

February 12, 2013
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held on Tuesday, February 12, 2013 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

- MINUTES -

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,030 by Kenneth J. Bruce (5082-222) concerning property located at **219 East 28th Street** in an R-1A District. The appellant is seeking a variance to continue to use the property as a two-family dwelling. Per Section 204.11 of the Erie City Zoning Ordinance, a two-family dwelling is not permitted in the R-1A District.

Findings of Fact

1. The applicant Kenneth Bruce appeared to testify on his own behalf, and told the Board that he purchased the property in 1994. It was advertised as a two-unit house at the time, and Mr. Bruce indicated that he has assumed that it always was a two-unit. He did not convert the house into a two-unit, and has not made any major changes to the property since purchasing it.
2. Mr. Bruce only recently discovered that the previous owner had received a zoning certificate from the Erie Zoning Office in 1971, classifying the property as a single-family dwelling. Mr. Bruce purchased the property from Glenn Adams, who changed the status of the house to a one-unit. Neither Mr. Bruce nor officials at the Zoning Office knows why the previous owner made the change. According to Mr. Bruce, the Erie County website has the property listed as two-unit; most of the surrounding properties on the street are similarly two-unit structures.
3. Given that many of the surrounding houses in the area are also two-unit dwellings, Mr. Bruce asserted that there would be no change to the character of the neighborhood if his variance request was granted.
4. Neither Mr. Bruce nor his family live in the house. He purchased and maintains the house as a rental property.

Conclusions

1. According to the Erie City Zoning Ordinance, a two-unit dwelling is not a permitted use in the R-1A Zoning District.
2. The appellant purchased the house as a two-unit structure; he did not convert the dwelling in to a two-unit.
3. Several other houses on the block and surrounding neighborhood are similar 2-family dwellings.

Decision

By a three to one vote, the Board voted to approve the variance. Board Chairman Richard Wagner noted that this is a common problem before the Board, resulting from the City's efforts to identify non-complying properties. He said that the appellant was not the person who converted the house to a 2-unit, and it would be unfair to punish an innocent purchaser. Citing that there are several other 2-unit structures in the neighborhood, Board members Patty Szychowski and Angela McNair also both voted to approve the variance. Board member Lisa Austin voted to deny the request. She indicated that she visited the street, and said that while there are other 2-unit houses, they are clearly different from the majority of single-family houses that make up the neighborhood. Board member Mike Hornyak abstained from voting.

It is So Ordered.

Appeal No. 12,031 by Anthony Wiest (6025-203) concerning property located at **903 West 18th/1812 Plum Streets** in a C-4 District. The appellant is seeking a use variance for a service garage at this address. Per Section 204.18 of the Erie City Zoning Ordinance, service garages are not a permitted use in the C-4 District.

Findings of Fact

1. The appellant, Anthony Wiest, appeared to testify on his own behalf, and began by providing Board members with a site plan of the proposal, together with photocopied photographs showing different views of the buildings and surrounding area.
2. Mr. Wiest said that originally he had planned to demolish the house facing West 18th Street, and construct a five-car garage; however, upon further consideration, he decided to abandon his original plan. He decided that since the house was over one hundred years old and has a unique character; he would instead make extensive improvements to the house in order to make it a

functional dwelling again. What he plans to do instead is to convert the small structure at 1812 Plum Street into a service garage.

3. In both his application and his testimony, Mr. Wiest indicated the various reasons why he believes the variance request on the Plum Street property should be granted. He said that the proposed change would not change the character of the neighborhood, and the hardship is not of his own making. This is a corner lot that does not have neighbors on three sides, he said, and has been in an abandon state for some time. The rear of the property (to the south) is zoned industrial and is vacant.
4. According to Mr. Wiest, the proposed service garage would not change the character of the neighborhood. There are at least four or more other garages, commercial or industrial in nature, within a 3-block radius he said. The property has been vacant for at least a decade, probably longer, and has become a dumping ground for used tires, old furniture, etc... Both properties have been occupied by vagrants and transients and have been looted for copper pipes and electric wiring. By contrast, if the variance was approved, the appellant would renovate building facing Plum Street to ensure it was up to code. Together with his renovation efforts to the house facing West 18th Street, Mr. Wiest said that he would be revitalizing the whole corner, positively affecting the entire neighborhood.
5. Given that the property in question seems to lie between two zoning districts, and that the applicant is seeking a non-conforming use for one of the structures, there was confusion among several Board members, who then had several questions for Erie Zoning Office officials. Zoning official Mathew Puz indicated that the entire corner (both structures) is located in the C-4 District. The Plum Street structure may have been used for a commercial purpose at some time; the Zoning Office has no proof of this, but the appearance of the property strongly suggests it was commercial, he said. If granted, Mr. Puz said, the variance would create a non-conforming use, which could be expanded by 50% of the current building size.
6. Also appearing to testify in support of the variance was neighboring property owner Joseph Silvas. Mr. Silvas owns the property next door to Mr. Wiest's properties, and said that he applauds what he called "the marvelous job" that the new owner has done with the blighted properties. Mr. Silvas added that to his memory both of the properties have been vacant and not kept up, and that the proposed changes will complement the neighborhood. Likewise Mr. Lamont Benzo, another neighboring property owner, also agrees with the appellant's new plans. Mr. Benzo said that he was initially opposed to the idea, wanting to save the house on West 18th Street; however, he changed his mind when he heard that Mr. Wiest intends to renovate the house.
7. There were also several area residents who appeared to testify in opposition to the proposal. Ms. Mary Mattern, who lives directly across the street to Mr. Wiest's West 18th Street house, presented the Board with a list of neighbors who oppose the variance request. Ms. Mattern has lived in the neighborhood for fifty years, and said that she wants to keep the only remaining residential block on West 18th Street as it is. She admitted that since 1997 the Plum

Street property has been vacant, but she said that until recently, about six years ago, the house on 18th Street was kept up by its previous owners. Ms. Mattern added that she has an autistic son, and is concerned about the potential hazards that could result from the additional noise, traffic, parking, and late hours of operation from the new service garage. Likewise, Ms. Rebecca Prawdziak, who has lived and worked in the neighborhood for years, is concerned about how the new service garage will affect what she called the only “peaceful” place in the increasingly industrial area.

8. Another witness, Mr. Ray Ferrito, told the Board that he has a “controlling interest” in many adjacent properties to the 18th and Plum Street corner, and is also concerned about how the new owner will develop the properties. Mr. Ferrito said that he is more neutral than outright opposed to the proposal, but added that he is very concerned that the corner will eventually be converted into a used car lot. He said that while he is certainly supportive of investment in the area, he is concerned that future Code enforcement will not be diligent enough. Another neighbor, Mr. Randy Rydzewski, also expressed concerns about disabled and abandoned cars eventually occupying the corner properties. He added that given the relatively small size of the parcel, it is unlikely that another more invasive business would move in if the current owner does not finish his plans to develop the corner.
9. Mr. Wiest was given the opportunity for rebuttal, and began by stressing that he is not going to invest upwards of ninety thousand dollars just to abandon or neglect the property. He reiterated that the street contains mostly auto-related commercial or industrial properties. Directly across the street from the proposed one-car garage is the E.M.T.A./LIFT facility - a full-functioning garage servicing large vehicles. By contrast, Mr. Wiest said that he plans to construct a reasonable sized, thirty foot garage with proper lighting, which would produce less noise than the E.M.T.A. garage. Without the variance, he insisted, he could not develop the property, and it would remain blighted.
10. Mr. Wiest stated that he has a car sales lot in Conneaut, Ohio, and plans to utilize the proposed garage on Plum Street for reconditioning and inspections of cars from his Ohio lot. He said that he expects to construct a building large enough to include a car lift, and enough equipment necessary for auto inspections; he would not have an air compressor, and expects to use hand tools only. He vehemently denied that his long-range goal is to open a small car lot on the 18th and Plum Street location. He also denied that he would be “stacking” cars, and that those cars that require significant repair would be handled at the Ohio location. This proposed garage, he said, is for inspections and small repairs only.

Conclusions

1. The appellant purchased a property on the corner of West 18th and Plum Streets. The parcel contains a house, facing W 18th Street and a small building, facing Plum Street. The property is located in a C-4 Zoning District.
2. The appellant has decided to make a considerable investment to renovate the house, hoping to make it a functional dwelling again. He plans to convert the building facing Plum Street into a small service garage. Service garages are not a permitted use in the C-4 District.
3. The proposed garage would operate primarily to recondition and/or inspect cars for the appellant's used car lot (located in northeastern Ohio). The proposed service garage would only be large enough to work on one car; it would not have an air compressor or other equipment for large-scale repair work.
4. The West 18th Street area has many auto-related commercial or industrial businesses, including a large service facility owned by E.M.T.A. directly across the street from the appellant's proposed garage.

Decision

By a unanimous four to zero decision, the Board denied the request for the use variance. Board member Lisa Austin said that she did not see a clear hardship for the appellant, other than a monetary one. Given the neighborhood objections, she said, she was also concerned about the extended, non-conforming use of this property, by both the present owner and by any future owners, if the variance is granted. Member Mike Hornyak also said that he did not see a clear hardship. He added that he was somewhat confused, given that the appellant has already changed his plans in the short time he has owned the property, the concern is that the appellant may revise his plans again in the future. Board members Patty Szychowski and Angela McNair also both voted to deny the variance, citing no hardship, and that the confusing proposal did not satisfy their concerns about future use. Board Chairman Richard Wagner abstained from the vote.

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 use variance to construct a retail business at this location. Per section 204.13 of the Erie City Zoning Ordinance, retail businesses are not a permitted use in the RLB District.

Findings of Fact

1. The appellant in this case is DPP VIII, LLC (a.k.a. G.B.T. Realty, LLC) from Nashville, Tennessee. They are filing the variance request on behalf of Dollar General, a nationwide chain wishing to construct a store on the corner of East 26th and Ash Streets. The same company filed for a dimensional variance for a convenience store at the Zoning Hearing Board's January, 2013 hearing; that request was unanimously denied. This time the appellants are filing for a use variance, and have amended their application so as to address the reasons that the Board denied the first application.
2. The appellant (DPP) was again represented by Mr. Bob Gage, who explained to the Board that his company would purchase and develop the property, according to Dollar General's specifications, and then lease the building to the national chain store. According to Mr. Gage, this is the only piece of property within the area that is suitable for Dollar General's specific use. Other potential sites would require either sub-leasing or renovating existing buildings, which DPP does not do. They only develop vacant sites.
3. Mr. Gage focused his testimony this time on the principle reason why the initial variance application was denied – lack of any demonstrable hardship. Specifically, the appellants cited the Erie City Zoning Ordinance, Sections 508(9)(d) and 508(9)(e), which address whether the proposed variance would change the character of the neighborhood, and whether the proposal represents the minimum modification necessary to accomplish the requested use of the property.
4. The proposed new store would be consistent with the existing semi-commercial character of the neighborhood (referencing Section 508(9)(d)), said Mr. Gage. He indicated that within a three-block area from the proposed site there are thirty-five non-residential properties, including fourteen businesses. The appellant's petition cited offices, convenience stores, an auto repair facility, and an Italian food store, all in the nearby area. Citing the other nearby businesses, Mr. Gage said his company believes that the precedent for another store has already been set. He did acknowledge that south of 26th Street is more residential than business.
5. According to Mr. Gage, the Code presently allows for the development of several commercial businesses (e.g. car wash, mobile home park, 24-hour laundry mat, etc...) that would be much more detrimental to the community than the proposed store. By contrast, the proposed Dollar General would not be detrimental to the public welfare, but would enhance the community by creating new jobs, and providing convenient access to general household and grocery items within walking distance for many nearby families.

6. The physical construction of the store would be accomplished with the minimal amount of disruption as possible, as would any changes to the existing neighborhood (referencing Section 508(9)(e)). Mr. Gage cited the fact that East 26th Street presently has approximately 15,000 cars traveling on it on any given day. The store, he said, would not increase that amount or create any new traffic; rather, it would draw from already existing traffic as people already passing by would stop at the new store.
7. Mr. Gage presented a revised site plan of the proposed store to the Board. Given that the Board's most recent appointee, Ms. Angela McNair, was not present at the previous hearing, Mr. Gage went over the features and dimensions of the proposed store. Citing the site plan, 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 or old style variety store. The new prototype has the entrance nearer the corner of the store, slightly toward 26th Street, and has two signs, one facing each side. They plan to install sidewalks on both Ash and 26th Streets, with the required setbacks as per the City Code. Mr. Gage added that the new development calls for utilizing the entire .82 acre site.
8. The Board had many questions for Mr. Gage, mostly focusing on the questions of what specifically is the hardship, why this particular location was chosen when there are apparently so many other similar sites in the area, and how the character of the neighborhood would be changed if the variance was granted.
9. Mr. Gage reiterated that the hardship lies in the fact that this is the only feasible site. He said that Dollar General really wants to come to the area and invest in the community. If this proposal is rejected, he said, there will eventually be another business on the site that would be more intrusive to the neighborhood. This is a positive venture, an attempt to install a business that would benefit the community.
10. The reason that 26th and Ash Street was selected is because, given the retailer's requirements, this is the only feasible location. Several Board members pressured Mr. Gage for more specific reasons as to why this is the case. He indicated that the retailer (Dollar General) gives DPP the specifications for a proposed store. Dollar General did not share with Mr. Gage's company how the research into the selection of a site is conducted. He just repeated that this was the only site that was determined to meet all the requirements. Another important reason why this location is ideal is that it allows for the new building to be constructed from the ground up.
11. Mr. Gage said that DPP does not renovate existing buildings, nor tear down existing sites. This is the main reason why nearby locations such as East 26th and East Avenue (a former Goodwill Store) and East 25th and Parade Street (a former Eckerd Drug store) were not feasible locations. Even if these other locations were feasible, Mr. Gage said, the former Eckerd location was not for sale, and the former Goodwill Store exceeded DPP's budget, in that their

business plan does not allow for tearing down or renovating existing buildings. Also, the other proposed location would still require a dimensional variance. Mr. Gage indicated that these other potential sites are in the surrounding area, and are very similar in character to the proposed Dollar General.

12. Given the many businesses in the general area, he reiterated that the proposed store would not change the character of the neighborhood. Mr. Gage said that he does not believe that it is the mission or duty of the Zoning Hearing Board to regulate commerce. He said that the proposed Dollar General would not put neighboring stores out of business. (For example, he said that there should be only about a 10% overlap in services provided between the Dollar General and nearby Serafin's convenience store.) If anything, Mr. Gage said, the existence of the Dollar General would actually boost competition for better prices, thus benefiting members of the community.
13. Mr. Gage concluded his testimony by stating that the proposed location would almost guarantee profitability, which is why Dollar General is so eager to build there, and that the retailer is committed to this investment, and will remain at the site for the long haul.
14. There were several witnesses who appeared in opposition to the proposed Dollar General. Mr. Dan Serafin, whose family has owned the corner store at the corner of East 24th and Ash Streets for eighty-eight years, testified that he knows through experience what the needs of the neighborhood are. He said that there is already adequate competition for business that protects the consumer, citing nearby Wal-Mart and Family Dollar stores. Mr. Serafin added that while City officials shouldn't ignore the issue of competition for business, as Mr. Gage mentioned, it is also not up to the Board to "bend over backward for out of town ventures." Mr. Serafin said that every dollar that Serafin's makes is reinvested in the area, including rental properties, demonstrating a true commitment to the Erie community.
15. Also appearing in opposition to the proposed store was Attorney Thomas Kuhn, representing St. Mary's Home. Attorney Kuhn, citing both the local Erie Zoning Ordinance as well as the Pennsylvania Supreme Court, stated that Mr. Gage's interpretation for a hardship is incorrect for several reasons. A hardship, Attorney Kuhn said, must address the physical attributes of the property itself, not just relying on there being no other suitable sites that meet an applicant's needs. Dollar General's requirements are irrelevant to the Board's consideration, he said.
16. In addition to stating no legitimate hardship, Attorney Kuhn argued that the proposal would certainly change the character of the area by virtue of placing a large commercial enterprise in the neighborhood. St. Mary's residents would be impacted, he said, by the early morning deliveries, increased traffic, etc... This is not a "limited" business venture, and therefore does not warrant a use variance in the RLB District.
17. Mr. Robert Orton, spokesman for St. Mary's Home, reiterated his opposition to the project for the same reasons that he stated at the previous hearing. He still believes that the increased lighting, traffic and other general commotion

would impact St. Mary's residents. While stating that he is not opposed to the property being developed, Mr. Orton expressed his concerns that we are going down a "slippery slope." Pretty soon, he said, St. Mary's would be set in a business/industrial area, and no longer have the "bedroom community" feel that the neighborhood now enjoys. When questioned about the long list of potential businesses that could go in to the property legally, Mr. Orton said that he could not comment on what may happen; he can only say that right now they don't want the Dollar General Store on the site.

18. Other neighborhood residents who appeared to testify included Mr. Walter Porter, an East 26th Street resident since 1980. He told the Board that among his neighbors, he is not aware of anyone who is in favor of this proposal. With a middle school nearby, he said, it would create more problems for the neighborhood, like loitering. Mr. Porter added that only a handful of people in the neighborhood actually own their homes; most of the residents of the area are renters. Most long time residents, according to Mr. Porter, oppose the installation of the Dollar General. This opinion was echoed by Mr. Mike Skrypzak, who also testified about his strong opposition to the proposed store.

Conclusions

- 1) The appellants are seeking a use variance to operate a small convenience retail establishment – namely a Dollar General Store. The hardship cited to grant the variance is that this is the only location that is feasible, according to the requirements of the Dollar General chain.
- 2) The hardship is based on the Erie Zoning Ordinance Section 508(9)(d), that the store would not change the character of the neighborhood as there are already many other businesses and non-residential establishments in the area, and Section 508(9)(e), that the requested proposal represents the minimum relief necessary to allow construction of the store.
- 3) Dollar General did all the demographics and research for this site, and gave the information to the appellants, who will purchase and develop the site, and then lease the building to the Dollar General chain. It is unknown what criteria Dollar General used in determining their requirements.
- 4) The appellants do not renovate existing buildings, nor tear down existing sites. For this reason, other potential nearby sites were excluded from consideration.

Decision

By a unanimous vote, the variance was denied. All five Board members cited the fact that the appellant was unable to present a legitimate hardship as the reason for their vote. Board Chairman Richard Wagner said that his vote was based primarily on this factor. Inconvenience, he said, is not the same as a legitimate hardship. Board member Mike Hornyak also felt that the appellant did not present a hardship. Likewise, Members Lisa Austin, Patty Szychowski and Angela McNair all cited the same reason – no legitimate hardship – as the reason for their votes.

It is So Ordered.
