

April 9, 2013
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held on Tuesday, April 9, 2013 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

- MINUTES -

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,034 by James K. Brown (4024-119) concerning property located at **728 West 4th Street** in an R-2 District. The appellant is seeking a use variance to convert the property from a single-family dwelling to an eating and drinking establishment. Per Section 204.12 of the Erie City Zoning Ordinance, eating and drinking establishments are not a permitted use in an R-2 District.

Findings of Fact

1. The appellant, James Brown, appeared on his own behalf and began his testimony by referring to the business plan that was included with his application for a variance. Mr. Brown told the Board that he is co-owner and operator of the Three B's Restaurant and Bar on the corner of West 4th and Liberty Streets. The property he wishes to convert is directly next door to the Three B's. Mr. Brown explained that he is not attempting to expand the existing bar and restaurant, but rather he wishes to open a small coffee shop to complement the bar, and provide an alternative to his customers.
2. According to Mr. Brown, Three B's is already one of the most successful restaurants in the area, and has been documented favorably in newspapers and television programs from as far away as Pittsburgh and Cleveland. Together with his local partners, Michael and Mathew Caro, Mr. Brown indicated that they are prepared to invest up to one hundred thousand dollars to add the coffee shop to the already successful bar / restaurant. Three B's presently employs fourteen people; Mr. Brown estimates that he will hire an additional seven or eight employees for the new business.
3. The proposed coffee shop will benefit the entire area; a neighborhood which, according to Mr. Brown, unfairly has a negative image in the community. The new business will improve the lower west side area, re-vitalize its economy, provide jobs and hopefully attract other new businesses. Mr. Brown pointed out that the proposal is not an attempt to expand the bar. He said that the focus of Three B's has been the restaurant, and providing the

customers a nice dining atmosphere (for example, the tavern does not have a happy hour). The coffee shop will offer deserts for the dinner patrons of Three B's. They also plan to offer a small breakfast menu at the coffee shop, mostly for carry-out, during early morning hours (either 5:00-9:00 or 5:00-11:00 a.m.) when the restaurant is closed.

4. The property that Mr. Brown and his partners have purchased and plan to develop is located directly next door to Three B's on West 4th Street. Although it is presently a one-family dwelling, it was previously used as a barbershop. The Board had several questions for officials from the Erie Zoning Office regarding the property. Zoning official Matthew Puz told the Board that the Zoning Office has a Zoning Certificate issued in 1970 that allowed the property to operate as a barbershop – a non-conforming use. However, while the dwelling is presently vacant, it is now considered a single-family dwelling. Even though the building was a barbershop at one time (a non-conforming use), since two consecutive years passed when the property was not utilized as a business, it is no longer considered as a non-conforming use status. Mr. Puz went on to say that Three B's itself is a non-conforming use.
5. The Board had several questions for Mr. Brown regarding the parking situation, which he acknowledged is one of the main concerns for the new business. Mr. Brown said that there are twenty-four (24) parking spaces behind the two properties (the restaurant and the house together). In an effort to address the parking situation, Mr. Brown and his partners have been actively trying to purchase the vacant property across the street – formerly a laundry-mat. The hope is to demolish the vacant laundry and use the property as a parking lot. According to Mr. Brown the owner of the abandoned building has moved out of the country, and there is nobody who has the authority to sell the property on the owner's behalf. Mr. Brown said that he and his partners hope to purchase the property at a tax sale. They estimate that it will cost approximately eighteen thousand dollars to purchase and raze the building, and install the parking lot. Mr. Brown said that this demonstrates the level of commitment that he and his partners have shown in order to make this proposal successful, which in turn, he said, would benefit the community.
6. It is the parking situation that brought several neighborhood residents to speak in opposition to the proposed coffee shop. Ms. Alicia Hodges lives nearby Three B's, and said that for years she has experienced parking problems in the neighborhood, occasionally forcing her to park illegally. Like many of her neighbors, Ms. Hodges does not have private, off-street parking, and must park on the street. She told the Board that she has spoken to employees of the restaurant that indicated to her that they were instructed by Mr. Brown to park on the street, (near the corner of West 3rd and Liberty), leaving the parking area behind the establishment available for customer's cars. Ms. Hodges said that these employees tend to park on the street for their entire eight-hour shifts. She said that she has approached Mr. Brown with her parking concerns, including what the Three B's employees told her. Ms. Hodges said

that she did not receive a good response from Mr. Brown, and felt that he was dismissive to her concerns.

7. Another area resident, Mrs. Jessica Schwenk (Ms. Hodges' next door neighbor), also appeared to testify in opposition to the proposed coffee shop. Mrs. Schwenk told the Board that she and her husband, together with friends, have patronized Three B's in the past. In spite of this, Mrs. Schwenk also claims to have received a poor response when she approached Mr. Brown with the parking concerns. However, Mrs. Schwenk said that she has also expressed her concerns about the parking to one of Mr. Brown's partners, Mathew Caro. According to Mrs. Schwenk, Mr. Caro indicated that he would speak to Mr. Brown to make sure that Three B's employees would not park on the street, where the neighborhood residents need the spaces.
8. Mrs. Schwenk further testified that in her conversation with Mr. Caro (the appellant's partner), he gave a different version of what the owners plan to do with the West 4th Street property. Mrs. Schwenk said that in the conversation she had with Mr. Caro about two years ago, he told her that the building on the property next to the restaurant was intended to be demolished to make room for additional parking. Mrs. Schwenk said that she resents this new proposal for a coffee shop, calling it a reversal of the original plan as told to her by Mr. Caro. Mrs. Schwenk also said that she doubts that there are actually 24 parking spots in Three B's lot, as Mr. Brown claims.
9. Mr. Jim Boehn, who owns property on nearby Poplar Street, also appeared in opposition to the proposed coffee shop. Mr. Boehn said that he is concerned that the new business will eventually become another liquor establishment. He added that it was not just the parking situation that concerns him, but also the additional traffic congestion that would likely be created if the size of the current establishment is enlarged. Mr. Boehn said that he thinks the Board should honor the R-2 restrictions and that approving the variance may have the effect of having local tenants leave the area.
10. In rebuttal to the opposition witnesses, Mr. Brown acknowledged that the neighbors came to speak to him about their parking concerns. However, Mr. Brown said that after those discussions he instructed his employees to park in the farthest corner of the Three B's lot, and no longer take up the resident's street parking spaces. He reiterated that his intention is to improve the economy and quality of the neighborhood, and has no plans to seek an expansion of his liquor license or create a new bar.
11. Mr. Brown said that he was not aware of the promise made by his partner to Mrs. Schwenk to tear down the next-door property and build a parking lot. Mr. Brown said that he and his partner discussed several possibilities, but were not sure what they would eventually do with the property. When asked by the Board why his partners did not attend the hearing to verify the statements, Mr. Brown said that his partner is a school official, and had another important meeting being held at the same time that precluded his attending the Zoning Board Hearing.
12. In response to the neighbor's concerns with the status of the street parking, Board member Patty Szychowski suggested that the neighbors investigate the

possibility of petitioning the City to install signs that restrict parking in selected spaces to neighborhood residents. She said that this has been done successfully in other areas of the City (like the area around St. Vincent Health Center) where employee parking on the nearby streets was an issue. Zoning Board officials said that neighborhood residents could request “neighbor specific” signs from the City’s Traffic Engineering Department.

Conclusions

1. The appellant is the co-owner and operator of Three B Saloon, a legal non-conforming bar and restaurant located on the corner of West 4th and Liberty Streets. The owners have purchased a vacant, single-family dwelling at 724 West 4th Street, directly next door to the restaurant. They plan to convert the house into a coffee and desert shop.
2. According to the Erie City Zoning Ordinance, eating and drinking establishments are not a permitted use in the R-2 District.
3. Adequate parking for the present restaurant is already a concern for neighborhood residents, who believe that the matter will become out of control with the addition of a new business directly next door to the existing one.
4. Under Section 302 of the Erie City Zoning Ordinance, eating and drinking places must provide a minimum of one off-street parking space for every four seats in the establishment.
5. In an effort to address the anticipated parking problem, the appellant indicated that he and his partners are attempting to purchase an abandoned property across the street, demolish it and build a parking lot to serve both the restaurant and proposed coffee shop.

Decision

By a vote of three to two the Board approved the use variance to allow the appellant and his partners to open a coffee shop next door to their existing tavern / restaurant. Board member Patty Szychowski said that she was torn on the issue after listening to all of the testimony, and is concerned about the nearby resident’s parking situation. However, given the success of the appellant’s restaurant, she decided to approve the variance because of the new jobs and other economic possibilities that the new business could create. Member Mike Hornyak also voted to approve the variance. He said that he too sees the concerns of both sides, but he anticipates that the purchase of the abandoned building should help the parking situation. He encouraged the appellant to revise the proposal so as to maximize the available space for parking. Board member Angela McNair also cited the economic benefit and potential new jobs as the reason for her vote to approve the variance. She recommended that the appellant seek better dialogue with the residents of the neighborhood to try to minimize opposition from them in the future.

Board members Richard Wagner and Lisa Austin opposed the variance request. Mr. Wagner said that the property could be a one-family dwelling or a parking lot, but that the proposal did not justify the additional parking and other problems that it would create for the neighbors. Ms. Austin also said that while she originally approved the proposal, it was the concerns expressed by the neighbors that made her change her vote.

It is So Ordered.

Appeal No. 12,035 by Kathleen Harris (4019-122) concerning property located at **711 Poplar Street** in an R-2 District. The appellant is seeking a dimensional variance to continue to using the property as a three-family dwelling. Per Section 305.24(a) of the Erie City Zoning Ordinance, 3 and 4-family dwellings are permitted provided each dwelling has at least two thousand square feet of lot area per family. The lot area per family is 1,289 square feet.

Findings of Fact

1. The appellant, Kathleen Harris, appeared to testify on her own behalf and told the Board that she has owned the property at 711 Poplar Street since 1970, and that it has been operating as a 3-family dwelling since she purchased it. She is seeking a dimensional variance to allow her to continue using the property as a 3-family dwelling.
2. Ms. Harris said that she purchased the property as a 3-family dwelling, and had no idea that it violated the Code until the contractor who is in the process of remodeling the house attempted to get a permit from the Erie City Zoning Office. Zoning Official Matthew Puz told the Board that he was unable to determine if or when the property was ever converted; there is no record or evidence of the property being used as a 3-family dwelling prior to 1968.
3. According to Ms. Harris the issue of parking has never been a problem with the property. She told the Board that the house is similar to most of the other properties in the neighborhood, which are predominantly multi-family apartment houses. Ms. Harris said that her property has always been well maintained, and that she is presently in the process of making renovations. When asked about the hardship in this case, Ms. Harris said that given her existing investment in the renovations, the hardship would be a loss of income. Additionally, she pointed out that converting the property now would not be feasible; it would be wasteful, and result in what she called wasted, unproductive space.
4. The contractors who are in the process of renovating Ms. Harris' property appeared to testify on her behalf. Mrs. Kathleen Orton (who is also a friend of Ms. Harris) confirmed what the appellant told the Board. Ms. Harris only

discovered the violation because Mrs. Orton and her husband (the contractors) told the appellant about it. The property is well maintained, Mrs. Orton said, and the neighbors that the contractors have spoken to during the renovation process have expressed no problems with the present situation.

5. Two nearby property owners appeared to testify in opposition to the requested variance. Ms. Lori Watson told the Board that her objection is due to the parking issue. She owns an adjacent property to the appellant's, which has no off-street parking for its residents. Similarly, many other neighborhood residents park on the street, as most of the multi-unit buildings do not have off-street parking. The street is one-way, and does not have alternate parking; this, Ms. Watson said, creates a problem. She added that in her opinion the economic concerns expressed by the appellant are not a legitimate hardship.
6. Another area property owner, Mr. Jim Boehn, also testified in opposition to the variance citing insufficient available parking for the number of tenants. While Mr. Boehn said that he applauds the appellant's renovation efforts, the property is still only about 69% of the space required by the Code; in his opinion this creates an over-crowding problem.

Conclusions

1. According to Section 305.24(a) of the Erie City Zoning Ordinance, three or four-family dwellings in an R-2 District must provide at least two thousand square feet of lot area per family.
2. The appellant, whose property provides just under one thousand three hundred square feet per lot, has owned the property since 1970. It has been a three-family dwelling ever since the appellant purchased it.
3. The Erie City Zoning Office has no evidence to suggest that the property was ever converted to a three-family dwelling.
4. The appellant has maintained the property well. The violation was only discovered when contractors who are making renovations to the property informed the appellant of the Code.

Decision

By a three to two vote, the Board approved the appellant's request for a dimensional variance. Board Chairman Richard Wagner said that this is a reasonable request since the property has been operating as a three-family dwelling for 43 years. He said that he agreed with the appellant that there was a hardship, given the number of years it has been in its present form. Board members Patty Szychowski and Angela McNair also both voted to approve the variance. Ms. Szychowski said that while she does not believe that there was a legitimate hardship, she nonetheless feels that given the length of time that the appellant has operated the house as a three-unit, the Board has the discretion to approve the request. Ms. McNair agreed, indicating that since the house has been a three-unit for 43 years, there is no compelling reason to change it now. Members Lisa Austin and Mike Hornyak dissented. Ms. Austin said that while she was sympathetic to an innocent buyer, there is no hardship in this case, and given the Code, the property would

more appropriately be a single-family dwelling. Mr. Hornyak cited the slim square footage as his reason for rejecting the request, together with the parking problems mentioned by the neighbors.

It is So Ordered.