

July 10, 2012
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held on Tuesday, July 10, 2012 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

- MINUTES -

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,014 by Raymond and Susan Zapolski (6202-204) concerning property located at **1215 West 24th Street** in an R-2 district. The appellant is seeking a dimensional variance for a two-family dwelling. Per Section 205 of the Erie City Zoning Ordinance, the required minimum lot size for a two-family dwelling is 6,000 square feet. The lot size is 3,600 square feet.

Findings of Fact

1. The appellant, Mr. Raymond Zapolski, appeared on his own behalf and told the Board that he and his wife purchased the house in question in 2004. Neither he nor his family lives in the house; he rents out both units. He said that he has always considered the property to be a conforming two-unit dwelling. The house was represented by the realtor (Howard Hanna) as a two-unit, and was so stated in the sales agreement, seller disclosure form, etc...
2. Mr. Zapolski indicated that he first learned of the violation when he received a notice from the Erie Zoning Office. After receiving the notice of violation Mr. Zapolski checked with Penelec and National Fuel, and his research indicated that the house was likely converted to a two-unit in 1989 or '90. Mr. Zapolski said that the house was a two-unit when he purchased it; he never made any changes. The house has always had separate utilities and mail boxes for each unit.
3. Being a property owner, Mr. Zapolski indicated that he is generally familiar with zoning regulations. He said that he bought the property in good faith, believing it to be a two-unit house. The adjacent houses are two-unit structures, and all other indications, including the Erie County website, identifies the house as a two-unit.
4. Board members inquired about how a discrepancy like this happened. Erie Zoning Office officials indicated that a realtor could contact the Zoning Office to determine the proper classification of a given property, and avoid any misidentified properties which could lead to grievances like this.

Conclusions

1. In an R-2 Zoning District, two-family dwellings require a minimum lot size of 6,000 square feet. The appellant's lot is 3,600 square feet.
2. Neither the appellant nor any member of his family live in the house.
3. The appellant purchased the house believing that it was a compliant, two-unit dwelling. Any changes to the property were done before the appellant purchased it.

Decision

By a two to one vote, the Board denied the appellant's variance request. Members Richard Wagner and Lisa Austin voted to deny the variance. Both members expressed regret over the confusion that has resulted in many innocent property owners discovering that they have purchased houses in violation of the Code. Ms. Austin indicated that she thinks that the purchaser has a grievance with the realtor who handled the sale of the house. Mr. Wagner said that he is concerned about the suspicious environment that may now exist with real estate buyers in the City. However, he said that he had to vote to deny the variance in this case because it is not the primary residence of the appellant or his family, and because the lot size is 2,400 square feet short of the required 6,000 square feet. Member Patty Szychowski, however, voted to approve the variance, citing that the appellant was an innocent, good faith purchaser of the property.

It is So Ordered.

Appeal No. 12,015 by Betty Torrance (5234-139) concerning property located at **4315 Fargo Street** in an R-1 District. The appellant is seeking a use variance for a two-family dwelling. Per Section 204.10 of the Erie City Zoning Ordinance, two-family dwellings are not a permitted use in the R-1 District.

Findings of Fact

1. Appearing on behalf of the appellant, Betty Torrance, was her son, Mr. Thomas Torrance. Mr. Torrance indicated that his family has owned the house in question since it was built, either in 1962 or '64. The structure was enlarged in 1987 so his grandmother (the owner's mother) could live in the house as well. It was Mr. Torrance's now deceased father who received the Zoning Certificate in 1989, indicating that the house is a one-family dwelling.
2. Mr. Torrance indicated to the Board that his family never realized that they were in violation until they recently received a notice from the Zoning Office. He said that the house is not functioning as a two-unit. The house has only one gas and one

- electric meter, and one front and back door. The family has no intention of attempting to convert the house into a two-unit.
3. Board members inquired about why the house was cited as being in violation. Zoning Office officials indicated that they do not determine the status of a property. It is the City Building Inspector's Office that makes that determination.
 4. When questioned as to why the inspector thought the house was a two-unit, Mr. Torrance proffered the fact that the house has two functioning bathrooms, and two kitchens. Presently his mother (the appellant) lives in what Mr. Torrance described as the "larger section" of the house, with her nephew living in the "smaller" section, assisting the appellant. However, Mr. Torrance maintained that the house has never been considered a two-unit structure by his family; but rather it is one large house.
 5. There was one opposition witness. Mr. Robert Rehn, who has lived directly across the street for thirty-seven years, said that he opposed the proposed variance due to the effect it could have on the assessed value of the houses in the neighborhood. Mr. Rehn also said that he remembers the appellant having other tenants live in the house throughout the years, suggesting that it has served as a two-unit dwelling.
 6. When the testimony was completed, Board Chairman Richard Wagner proposed that it was likely the existence of a second functioning kitchen that accounts for the building inspector's evaluation of the house as a two-unit structure. If the second kitchen were to be removed, the house should be considered compliant. Speaking on behalf of the appellant, Mr. Torrance indicated that he would agree to have the second kitchen removed, and for the house to be re-evaluated after the renovation is completed.

Conclusions

1. Two-family dwellings are not a permitted use in an R-1 District.
2. The appellant's house is functioning as a two-unit. It has a single entrance way in the front and back, and only one set of utilities. The house has two bathrooms and two kitchens, which most likely explains why it was determined to be a two-unit by the City building inspector.
3. The Board suggested that if the second kitchen was removed, the house would be a compliant single-family dwelling.

Decision

Prior to voting the Board agreed on the record that by denying the variance in this matter, they would be allowing the family to remain living in the house as they are presently. In exchange, the applicant (through her representative) agreed on the record that the family would contact the City Building Inspector's office and make whatever changes necessary to become a compliant one-family dwelling.

With that agreement reached, the Board members Richard Wagner, Mike Hornyak, Lisa Austin and Patty Szychowski voted unanimously to deny the variance.

It is So Ordered.

Appeal No. 12,016 by Wayne Rose (5075-216) concerning property located at **2829 Old French Road** in an R-1 District. The appellant is seeking a use variance for a two-family dwelling. Per Section 204.10 of the Erie City Zoning Ordinance, two-family dwellings are not a permitted use in the R-1 District.

Findings of Fact

1. The appellant, Mr. Wayne Rose, indicated to the Board that he had purchased the property in September 2010 directly from the seller in a private sale, without the use of a realtor. The seller, Mr. Jeffery Heintz, had previously purchased the property from his father. Mr. Rose indicated that it was the seller's father who had converted the property some time in the 1980's. At the time of the sale, neither the buyer nor the seller of the property realized that the dwelling was non-conforming.
2. Mr. Rose provided photos of the properties for the Board to see, and several Board members indicated that they visually inspected the property. Mr. Rose said that he presently rents the units to two separate tenants, both unrelated to him.
3. The property has two separate utilities, and Mr. Rose said that he knew the property was a two-unit when he purchased it. Next door to it there is a four-unit dwelling. The property is in a section of the City where a residential district abuts a commercial district. This, Mr. Rose suggested, led to some of the confusion about the zoning status of the property.

Conclusions

1. Two-family dwellings are not a permitted use in a R-1 Residential District.
2. The appellant's property is in the R-1 District, however, it abuts a commercial district.
3. Neither the appellant nor his family live in the property; he rents it to tenants who are unrelated to him.

Decision

By a four to zero vote, the Board unanimously voted to approve the variance. Board member Mike Hornyak said that while this is not the typical type of case that the Board hears, where

the owner of a two-unit, non-conforming property lives in the house themselves, he nonetheless approved the variance because this property is well maintained, and does not change the character of the surrounding commercial area. Member Lisa Austin said that she would normally vote to deny the variance request; however, because the property is so well maintained, and is in such close proximity to a commercial district, she decided to approve the request. For the same reasons, members Richard Wagner and Patty Szychowski also voted to approve the variance.

It is So Ordered.

Appeal No. 12,017 by McCarty Printing (1007-236) concerning property located at **246 East 7th Street** in an RLB District. The appellant is seeking a variance for lot coverage requirement and front yard setback requirements. Per Section 205 of the Erie City Zoning Ordinance, the maximum lot coverage in the RLB District is 50% and the front yard setback is 18' +/- 5'. The appellant is proposing 73.3% lot coverage and a 0' front yard setback.

Findings of Fact

1. Company president Donald Sieber appeared to testify on behalf of the appellant, McCarty Printing. He began by stating that the company's existing building will soon be one hundred years old. A new addition to the building would alleviate many current problems, and make the company more competitive, which would in turn create new jobs and increase the tax base.
2. The plan is to construct a new addition and tear down a portion of the existing structure after the new addition is complete. The new building addition would be located on the same south building line as the existing office facility. Once the addition is complete, the demolished portion of the existing building will be approximately 50% of the square footage of the addition. Mr. Sieber said that the new construction would not alter the essential character of the neighborhood, would not substantially impair the appropriate use or development of adjacent properties, and have no detrimental effect to the public welfare.
3. The existing McCarty Printing facility exceeds the current lot coverage and front setback requirements allowed by the Code for an RLB district; the company has received variances for previous expansions in the past. McCarty would like to continue their operations at their existing facility. In order to accomplish their proposed addition, they will have to exceed the maximum lot coverage as specified in Section 205 of the City Ordinance.
4. Testifying on behalf of McCarty's plan was Mr. Thomas Freeman, architect of the proposed expansion. Mr. Freeman presented a large architectural design for the Board to

follow as he explained the proposal. The existing building, he said, is the same as the new proposed building as far as setbacks are concerned. The new building will encroach on the property line.

5. Mr. Freeman said that the older portion of the building that will be demolished will provide additional parking spaces.
6. There was one witness who opposes the proposed expansion. Mr. Kevin Konzel, owner of the property directly across the street from McCarty, appeared to express his concerns for the project, and also showed another map of the area to the Board. Mr. Konzel owns Konzel Cabinets, and claims to have had a history of trouble with deliveries to McCarty Printing, with a truck even hitting Konzel's building in the past. His primary concern now is that the trailers that must accompany a large construction project like this can only gain access to the site by going over Mr. Konzel's property on the south side of East 7th Street.
7. Mr. Konzel also expressed concerns with the increased traffic, and the fewer available parking spaces that will result from the proposed expansion. He said that he has had numerous serious problems with McCarty over the years, and that any attempts to negotiate a resolution have failed. He asked the Board to issue a three month continuance in order for him to have more time to research the proposal and provide more specific reasons for the Board to deny the variance. However, when questioned by the Board, Mr. Konzel admitted that he never actually contacted the authorities nor filed any complaint for any of the alleged infractions by McCarty. He said that the reason he is not more prepared today is that he was out of town when the notice of the Board hearing on the variance was sent. Subsequently, the Board rejected the request for any continuance.
8. In response to the complaints alleged, Mr. Sieber said that the new facility will not produce any increased truck-traffic activity. Further, he said that any construction trailers should be able to park on McCarty property, and not infringe on the neighboring businesses.

Conclusions

1. According to Section 205 of the City Ordinance, the maximum lot coverage in an RLB District is 50%, and a front yard setback of 18' +/- 5'. The appellant's proposed building would cover more than seventy percent of the lot, and have no setback.
2. The existing building is setback similar to the proposed building. While the dimensions will differ, the overall property coverage of the new building will be slightly greater than the current lot coverage.
3. The appellant has been a local business in the same location for many years. Their proposed expansion should not alter the character of the neighborhood.

Decision

By a unanimous four to zero vote, the Board approved the appellant's request for a dimensional variance for both the maximum lot coverage, and setback requirements under

Section 205 of the Erie City Ordinance. Board members Mike Hornyak, Lisa Austin, Patty Szychowski and Richard Wagner all approved the variance and applauded the efforts to generate new economic growth in the City.

It is So Ordered.

Appeal No. 12,018 by Rick Rambaldo (4140-200) concerning property located at **1324 South Shore Drive** in a R-3 District. The appellant is proposing a 73' radio antenna at this address. This is a special exception as a Communication Tower / Antenna and must, therefore, be presented to the Zoning Hearing Board for approval.

Findings of Fact

1. Mr. Rick Rambaldo of First Channel Communications appeared on behalf of himself and his partner, David Hallman Jr., to testify in support of the company's application for a special exception. Mr. Rambaldo told the Board that his company received the rights for one FM radio station in Erie, via public auction, from the Federal Communications Commission. When fully operational the station expects to employ up to ten people.
2. Prior to issuing the permit, the FCC requires that the purchaser must secure "reasonable assurances" from local government (the City of Erie) and property owners. Mr. Rambaldo provided the Board with a copy of a letter he sent to City officials to comply with the FCC requirement. Additionally, Mr. Rambaldo provided a copy of a letter he received from the Bureau for Historic Preservation in Harrisburg, confirming that his company informed the Bureau, and received clearance from them as per FCC rules.
3. The Bureau of Historic Preservation allows for an antenna of up to eighty (80) feet. However, the Erie City Ordinance limits the height of any communication's tower / antenna to seventy-five (75) feet. Therefore, Mr. Rambaldo said, the company reengineered the antenna to be seventy-three (73) feet, in order to be compliant with the City Code. The building on which the antenna sits is 123'; the total height of the building and antenna is therefore in compliance with another federal regulation – the Federal Aviation Administration rule that requires any structure exceeding two hundred feet to be lighted.
4. Mr. Rambaldo focused his remarks around the Erie City Zoning Ordinance - specifically Section 305.45.5 (a) through (h), and the issues addressed in those subsections of the Code. He also provided photos of the building and antenna, taken from several different vantage points throughout the City (e.g. the Peninsula, the Yacht Club, the Convention Center, etc...). Mr. Rambaldo also showed the Board a map of northern Erie County, with a highlighted triangle-shaped area identifying the only section of the City where the FCC will permit the installation of the station's antenna. Mr. Rambaldo explained that going outside the specified area would interfere with existing radio frequencies.
5. The FCC requires that the company stay within this narrow geographic band. To go outside the area risks interfering with a more powerful station in Jamestown, NY, and thus

losing the local station's frequency. The South Shore location where the antenna is erected is the eastern-most site in the specified area. According to Mr. Rambaldo, First Channel Communications would have preferred to place their antenna on an existing tower; there is no suitable location within the FCC-specified area that could provide an acceptable signal. Many different locations were considered. Television channels 12 (WICU), 24 (WJET) and 54 (WQLN) all offered to have the antenna placed on their existing sites, but they are all out of the specified area.

6. The challenge for the company was to locate a site for the antenna that would reach the largest possible audience, while remaining sensitive to neighbor's concerns. Mr. Rambaldo said that his company met with a neighborhood group, where all of the issues of concern were discussed. He said that his company utilized the latest technology to minimize visual and audio "noise." They also avoided excessive lighting on the pole, and erected the antenna without the use of guy wires.
7. There were several witnesses who appeared to testify in opposition to the proposed radio station antenna. Mr. Robert Allhouse lives next to the high-rise where the antenna will be erected. He was previously a resident of the Frontier Park area. Mr. Allhouse presented the Board with a petition signed by 93 people who oppose the antenna, many of whom are also Frontier residents. The meeting with First Channel Communications and neighborhood residents, Mr. Allhouse said, only included people who live within five hundred (500) feet of the antenna. It did not include Frontier residents who are equally affected by the new structure.
8. Mr. Allhouse indicated that opposition to the antenna is not only for aesthetic reasons, but also for economic and tax considerations. Mr. Allhouse then presented the Board a "Petition to Deny" the requested special exception. In the Petition to Deny, Mr. Allhouse cited several portions of the Erie Zoning Ordinance which he asserts prohibit the installation of the antenna in its present location. He also claims that the erection of the antenna violates provisions of the Frontier Shores Subdivision. He stated that members of the Frontier Shores purchased their properties with the understanding that certain covenants and restrictions on the land protected them against unwanted construction projects, like the First Channel Communications antenna and tower.
9. Another witness in opposition was Attorney Gregory Sesler. Attorney Sesler said that First Channel Communications selected a sensitive residential area for the erection of their antenna, even though there were several other locations in zoning districts (C-3, M-1, R-2) where the tower would also be permitted. However, legal arguments aside, Attorney Sesler said that the most important reasons for opposing the antenna were health and safety concerns. He said that throughout the entire process Mr. Rambaldo and his partners focused only on economic arguments, without regard to the important health considerations. Attorney Sesler said the chief problem is what he described as "electromagnetic concerns", lightning and other hazards that could be attracted to a tower on top of a building where many people live. He pointed out that the building is more than one hundred feet tall to begin with, and with the addition of the antenna the total height of the structure is not in compliance with the Code.
10. Another witness in opposition was Ms. Susan Miller, who lives in the building where the antenna is erected. Ms. Miller is a registered nurse, and retired US Army Colonel. She purchased the condo recently, in November 2011, and said that she would not have bought the property if she had known about the antenna. Ms. Miller extensively cited research

studies conducted in many countries that delineate the many health concerns associated with prolonged exposure to radio waves. Among those concerns are cell abnormalities that lead to breast and brain cancer, lymphomas and auto-immune diseases. She continued by including studies linking exposure to birth defects and reproductive disorders, as well as insomnia and depression experienced by people living near electric-magnetic signals. When questioned by the Board, Ms. Miller said that she also had concerns about the aesthetic appeal, and effect the signals would have on wildlife in the area. She indicated that the studies she quoted focused on the effect of radio waves, and not cell phone or other transmission devices. She stated that the studies examined exposure of radio waves for up to six (6) kilometers.

11. Other witnesses testifying in opposition to the proposed antenna included Mr. Steve Stroul. Mr. Stroul is a resident of Frontier, and reiterated the concerns states by previous witnesses. Ms. Debra Wells, a South Shore resident for 24 years, told the Board that all prospective purchasers received a book with strict rules of compliance. Those rules are supposed to preclude the erecting of signs, antennas, etc... All such rules, she said, are intended to improve the quality of the area and make it a comfortable place to live. Ms. Wells also cited studies that show property values decrease wherever radio towers go up.
12. In response Mr. Rambaldo was permitted to rebut the allegations made by the witnesses who spoke in opposition to the antenna. He began by addressing the issue of property values, which, he said, was obviously not a concern of Mr. Patterson, who owns the building where the antenna is erected. As to the health concerns, Mr. Rambaldo said that he relies on the FCC, who permit the installation of radio towers in populated areas. The FCC has so many rules that regulate the radio business and the transmission of radio frequencies that if there were any dangers or negative effects of radio waves, the towers would not be permitted. He introduced a letter from Mr. Myron Jones, a long-time local radio owner who indicated that he does not believe there are any health concerns with the location of a radio tower in a residential area. Additionally, he indicated that lightning should not be a problem, because the building itself would protect the pole from lightning strikes.

Conclusions

1. The appellant received the rights to operate a FM radio station via public auction. The new station must stay within a specified area designated by the Federal Communications Commission, so as not to interfere with the frequencies from other FM stations.
2. Under Section 204.13 of the Erie Zoning Ordinance, "Communication Towers/Antennas" are Special Exceptions in an R-3 Zoning District.
3. According to the Code, a tower must not exceed seventy-five (75) feet, nor be so high that it requires lighting. The proposed tower is seventy-three (73) feet tall.
4. According to a Federal Aviation Administration regulation, structures exceeding two hundred feet must be lighted. Even when the appellant's antenna is erected on the building, the structure is less than two hundred feet high, making it compliant with the FAA regulation, as well as the City Zoning Ordinance.

Decision

By a three to one vote, the Board approved the Special Exception allowing the appellant's radio antenna / tower to be erected on the South Shore apartment building. Board members Mike Hornyak, Patty Szychowski and Richard Wagner voted to approve the request. Member Mike Hornyak said that the appellant performed due diligence in the entire process of complying with the many federal and local regulations, and they are entitled to the special exception. Mr. Wagner added that as a special exception the "communication tower / antenna" would be permitted in most zoning districts of the City; Ms. Szychowski agreed, and both voted to approve the special exception request. Member Lisa Austin voted to deny the request.

It is So Ordered.