings.
7. Appearing in opposition to the proposed new business was Mr. William Lechner, president of the Garden Court Association. Reading from a prepared statement, Mr. Lechner said that there was no hardship for Ms. Sulkowski, as there are many other properties and locations in downtown Erie for her to choose from. If she was granted the variance it would alter the character of the neighborhood, Lechner said, as the Garden Court area is listed on the National Historical Register, and that generations have worked to preserve the character, architecture and historical importance of the neighborhood. It is part of the Zoning Board’s responsibility, he said, to preserve Erie’s historic neighborhoods.

8. Answering questions from the Board, Mr. Lechner said that the reason the property has been on the market for several years is in part the fault of the owner, who has too high an asking price, and has failed to keep up the exterior of the house. He said that the primary concern about this proposal is that there is no way of telling what type of business would move in when Ms. Sulkolwski vacates the location. Additionally, there are still many unanswered questions about Ms. Sulkowski's business, such as whether she would have late night clients, emergency calls, etc...which would further disturb the character of the neighborhood.
9. At least two other neighbors testified in opposition to the proposal. Mr. Dwayne Bennett and Ms. Diane Banks expressed several additional concerns. Among the neighbor's concerns are the fraternity houses, which were introduced to the neighborhood in the 1970's; a proliferation of fraternity houses followed, which the neighbors believe devalued the neighborhood. Another concern was a group home that moved into one old mansion and then completely re-styled the front of the house, and now has the additional specter of sheriffs escorting prisoners to and from the home. The character of Cherry Street would also change, as it is designated as an emergency route, and parking is only permitted on one side of the street. This, it was suggested, would inevitably add to the congestion of the area if the new business were installed.

Conclusions

1. Professional services are not a permitted use in the R-2 District.
2. If permitted, the property has enough room to install the required number of parking spaces so as to be in compliance with the City Ordinance.
3. In recent years the old style mansions along West 6th Street have been replaced by many law firms, accounting firms, group homes and other businesses
4. The proposed counseling center would be in the neighborhood known as the Garden Court Historical Association, which is on the National Historical Registry.

Decision

By a unanimous three to zero vote the Board denied the applicant's request for a variance to install a counseling center on the site. Board Chairman Richard Wagner said that he saw no hardship demonstrated by Ms. Sulkowski, and that there was nothing preventing her from finding an alternative, suitable location. Board Member Mike Hornyak said that he too did not believe any hardship was expressed, and he does not believe that the business fits into the area. Likewise, member Lisa Austin also said that although she did feel that there is a need for this business in the community, she too did not feel that a hardship was expressed, and the change would alter the character of the neighborhood.

It is So Ordered.