

March 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, March 12, 2013 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

- MINUTES -

THE FOLLOWING APPEAL WAS HEARD:

Appeal No. 12,033 by Gerald and Anna Maria Kirk (5086-207) concerning property located at **3002 Holland Street** in an R-1A District. The appellants are seeking a use variance to continue using this property as a three-family dwelling or convert the property to a four-family dwelling. Per Section 204.11 of the Erie City Zoning Ordinance, a three or four-family dwelling is not permitted in the R-1A District.

Findings of Fact

1. Mrs. Anna Maria Kirk appeared to testify on behalf of her husband and herself, the appellants. They were applying for a use variance. Mrs. Kirk provided the Board with photographs of the appellant's house and other multi-unit properties in the neighborhood. She told the Board that her and her husband have owned the property for twenty-nine years, and that it has been a three-unit dwelling since the time they acquired it.
2. The appellants only realized that the house was in violation of the Code after the City of Erie required all landlords to register their properties, and the subsequent violation they recently received. Included with their variance application, the appellants included a copy of the landlord registration that they filed with the City in 2007, identifying the property as having three units.
3. According to Mrs. Kirk there will be no changes to the existing property, so the requested variance will not alter the character of the neighborhood as it already exists. The appellant's property provides off-street parking for all of its residents, even though there are several other multi-unit dwellings in the neighborhood (including the houses in the photographs) that do not provide off-street parking. Mrs. Kirk said that the appellant's house is well maintained, and has remained essentially the same for the entire time that the appellants have owned it.
4. The house is for sale at the present time, and according to Board Chairman Richard Wagner is mistakenly represented by the realtor as being in a R-2 Zoning District. The Board questioned Mrs. Kirk about the house itself, and

the misrepresented listing. Mrs. Kirk said that for the entire time that the appellants have owned it, the house has had three units, with a small space for an efficiency apartment that is currently being used only for storage. She indicated that she does not know why the realtor listed the house as it has. She added that at the present time there is no pending buyer (a potential purchaser recently withdrew their bid).

5. Board member Lisa Austin had several questions for Erie City Zoning Office officials about the property and Zoning District. Zoning official Mathew Puz indicated that the residential rental registration program was begun by the City in 2005, and that the appellant's house was registered in 2007. Mr. Puz said that the Zoning Office is unable to confirm when, if ever, the house was converted from a two-unit, but added that there is no record of it ever being a commercial property. Board member Mike Hornyak confirmed this. Mr. Hornyak told the other Board members that he has lived in the neighborhood his entire life, and remembers the house as always being a residence.
6. The Board recessed temporarily and privately conferred. When they returned Board Chairman Richard Wagner proposed a condition to the variance: the house can remain as a 3-unit dwelling until the present owners (the appellants) sell the house. When the house is sold it will revert back to a two-unit. This, Mr. Wagner said, is closer to honoring the Code, which does not permit multi-unit houses in the R-1A District.

Conclusions

1. The appellants have owned the house for twenty-nine years; it has been a three-unit dwelling for the entire time that the appellants have owned it. Despite the buildings unusual architecture and appearance, there is no record that the house has ever been used as a business.
2. Multi-family dwellings are not a permitted use in the R-1A Zoning District.
3. The appellants are seeking a non-conforming change of use as defined in Section 301.20 of the Erie City Zoning Ordinance.
4. According to the City Ordinance, the request for a non-conforming change of use does not require the appellants to show a hardship under Section 508.

Decision

Prior to the vote the condition that was proposed by Board Chairman Wagner was seconded and unanimously adopted. If the variance is approved, it will contain the condition that the property may remain a 3-unit dwelling only until it is sold by the appellants; then it will revert to a non-conforming 2-unit house.

With the said condition attached the Board unanimously approved the use variance. Board Chairman Richard Wagner said that the Board took the appellant's situation into consideration, but had to balance it against the City's ongoing dilemma with non-conforming, multi-unit dwellings. The vote, he added, constituted a compromise, which the Board agreed to because the property has been used as a 3-unit house for so many

years. Board members Lisa Austin and Mike Hornyak agreed, and also voted to approve the variance request. Both noted that their approval was also influenced by the fact that the property has been maintained at a high standard all the time that the appellants have owned the house.

It is So Ordered.
