

August 13, 2013
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held on Tuesday, August 13, 2013 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

- MINUTES -

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,048 by Nick Marinelli (5049-233) concerning property he owns located at **1061-63 East 26th Street** in an RLB District. The appellant is seeking a dimensional variance to convert the nonconforming five-unit multifamily dwelling to a six-unit multifamily dwelling. Per Section 205 of the Erie City Zoning Ordinance, a six-unit multifamily dwelling requires 9,000 square feet of lot area. The lot is 3,750 square feet.

Findings of Fact

1. The appellant, Nick Marinelli, appeared with his wife, Sally Marinelli, and together they testified regarding their East 26th Street multifamily dwelling. Mr. Marinelli passed out an information packet to each Board member, containing a statement in support of the request, a site plan including dimensions of the building, and several photographs showing different angles of the dwelling. They are requesting that the front corner unit, presently listed as a commercial property, be converted into a small, one bedroom single apartment.
2. The appellants referred to the photographs in the packet as they testified that they purchased the property several years ago, when it was in a state of complete disrepair. Mr. Marinelli said that he tried repeatedly to rent out the space to a commercial tenant. First, he said the property was occupied by a beauty shop. That venture failed, when it was discovered that the occupants were engaging in illegal drug activity. Next, Mr. Marinelli said he spent over \$4,000.00 to install a small Laundromat, which was subsequently destroyed by the tenants. After spending another two thousand dollars in upgrades and repairs, he has been unable to find another commercial tenant, and the property has remained vacant and unutilized.
3. Mr. Marinelli told the Board that not only is the commercial space conducive to a single-family unit, but that he has already renovated the unit, and has a

tenant in waiting pending the Board's variance approval. The prospective tenant, a partially handicap man who presently rents another one of Mr. Marinelli's units, is ready to move in to the proposed unit; it would be easier for the tenant to clean and maintain the smaller unit, and his Section 8 financing has already approved the move.

4. Answering several questions from the Board about the building itself, Mr. Marinelli said that the dwelling presently has five residential units; two upstairs and the rest on the ground floor. All but one of the units are single occupancy, with one double. There are six electric boxes outside, five for the residential units, and one for the former commercial unit that he hopes to rent as residential.
5. Both Mr. and Mrs. Marinelli asserted that one of the reasons that the property is difficult to rent to a commercial tenant is because the nearby area really is residential. The nearest commercial properties are a County Fair store and a beer distributor, both a block away. Mr. Marinelli, who himself is a retired real estate broker, said that he has tried to rent the property to a commercial tenant using signs, newspaper ads and Craig's List, all to no avail. After having no luck for seven years, he said, he decided to examine the current proposal; to rent the property as a residential unit.
6. One nearby property owner agreed, and testified in favor of the appellant's request. Ms. Trisha Paglia owns a four-unit dwelling across the street from the appellant's building. Ms. Paglia said that there is a great demand for one bedroom, single-unit apartments in that area. She said that she has no objection to the appellants converting the property into a residential unit.
7. Mr. Marinelli concluded his testimony by telling the Board that he has spent upward of \$75,000.00 to renovate his properties and bring them up to Code. The hardship is the ongoing maintenance for a vacant unit that he has been unable to rent. The best use for the property, he said, is to convert it and rent it as a residential unit.

Conclusions

1. The appellant owns a multi-unit building containing five residential apartments (four of which are single occupancy, one double) and a vacant commercial unit facing the street.
2. The commercial unit was rented out twice in the years that the appellant owned the property. On both occasions the tenants misused or destroyed the property, costing the appellant thousands of dollars to repair. In the past several years the appellant has tried unsuccessfully to rent the unit to another commercial tenant.
3. The appellant, along with at least one of his neighboring property owners, contends that the best use for the vacant property is to convert it into a single-unit apartment, for which there is a large demand in the area.
4. There is a tenant of one of the appellant's other apartments who is ready and waiting to occupy the unit, pending Board approval. The prospective tenant is

partially immobile, and would benefit from the easy access afforded to the street front unit.

Decision

By a three to one decision, the Board voted to approve the appellant's request for a dimensional variance. Board Chairman Richard Wagner said that the appellant has demonstrated due diligence in attempting to rent out the unit to a commercial tenant. He added that given the demand for single-unit apartments in the area, the conversion will benefit the neighborhood. Board members Patty Szychowski and Mike Hornyak agreed, and also voted to approve the request; Ms. Szychowski adding that despite there being no significant hardship, each case must be decided on its own unique circumstances, and that this is what is best for this situation. Member Lisa Austin voted to deny the request. She said that the square footage in this case is too small, and added that she was concerned that low income tenants often are forced to accept properties like this, which do not conform to Code restrictions.

It is So Ordered.

Appeal No. 12,046 by Colleen McCarthy (4005-228) concerning property located at **150 West 5th Street** in a C-3 District. The appellant is seeking a use variance to convert this property from a multifamily dwelling and professional service to a single-family dwelling and a professional service. Per Section 204.17 of the Erie City Zoning Ordinance, a single-family is not a permitted use in the C-3 District.

Findings of Fact

1. The appellant, Colleen McCarthy, appeared on her own behalf and testified about the history of the building. She told the Board that the building had been built in the 1970's, and soon after purchased by her father and his then business partner, who together converted it into a partially commercial building – originally a law office and three residential apartments.
2. Ms. McCarthy went on to say that later in the 70's the building was converted again, this time into two (commercial) law offices, and two residential units. It was changed yet again in the early 1980's, this time converting one of the apartments and adding another law office; by 1984 it had become three law offices, and a single residential apartment. The appellant included a zoning certificate from November 1984, classifying the building as “multiple family dwelling / professional services”, in her application.
3. The appellant explained that the recent trend for the neighborhood in question has reverted back towards residential, which the block was originally zoned to be. With the expansion of the nearby Erie County Courthouse, Gannon

University and other large government and commercial enterprises, for many years it was not unusual to convert residential properties into commercial ones (like the law offices the Ms. McCarthy's father installed). In fact, prior to their recent demolitions, there were several neighboring buildings that were similarly both commercial and residential.

4. City Zoning Office official Mathew Puz answered several questions posed by Board members regarding the history and classification of this property. Mr. Puz explained that prior to 2005 the district was zoned as RLB (residential limited business). The appellant's present request would have been permitted if the district was still zoned as RLB. The reason why the Board's approval is required is because the owners did not receive permits for all of the conversions that Ms. McCarthy noted. The City Zoning Office has no record of the property being converted from a three-unit residential into a two commercial, two-unit residential property.
5. Ms. McCarthy concluded her remarks by pointing out to the Board that if approved, the variance would not change the present arrangement at all; the building would remain as it is, with one residential tenant along with the multiple commercial units.

Conclusions

1. The building was originally built as a multi-unit, residential property, in what was at the time an RLB Zoning District. The appellant's father and his business partner began to convert the residential units into law offices. By the mid-1980's there was a single residential unit, and three law (commercial) offices.
2. The Erie City Zoning Map was changed in 2005, making the district a C-3. Single-family dwellings are not a permitted use in a C-3 Zoning District.
3. There is presently only one residential tenant in the building. If approved, the variance would not change the status of the residents; it would remain as multiple-commercial (law offices) with one residential occupant.

Decision

By a unanimous decision, the Board voted to approve the appellant's variance request. Board Chairman Richard Wagner said that this was a simple request, with no changes to the present status of the occupancy of the building, and therefore no changes to the neighborhood. Board members Lisa Austin, Patty Szcowski and Mike Hornyak all agreed, and voted to approve the request.

It is So Ordered.

Appeal No. 12,047 by Vincent and Joanne Martin (3026-207) concerning property they own located at **1602 Walnut Street** in an R-2 District. The appellant is seeking to continue using the property as a multi-family dwelling by seeking a nonconforming change of use to convert this property from a commercial use and two-family dwelling to a seven-unit multifamily dwelling. Per Section 301.20 of the Erie City Zoning Ordinance, a nonconforming change of use shall be referred to the Zoning Hearing Board.

Findings of Fact

1. The appellant, Vincent Martin, appeared on his own behalf and told the Board that he only realized that his building was not compliant then he recently applied for a permit to tear down a wall in one of the building's apartments. Mr. Martin said that he purchased the building in 1992, and has never tried to conceal the fact that it is a seven-unit property. The building has passed all inspections since 2000, and no violation was ever mentioned during that period.
2. The multifamily dwelling is next door to the neighborhood clinic owned and operated by St. Paul's Catholic Church, and according to Mr. Martin, the relationship has always been cordial. The Clinic was previously in the appellant's building, until the neighboring store closed, and the Clinic moved into the location next door.
3. In addition to the Clinic, there was a vacant commercial unit when the appellant purchased the property in 1992. Mr. Martin said that he never made a distinction as to whether the seven units were residential or commercial. He said that at the time the Clinic moved, he was advised by an unidentified City official to simply rent out the units as residential if there was a demand for them. Zoning Office officials told the Board that they have no record of permits having been issued to convert the commercial units to residential ones.
4. The Erie Zoning Office confirmed the history of the building, transitioning from primarily commercial to residential. Originally the building housed two residential apartments, and five (commercial) units. At the time that the appellant purchased the property in 1992, it was five residential units and two commercial. It has since been converted into seven residential units and no commercial properties.
5. Appearing in opposition to the appellant's proposal was Mr. Jim Spodin, representing St. Paul's Clinic. He began by passing out a packet to each Board member which included recent sales and assessment history of the appellant's building, and photographs showing the building and Clinic from several different angles. Mr. Spodin told the Board that the Clinic was originally incorporated in 1993, and was, in fact, in the appellant's building until moving into its present facility. The Clinic is concerned with congestion in the area and off-street parking on the narrow streets in the winter.

6. Mr. Spodin went on to say that St. Paul's has no problem with the appellant himself, or with any of the building's present tenants for that matter. The concern, he said, is that St. Paul's is unaware as to future tenants and uses of the property. Mr. Spodin also expressed the Clinic's concern with the size of the lot containing the appellant's building, and the square footage per family that the building's units provide – all of which he maintained were smaller than the Code permits. Given the small unit sizes and the changes that have already occurred (commercial units converted into residential) in the appellant's building, St. Paul's Clinic has a legitimate concern with the make-up of the occupancy in the neighboring property moving forward.
7. Also appearing to testify in opposition to the proposal was Mr. Wally Brown. Mr. Brown is the Director of the Community Relations for the Sisters of St. Joseph, and head of the local Neighborhood Watch, as well as a member of the nearby Nuova Aurora Society. Speaking on behalf of all these concerned citizens, he said that they are shocked to have learned that the building is a seven-unit dwelling – which he claimed was akin to a boarding house; something the Neighborhood Watch is very concerned about. He added that the building has been up for sale recently, and the community is additionally concerned that new ownership may rent to over capacity, and create further parking problems in the area.
8. In response to the opposition, the appellant was permitted a rebuttal. Mr. Martin said that while he did have a “for sale” sign up for about three years, he has taken it down, and the building is not presently up for sale. He added that the building does not conform to larger, multi-family tenancy, and that most people who show interest in the property are either single or double occupants. He said that many of these tenants do not even own their own cars, and that parking has not been a problem since he owned the building.

Conclusions

1. The appellant's property has been a seven-unit building since he purchased it in 1992. At the time the building contained five residential units and two businesses.
2. Both of the commercial tenants in the appellant's building have since left. In their place the appellant converted the units into residential units. All seven units have been rented to residential tenants for the past several years.
3. The appellant never obtained permits for converting the units from commercial to residential. Section 301.20 of the Erie City Zoning Ordinance requires that such a nonconforming change of use be approved by the Zoning Hearing Board.

Decision

By a unanimous vote the Board approved the nonconforming use. Board member Patty Szchowski said that she has been a long time supporter and former member of St. Paul's Church, but cannot find a good reason to support their request, as there is no problem with the appellant's property. Board Chairman Richard Wagner indicated that the rental system in Erie has become more complicated, and as the Code has changed it is often difficult for property owners like the appellant to keep up. The appellant has done a good job of maintaining the property, and has always been in compliance with the Code. Member Mike Hornyak likewise said that he finds no problem that would make him deny the appellant's request. Member Lisa Austin indicated that the area itself is not exclusively residential in nature, given the proximity of St. Paul's Church and Clinic, the Nuova Aurora Club, etc..., and that two more residential units in the appellant's property does not change the character of the neighborhood. She did add that she hopes that some of the units in the appellant's building will revert back to commercial properties if the opportunity should arise in the future.

It is So Ordered.