

**March 11, 2014**  
**City of Erie, Pennsylvania**  
**ZONING HEARING BOARD**  
**1:00 P.M.**

The regular meeting of the Zoning Hearing Board was held on Tuesday, March 11, 2014 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

**- MINUTES -**

**THE FOLLOWING APPEALS WERE HEARD:**

**Appeal No. 12,058 by Dedan Sulaenam (2133-110)** concerning property he owns located at **1936 Wagner Avenue** in an R-1 District. The appellant is seeking a dimensional variance to construct an attached garage. Per Section 205 of the Erie City Zoning Ordinance, the side yard requirements for an addition in the R-1 District are a minimum of 5' with a total of 15' for the side yard. The appellant is proposing a 1' minimum with a total of 6'.

**Findings of Fact**

1. The appellant is the property owner, Mr. Dedan Sulaeman. Mr. Sulaeman was represented at the hearing by Mr. Gregory Hevica, owner of Sheds for Less, the contractor in charge of the proposed project. Mr. Hevica said that Mr. Sulaeman is hoping to demolish a small, standalone structure in the backyard of his Wagner Avenue property, and replace it with a garage that would be attached to his house.
2. The present structure is on the homeowner's property, but is not attached to the home. The appellant is requesting that this present structure be torn down and removed prior to the construction of the new garage. This existing structure is not a useable garage. At some point a previous owner converted the structure into what resembles a small dwelling. However, the only way the appellant has ever been able to utilize the structure is as a storage facility; it cannot be used as a garage.
3. Answering questions from the Board, Mr. Hevica referred to a site plan and photographs provided to Board members; photos of both the entire property and the small structure in the rear. He explained to the Board that the more important reason why the existing structure cannot be used as a garage by the appellant is because of the contour of the land. This is also the hardship that the appellant faces. The present building is at the rear of the property, lower than the house and driveway. Therefore, even if the structure could be

converted into a garage, the appellant would not be able to park in it because of the slope. Instead, the appellant proposes to demolish the existing structure, and build a garage that would be attached to the house, level with the driveway.

4. Mr. Hevica indicated that the adjoining property is commercial, so the proposed construction would not affect the character of the neighborhood. In fact, he said, the new attached garage would be more aesthetically pleasing as opposed to the present, free standing unused structure.
5. As for the issue of safety, Mr. Hevica said that the requested attached garage would better insure the safety of the appellant's family, as they could enter and exit the garage without going outside. The appellant has had at least one attempted break-in, last October, which he attributes to the neglected property.
6. Given the narrowness of the lot and unusual contour of the land, this proposal is the most viable option, requiring the least modification, and the least deviation from the Ordinance.

### **Conclusions**

1. The appellant purchased the property with a standalone structure in the rear. Although likely intended to serve as a garage, at some point a previous owner converted the small structure in the rear into a small dwelling.
2. The appellant is not able to utilize the rear structure, other than as a storage facility. In addition to it having been converted into a small dwelling, the downward slope of the land would prevent using the structure as a garage.
3. Under Sections 508(9)(a) and 508(9)(b), this unique contour of the land is the appellant's hardship.
4. The appellant proposes to demolish the existing structure, and in its place build a garage that would be attached to the house, and level with the driveway and roadway.

### **Decision**

The Board unanimously approved the dimensional variance. Board Chairman Mike Hornyak said that he feels this is a good use of the property. Board member Lisa Austin agreed, and added that the application, with its photographs and site plan was well prepared and easy to understand. Board members John Drew and Selina King both agreed, and also voted to approve the request.

**It is So Ordered.**

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**Appeal No. 12,059 by Gary L. Fleming (4031-207)** concerning property he owns located at **1001-03 West 6<sup>th</sup> Street** in an R-2 District. The appellant is seeking a nonconforming change of use from retail and a single family dwelling to an eating and drinking establishment and a single family 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 Gary Fleming is the owner and operator of Virgil's Plate, a pizza shop presently located at 1210 West 26<sup>th</sup> Street. Mr. Fleming appeared to testify on his own behalf.
2. The appellant's plan is to relocate the pizza shop to his West 6<sup>th</sup> Street property, and enlarge the facility to add a few indoor seats – perhaps up to 15. The addition, Mr. Fleming said, would be constructed so as to accommodate handicap customers. The renovations would be entirely for the shop's dining customers. There will be no alcohol served at the establishment.
3. The building where the new pizza shop is proposed is presently vacant, and has been unused for an uncertain number of years. According to Mr. Fleming, it has fallen into disrepair; much of the building having been vandalized. He said that it required extensive work to refurbish the proposed establishment, including all new wiring.
4. The West 6<sup>th</sup> Street building, near the corner of Cascade Street, was previously a retail convenience store. The property's previous owner received a certificate from the Erie City Zoning Office in 1988 to operate the store as a nonconforming use.
5. A nearby resident, Mrs. Carolyn Master, appeared to address the Board about the proposal. She said that she has been a resident of 6<sup>th</sup> and Cascade Streets for most of her life, and indicated that she had two concerns: that the new establishment would create parking problems, and that it may be selling alcohol. After listening to the appellant's testimony that the pizza shop would not be selling any alcoholic beverages, Mrs. Master said that she believes the proposed shop will be a good fit for the neighborhood; particularly since most other nearby establishments do sell liquor, and the neighborhood then has to deal with the unruly behavior from customers of those other establishments.
6. Another neighbor who initially had misgivings, but now says she supports the proposed pizza shop after learning that no alcohol would be served there, is Mrs. John Ray Campbell. A resident of the neighborhood for many years, Mrs. Campbell also has concerns about the potential parking situation. She said that she can remember other nearby establishments in years past where the parking was so bad that patrons would park their cars on the grass of nearby homes. She also added, however, that there has been parking problems before the commercial establishments were there, as West 6<sup>th</sup> Street has traditionally been a busy street with much traffic.
7. One other witness to address the Board was Mr. Bert Crocker, representing the Erie City Mission. His concern about this proposal is because the Mission

has recently acquired property on nearby West 5<sup>th</sup> Street. Mr. Crocker inquired whether the change of nonconforming use, if granted to this applicant, would extend to future owners who may wish to open establishments that do sell liquor.

8. In response to the three witnesses who expressed concerns about alcohol use in the neighborhood, Board member Lisa Austin proposed that the Board attach a condition that no alcohol may be permitted to be sold by this or any future owner who wishes to operate a nonconforming business use at this location.

### **Conclusions**

1. The appellants presently own and operate a pizza shop on West 26<sup>th</sup> Street. They wish to move the shop to a property they have purchased near the corner of West 6<sup>th</sup> and Cascade Streets. The new location is in an R-2 zoning district, where eating and drinking establishments are not a permitted use.
2. The pizza shop at the proposed new location would be a nonconforming change of use, which requires Board approval under Section 301.20 of the Erie City Zoning Ordinance.
3. The appellants plan on installing indoor seating at this new location; with perhaps as many as 15 seats. The new establishment will not sell any alcoholic beverages.
4. A previous owner had obtained permission to operate a retail store at the West 6<sup>th</sup> Street location in 1988. The building had been unused in recent years, and in poor condition. The new owner has had to significantly renovate the building in order to make it suitable for the proposed pizza shop.

### **Decision**

A motion for the condition proposed by Ms. Austin was made and seconded. The Board unanimously approved the condition that no alcohol may be served by this or any future owner using this location as a nonconforming use.

With the condition attached, the Board unanimously agreed to the nonconforming change of use to allow the appellants to move their pizza shop from its present West 26<sup>th</sup> Street location, to West 6<sup>th</sup> and Cascade Streets. Board chairman Mike Hornyak said that he thinks this is a good use of the property in an area that needs good entrepreneurs. Board members Lisa Austin, John Drew and Selina King also agreed and all voted to approve the appellant's request.

**It is So Ordered.**

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**Appeal No. 12,060 by Baldwin Brothers Inc. (6210-127)** concerning property they own located at **1812-16 West 24<sup>th</sup> Street** in an R-1 zoning district. The appellant is seeking two dimensional variances for a subdivision on the lot. Per Section 205 of the Erie City Zoning Ordinance, the lot size for a single family dwelling in an R-1 district is 6,000 square feet. Lot A will be 4,995 square feet, and Lot B will be 5,589 square feet. The side yard setback requirements per Section 205 require a minimum of 5' with a combined total of 15' in the R-1 district. Lot A will have a minimum of 1.6' with a combined total of 9.6'. Lot B will have a minimum of 2.6' with a combined total of 13'.

### **Findings of Fact**

1. Appearing on behalf of the appellants was Mr. Drew Baldwin, an agent for Baldwin Brothers Inc. Mr. Baldwin explained to the Board that the appellants are seeking a dimensional variance for the lot size along with a side yard setback variance.
2. The appellants are hoping to sub-divide the large lot, making it into two smaller, separate lots. When the division is completed, the smaller lots will present some minor Code violations, for which the appellants are seeking the dimensional variances.
3. According to Mr. Baldwin, the appellants are seeking the variance so that there is only one dwelling on each of the two reduced-size lots. Baldwin Brothers Inc. are in the process of reviewing their properties in the area, and concluded that it was in everyone's best interest to subdivide the property at this time.
4. The proposed dwellings on the smaller lots will conform with other properties that Baldwin Brothers have in the area. Mr. Baldwin added that other owners in the area have similar single-unit dwellings on smaller sized lots. The proposal will not adversely affect the character of the neighborhood, as most of the lots in the area are approximately forty feet in size, he said.

### **Conclusions**

1. The appellants are seeking to subdivide a large lot into two smaller lots that will each contain a single-family dwelling.
2. According to Section 205 of the Erie City Zoning Ordinance, the minimum lot size for a single-family dwelling in an R-1 zoning district is 6,000 square feet. If approved the two properties will contain 4,995 and 5,589 square feet respectively.
3. The Code also requires a minimum side-yard setback of 5', with a combined total of 15'. The proposed lots will be 1.6' with a combined total of 9.6', and 2.6' with a combined total of 13' square feet – both slightly smaller than the Ordinance specifies.
4. The residential area where the two homes would be located is comprised mainly of similar single-family dwellings.

### **Decision**

By a unanimous decision the Board voted to approve the appellant's request, and grant the dimensional variances. Board chairman Mike Hornyak said that he thinks the proposed houses are a good fit with the other homes in the neighborhood, and the proposal is a diminimus violation of the Code. Board members Lisa Austin, John Drew and Selina King all agreed, and voted to approve the variances.

**It is So Ordered.**