

January 8, 2013
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held on Tuesday, January 8, 2013 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

- MINUTES -

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,028 by the Bayfront East Side Taskforce (1012-123) concerning property located at **307 East 3rd Street** in an R-2 District. The appellant is seeking a variance to continue to use the property as a three-family dwelling. Per Section 305.24(a) of the Erie City Zoning Ordinance, a three-family dwelling is required to have 6,000 square feet of lot area. The lot area is 3,403 square feet.

Findings of Fact

1. The applicant, the Bayfront East Side Taskforce (B.E.S.T.), was represented at the hearing by their executive director, Mr. Jeremy Bloeser. Mr. Bloeser explained to the Board that B.E.S.T. purchased the property approximately one month ago. The house is currently listed as a 2-unit because it was certified as such in 1996 by the previous owner. According to Mr. Bloeser, his research indicates that the house has been operating as a 3-unit structure for at least the past fifteen years. The appraiser and county website both indicate that the house is a 3-unit structure.
2. Mr. Bloeser told the Board that B.E.S.T. knew that there would be some renovation required when they purchased the house. They are asking to continue to use the property as it was when they bought it – a 3-unit dwelling. The most recent City inspection reports showed no violations, even though it has been operating as a 3- unit. Mr. Bloeser said that B.E.S.T. will utilize the property even if the variance is denied. The house presently has two 2-bedroom units and one single bedroom apartment. If granted the variance, B.E.S.T. plans to maximize the use of the property and reduce density by transforming one of the 2-bedroom units into a one-bedroom.
3. The Board had several questions for the City Zoning Office regarding the status and zoning history of the house. Zoning officials indicated that they believe the house was built as a 3-unit dwelling sometime prior to 1968, and for unknown reasons was converted into a 2-unit by the owner in 1996.

4. B.E.S.T.'s overall goal is to improve the neighborhood, Mr. Bloeser said, and save and renovate as many houses as possible. Mr. Scott Little, the house's next door neighbor and local business owner, appeared in support of the variance. He said that the property has been operating as a 3-unit since he has been there, and he cannot recall any parking problems or disturbances. Mr. Little said that B.E.S.T. properties are typically very well maintained.
5. B.E.S.T. also presented a letter of support for its proposal from the East Bayfront Neighborhood Watch group. The letter indicated that B.E.S.T. has made a considerable impact in the community through its revitalization efforts; and that the property in question has been operating as a 3-unit dwelling "without any negative impact to the neighborhood."

Conclusions

1. The house purchased by B.E.S.T. has been operating as a 3-unit dwelling for at least the last fifteen years. It is listed on the county website as a 3-unit structure.
2. B.E.S.T. plans to reduce density in the house by transforming one of the two-bedroom apartments into a one-bedroom apartment. The three units would therefore comprise a single two-bedroom apartment, and two single-bedrooms.

Decision

Prior to the vote, Board member Lisa Austin proposed a condition on the variance, that if passed, it would only apply so long as B.E.S.T. owns the property. If the organization sells the house, the new owner would have to petition for permission to keep it a 3-unit. The condition passed by a three to one vote.

With the said condition attached, and by a unanimous vote, the Board approved the dimensional variance. Board member Mike Hornyak said that he was comfortable that the dwelling was a 3-unit as far back as the late 1960's, and that B.E.S.T. did its due diligence prior to purchasing the house. Board Chairman Richard Wagner added that since the house is professionally built, there is no reason to change it now. For the same reasons Board members Lisa Austin and Patty Szychowski also voted to approve the variance request.

It is So Ordered.

Appeal No. 12,029 by Erie (26th) DPP VIII, LLC (5023-100) concerning property located at the northwest corner of the intersection of East 26th and Ash Streets in an RLB District. The appellant is seeking a variance to construct a 9,100 square foot convenience

store. Per section 305.43(b) of the Erie City Zoning Ordinance, convenience stores shall not exceed 2,500 square feet in the RLB District.

Findings of Fact

1. The appellant was DPP Realty, an out of state company who represents the interests of Dollar General, the company wishing to construct a store on the East 26th Street site. At the hearing, the appellant was represented by Mr. Bob Gage. Mr. Gage's company would own and develop the property, and lease it to Dollar General.
2. Mr. Gage began his testimony by indicating that the first issue that must be addressed is whether the proposed store should be classified as a "convenience" or a "retail" store. Convenience stores are a permitted use in the RLB District, with a maximum square footage of 2,500 square feet; retail stores are not a permitted use.
3. The Zoning Hearing Board application did not specify that the store in question was to be a Dollar General. Erie Zoning Office official Armand Chimenti told the Board that the Zoning Office did not discover until the morning of the hearing that the store in question was in fact a Dollar General. There is no indication that the filing was intended to deliberately mislead City officials.
4. Mr. Gage presented a site plan of the proposed store to the Board. He described the layout of the store, indicating that the facility would occupy approximately 9,000 square feet, and have 28 parking spaces. Mr. Gage said that there would be nothing served at the store that would be cooked; the store would offer anything you could purchase at a typical convenience store. The store would have two signs, one free-standing sign approximately fourteen feet high, and one sign attached to the building. It would be setback from the street by virtue of parking spaces in the front of the building.
5. The parcel on which the Dollar General is proposed is one of two lots that the appellants would be purchasing. The other lot (on the south side of East 26th Street) is presently occupied by the International Institute of Erie. Mr. Gage indicated that his company will not split up the parcel. The International Institute will have 90 days to renew their present lease if they wish to remain at the location.
6. Speaking in opposition to the proposed store was Attorney Paul Burroughs, who represents St. Mary's Home. St. Mary's is on the southwest corner, directly across the street from the site. Mr. Burroughs indicated that he believes the testimony reflects a retail, not a convenience store, and therefore would not be a permitted use. Mr. Burroughs said that only the owners of a given property may request a variance. However, his primary objection is that any hardship that may be claimed by the applicants is self-imposed; that there are not unique or peculiar physical circumstances that would justify the variance (per Section 508 of the City Zoning Ordinance).
7. The proposed store, Mr. Burroughs claimed, would change the character of the entire neighborhood. This concern was echoed by Mr. Bob Orton of St.

Mary's Home, who said that the senior home facility is concerned about the additional lighting, noise and general nuisance that their tenants facing 26th Street would be subjected to. Mr. Orton said that this concern is not just with the customers coming and going, but also with delivery trucks, employees, etc... He said that St. Mary's would prefer to maintain the property as a "bedroom community."

8. Mr. Gage was permitted a rebuttal in response to the objections stated by St. Mary's. He said that at the 10,000 stores nationwide Dollar General typically gets about ten customers per hour on average, slightly more at peak hours - well within the traffic flow for East 26th Street. The lighting at Dollar General stores has cut-off shields that direct it downward, so the glare would not bother someone across the street. He went on to say that the store hours would be 8:00 a.m. to 10:00 p.m. daily, and 9:00 to 9:00 on Sundays. Deliveries are typically made on the same days of the week, in the early morning hours prior to the store opening. There are typically three employees on staff at any time, and most stores attract more foot traffic than vehicle traffic. In fact, Mr. Gage said, the store anticipates business from St. Mary's residents.
9. Responding to questions from the Board, Mr. Gage indicated that Dollar General themselves do all the demographics and research for a given site. He is not sure whether or not Dollar General sought out any other nearby sites. Mr. Gage's firm will be the purchaser and developer of the property, and then gives Dollar General a 15 year lease. The construction is usually done by small contractors after the job is open up to bids; Mr. Gage said that his company encourages the use of local contractors and construction firms.
10. Lastly, Mr. Gage said that this proposal has no demonstrable hardship. He denies, however, that the installation of a Dollar General store would change the character of the area; if anything, he said, it would improve it.
11. Erie Zoning Office official Armand Chimenti told the Board that his investigation revealed that all previous Dollar General stores in the City were categorized as "retail", not convenience stores.

Conclusions

- 1) Convenience stores are a permitted use in an RLB District, "retail" stores are not. The Code limits convenience stores to 2,500 square feet. The Dollar General would occupy 9,000 square feet. Article 6 of the Zoning Ordinance defines retail use but does not define convenience stores.

- 2) Dollar General did all the demographics and research for this site. It is unknown if they sought out any other nearby sites.
- 3) The appellants would purchase and develop of the property, and give Dollar General a 15 year lease.
- 4) The appellant's were unable to articulate a hardship, as required by Section 508 of the Erie City Zoning Ordinance.

Decision

By a unanimous vote, the variance was denied. All four Board members cited the fact that the appellant was unable to present a hardship as the reason for their vote. Board Chairman Richard Wagner said that this was the most important factor in his decision. He added that an applicant cannot create their own hardship. Whether the store is a convenience or retail facility, he said, is irrelevant if there is no hardship. Board member Mike Hornyak felt that the proposal does not fit into the category of convenience store, and felt that the large establishment would in fact change the character of the neighborhood. Member Patty Szychowski said that she was familiar with the neighborhood, and she too felt that the store would change the area; especially given its proximity to Wilson (middle) School. For the same reasons Board Member Lisa Austin also voted to deny the request.

It is So Ordered.
