

May 13, 2014
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held on Tuesday, May 13, 2014 at 1:00 p.m., in the City Council Chambers, Municipal Building, 626 State Street.

- MINUTES -

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,065 by Ruth Thompson (2104-307) concerning property located at **1455 East 10th** Street in an M-1 district. The appellant is seeking a nonconforming change of use from a professional service to an animal care facility. 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 is Ms. Ruth Thompson, the operator and manager of the Erie ANNA shelter. Ms. Thompson appeared to testify on her own behalf, and told the Board about the animal shelter; a standard clinic for the public to bring lost animals. Since opening four years ago, she said, the shelter has grown considerably, and must now make some changes to meet the ever growing demand from the community.
2. Ms. Thompson said that the present location has become too small for both an animal shelter and clinic. There is another building, however, a former insurance office two doors down from the present animal shelter, which could serve as the clinic. By moving their veterinarian into the low cost clinic, the animal shelter would then have more much needed space.
3. The new proposed clinic would not serve as an overnight shelter, as the present facility does. Rather, the new facility would be open usually between 9:00 a.m. and 3:00 p.m. People would drop off their animals for spay and neutering. Depending on how busy they are, Ms. Thompson said, the facility would service about twenty animals a day, three days a week.
4. The original facility, two doors away, would remain as a shelter where animals will continue to be kept overnight. Separating the two functions - the shelter and the clinic - will enable the Erie ANNA shelter to better serve the growing needs of the community.

Conclusions

1. The appellant operates the Erie ANNA shelter, in an M-1 zoning district. After four years of operation the present facility is no longer able to meet the growing needs of the Erie community.
2. The appellant's proposed change of nonconforming use, as per Section 301.20 of the Erie City Zoning Ordinance, is to convert a former insurance office that sits two doors down from the present facility into a clinic for the spay and neutering of animals.
3. The proposed clinic would operate during regular business hours, from 9:00 a.m. to 3:00 p.m., usually three days a week. It would not serve as an overnight shelter.

Decision

Prior to voting on the change of nonconforming use, the Board unanimously approved a condition to the proposal. The new clinic must operate between the hours of 8:00 a.m. and 5:00 p.m., Monday thru Friday, with no overnight service.

With the condition attached, the Board unanimously approved the proposed change of nonconforming use. Board Chairman Mike Hornyak said that he feels this is a good use of the property and a good service for the City. Board members Lisa Austin agreed, adding that she thanks Ms. Thompson for her efforts and applauds the people who run the animal shelter. Members Patty Szychowski, John Drew and Selina King all agreed; and all five members voted to approve the request.

It is So Ordered.

Appeal No. 12,066 by Keystone Electric (1005-134) concerning property at **100 Erie Insurance** Place, in a C-3 District. The appellant is seeking a height variance to construct a 14' high enclosure around a generator. Per Section 205.19 of the Erie City Zoning Ordinance, enclosures within a non-residential district shall not exceed eight (8) feet six (6) inches.

Findings of Fact

1. Appearing on behalf of the appellant, Keystone Electric, was Mr. Marty Skladanowski. Keystone Electric has been contracted by Erie Insurance Company to install an emergency generator at their main facility.

2. The generator itself will stand just under 14' in height, and must be enclosed with a screened wall around it. The variance is required because the screen must be at least as high as the generator. The enclosure, Mr. Skladanowski said, cannot be a completely housed structure; they do not want to put a roof on the enclosure because it may obstruct the air flow of the generator.
3. According to Mr. Skladanowski, the choice of a masonry wall instead of a chain link fence or some other type screen is primarily an aesthetic one. He said that the mason wall has a visual component, in that it would match the other Erie Insurance facilities around it. The generator will not become an unsightly fixture in the neighborhood where the Erie Insurance Plaza sits.

Conclusions

1. The appellants are constructing an emergency generator for Erie Insurance Company, which is in a C-3 zoning district. The generator is almost 14' tall, and must have a screen enclosure around it.
2. Section 205.19 of the Erie City Zoning Ordinance requires that such enclosures within a non-residential district cannot exceed eight feet, six inches in height.
3. The appellants have chosen a masonry fence for aesthetic purposes; it will match the other buildings in the Erie Insurance Plaza.

Decision

The Board unanimously approved the dimensional variance to allow the appellants to construct a 14' high fence. Board chairman Mike Hornyak said that the appellants met all the requirements for the variance, and that there is no good reason to deny it. He also said that the type of enclosure is a good idea, as the purpose of the wall is to keep an unsightly generator from being seen. Board members Lisa Austin, Patty Szychowski, John Drew and Selina King also agreed and all voted to approve the variance.

It is So Ordered.

Appeal No. 12,067 by P&C Offices II, Inc. (3035-132) concerning property they own located at **650 West 10th Street** in an R-2 zoning district. The appellant is seeking a dimensional variance for lot size to convert a single-family dwelling to a three-family dwelling. Per Section 305.24 of the Erie City Zoning Ordinance, in the R-2 District, a three-family dwelling is permitted provided that each dwelling has at least 2,000 square feet of lot area per family. There is currently 1,925 square feet of lot area per family.

Findings of Fact

1. Appearing on behalf of the appellants was the contractor of the proposal, Mr. John Weaver. The property is owned by Mr. Chuck Herron, who purchased the house at a December 2013 judicial tax sale. Mr. Weaver said that together the owner and contractor have determined that it is feasible to convert the house into a multi-unit dwelling. Using a map showing the many multi-unit houses in the area, Mr. Weaver said that there are even a few three-unit houses in the West 10th Street neighborhood.
2. According to Mr. Weaver, the property has been in a deteriorating condition for several years and has received several Code violations. When the appellants acquired the house, they immediately demolished those portions of the property that were dangerous, including the detached garage. They now wish to refurbish the property, and convert the house into a three-unit dwelling. One of the proposed units will be an efficiency apartment; this can all be accomplished using the original footprint of the house.
3. The lot measures 35' x 165', or 5,775 square feet - 225 feet short of the Code requirement. When asked by the Board about the hardship in this matter, Mr. Weaver said that this is an investment property for the appellants. The hardship is that the house would be profitable as a three-unit, where it would not be economically advantageous as a duplex or other two-unit structure.
4. Also appearing to testify on behalf of the proposal was Mr. Jim Geronimo, the general manager of P & C Offices Inc., the business that owns the property. He, too, said that the character of the neighborhood is multi-family. The appellant's intention, Mr. Geronimo said, is to take a severely damaged home and repair it; similar he said to other houses in the neighborhood that have been renovated. Chuck Herron (the owner of P & C) plans to invest eighty thousand dollars to make the necessary improvements to the house.
5. Mr. Geronimo said that the proposal would not alter the character of the neighborhood. In support of this he introduced a letter written by one of the house's neighbors, James Gervase, which indicated his favorable opinion of developing the house. Answering questions from the Board, Mr. Geronimo clarified that the appellants will not be building another separate, free-standing structure; rather, they plan to convert the two-unit house into a three-unit dwelling (adding the efficiency apartment).
6. Erie Zoning Office official Mathew Puz told the Board that the house is presently listed as a single-unit in the Office's records. Included with the variance application was a copy of a 1986 zoning certificate identifying the

house as a one-family dwelling. According to Mr. Puz, if the house is presently being used as a two-unit, it is being done so illegally.

7. Appearing to testify in opposition to the proposal was another neighbor of the property, Ms. Donna Del Fino. She told the Board that she feared it would be setting a dangerous precedent to allow the three-unit house in a zoning district where they were not permitted. Ms. Del Fino said that she has been a resident of the neighborhood for twenty years, and has spent over sixty thousand dollars herself to renovate her house. She added that she has no objection to Mr. Herron purchasing the property and maintaining it as a two-unit dwelling; but she fears that property values would be compromised if it were a three-unit, as fewer people would purchase a house near what she called a “triplex.”

Conclusions

1. The appellants have purchased a two-unit house and begun renovating the structure. They are seeking a variance in order to add another small, efficiency-type apartment to the two units.
2. According to Section 305.24 of the Erie City Zoning Ordinance, a three-family dwelling is permitted in an R-2 district, providing that there is at least 2,000 square feet of lot area per family; the appellant’s house is currently 1,925 square feet of lot area per family.
3. According to the appellant’s contractor, the hardship in this matter is a financial one; specifically, it would be feasible for the owners to renovate the house with three units to rent, however, it would not make sense if they only had two units.
4. The Erie City Zoning Office lists the house as a single-family structure. This is the result of a 1986 zoning certificate that was obtained by a previous owner. If the house is presently being used as a two-unit, it is being done so illegally.

Decision

By a unanimous decision the Board voted to reject the appellant’s request. Board member Lisa Austin said that the only hardship that was given was a financial one, and not one on the property itself. Likewise, Board chairman Mike Hornyak said that the Board has strict standards that it has to meet in order to approve a variance like the one requested, primarily that the appellant demonstrate a hardship. There was no hardship in this case. Board members Patty Szychowski, John Drew and Selina King all cited the same reason – that there was no hardship demonstrated – as to why they voted to deny the request.

It is So Ordered.

Appeal No. 12,068 by Todd Morton (6131-118) concerning property he owns located at **1350 West 35th Street** in an R-1A district. The appellant is seeking a dimensional variance for the side yard setbacks for an 18' x 20' addition. Per Section 205 of the Erie City Zoning Ordinance, the minimum side yard setback is 3' with a 6' minimum total. The proposed setback is a minimum of +/- 1' with a total of +/- 5'.

Findings of Fact

1. The appellant is Mr. Todd Morton who appeared to testify on his own behalf. Together with his wife he has owned the property for 18 years. He is seeking a variance for a side yard setback so that he can enlarge his house and enable his family to remain at the residence.
2. Mr. Morton told the Board that his family is very happy with their current residence and they hope to stay (his son has just been accepted to the Collegiate Academy). It is coming to the point, however, where the house is not big enough to satisfy the needs of his family. Installing an 18' x 20' addition to the rear of the house would be an ideal solution, but in doing so it would put the house in violation of the Code by being too close to the garage.
3. City Zoning Office official Matthew Puz explained to the Board why the appellant's proposal would violate the Zoning Ordinance. He said that the Code requires that any detached accessory structure must be at least six (6) feet from the main structure. The proposed addition to the rear of Mr. Morton's house would make the distance less than six feet from the garage. The only reason the appellant needs the variance, Mr. Puz said, is because of the existence of the garage.
4. Using several photographs of the rear area of the house and garage, Mr. Morton explained his hardship. The house was built in 1953, and the garage four years later. Therefore, the hardship was not created by the appellant. There is a three foot slope in the yard immediately behind the location of the garage, making it financially prohibitive to consider demolishing the garage and moving it and its foundation back. One estimate Mr. Morton received was in excess of twenty-two thousand dollars to move the garage. Additionally, the narrowness of the lot prohibits moving the extension to the house in any other direction other than to the back.

Conclusions

1. The appellant is requesting a dimensional variance to put an extension on the rear of his house. The proposed extension would put the rear of the house within six feet of the rear garage.
2. According to Section 205 of the Erie City Zoning Ordinance, the minimum side yard setback in the R-1A district is 3' with a 6' minimum total. The proposed setback is a minimum of +/- 1' with a total of +/- 5'.
3. The appellant's hardship is that there is a significant slope in the contour of the yard behind the garage; this would prohibit moving the garage back.

Additionally, the lot is so narrow that the extension to the house could not go in any other direction.

Decision

The Board unanimously voted to approve the dimensional variance so that the appellant can add the extension to the rear of his house. Board chairman Mike Hornyak said that the only reason why the appellant needs the variance is because of the existence of the garage, and the appellant examined all other options; the hardship was not created by the appellant. Board members Lisa Austin, Patty Szychowski, John Drew and Selina King also agreed, and all voted to approve the variance.

It is So Ordered.

Appeal No. 12,069 by ECHO GetGo Partners 2004, LP (3104-103) concerning property they own located at the northwest intersection of West 12th Street and Greengarden Road in an M-1 district. The appellant is seeking a use variance to convert a parking lot to a convenience store with gas pumps and car wash. Per Section 204.19 of the Erie City Zoning Ordinance, a convenience store with gas pumps and a car wash are not permitted in an M-1 district.

Findings of Fact

1. The appellant is ECHO GetGo Partners, an affiliate of Giant Eagle Inc. Representing Giant Eagle at the hearing was Ms. Wendy Nichols-Lowe, who provided the Board with an aerial site plan of the proposed facility prior to beginning her testimony.
2. Ms. Nichols-Lowe explained to the Board that the appellants are proposing the construction of a 24-hour convenience store and indoor restaurant, together with gas pumps and a car wash. In September 2004, the appellants received a variance for a similar proposal, but for a variety of reasons never commenced with the construction, and the variance expired before development could begin.
3. Using the aerial site plan Ms. Nichols-Lowe explained that the property is presently just a vacant lot; it was formerly used by the Lord Corporation as a parking lot. The access to the proposed facility will be from the Bayfront Parkway, with a secondary access from Lincoln Avenue through West 11th Street. Including the convenience store and indoor eating facility, and outdoor gas pumps and car wash, the proposed facility will occupy 5,750 square feet; the facility will be open 24 hours a day.
4. Also testifying on behalf of the appellants was Mr. Pat Avolio, director of real estate development for Giant Eagle Inc. He explained that the plan now before the Board is a newer prototype, and approximately one thousand square

feet larger than the 2004 proposal. He said that there is presently no determination or other discussions to close any of the other Giant Eagle stores in the Erie area if this proposed convenience store is completed.

5. The Board had several questions for the Giant Eagle representatives regarding the actual construction of the proposed facility and how the proposal will affect the area. Ms. Nichols-Lowe said that the company does expect having to make considerable changes in the gradation and contour of the land in order to develop it; but added that the final proposal will provide the least modification possible in order to develop the property. She said that the proposal will not alter the essential character of the neighborhood, as it is currently zoned light manufacturing (M-1), and is located on the West Bayfront Highway, a major thoroughfare. The building across the street is vacant, and the property itself has been vacant for a decade.
6. Also appearing on behalf of the appellants was Mr. Daryl Terella. He works for Passport Realty, who represents ECHO GetGo in the Erie area. The previous proposal was not developed in 2004 because it was not economically feasible, he said. Since then, the company has grown and reconsidered the project. After Giant Eagle did not move forward with development of the project ten years ago, they have had difficulty trying to sell the land. Mr. Terella said that the property was too small for large developers, and too big and too expensive for smaller enterprises. Given this market for the property, Giant Eagle decided to re-evaluate the feasibility of developing it.
7. There was opposition to the proposal. Erie Zoning Office official Mathew Puz read into the record an email letter he received from Erie businessman and attorney (and former Mayor) Rick Filippi. Mr. Filippi's letter said that it would be short-sighted for the City to develop the land in this way as West 12th Street represents prime industrial land zoned for manufacturing, especially given its proximity to an important railroad corridor. He also said that the jobs that a convenience store would create would not likely be high paying positions. Mr. Filippi asked the Board to consider what he called this "encroachment" on one of the City's few remaining assets, and reject the variance.
8. Also appearing to testify in opposition to the proposal was Mr. Ed Kissell. He said that he was not opposed to the development itself as he is concerned about the environmental and safety factors. Among his safety concerns is whether customers exiting the facility turning left onto the Bayfront Highway would be at risk given the oncoming traffic. Reading from several environmental studies, Mr. Kissell inquired whether the ground water, which feeds Cascade Creek, would be affected by the gas tanks and other run-off from the convenience store facility. He asked that the Board consider these concerns, and to add conditions to the variance if they decide to approve it.
9. The Board allowed Mr. Avolio from Giant Eagle to respond to the opposition testimony. He told the Board that the company's goal is to provide as good an operation as possible, and to comply with all government regulations. They hope to have as many access points as possible to the facility, subject to PennDOT and Erie City regulations. Mr. Avolio said that he was not familiar

with the particular environmental reports that Mr. Kissell quoted from, but assured the Board that Giant Eagle has completed all ground water inspections prior to purchasing the property. The development, he said, will be compliant with both federal E.P.A and Pennsylvania D.E.P. guidelines. Whatever method for decontamination or any other environmental questions the appellants decide on, they will base their decision on the recommendation of the Erie County Conservation Committee. Mr. Avolio added that the appellants are only seeking a variance at this stage, which would then give them a year to evaluate the many factors that will decide the schedule of construction.

Conclusions

1. The appellant is seeking a use variance to construct a 24-hour convenience store and restaurant, together with gas pumps and a car wash. According to Section 204.19 of the Erie City Zoning Ordinance, a convenience store with gas pumps and a car wash are not permitted in an M-1 district.
2. The appellants previously received a variance for a similar proposal in 2004; however, because of several factors the variance permit expired. The appellants have been unable to sell the vacant property, which was the parking area for the former Lord's Corporation.
3. The proposed facility will occupy 5,750 square feet. Its access points will be from the Bayfront Parkway, with a secondary access from Lincoln Avenue through West 11th Street.
4. If granted the variance, the appellants will decide on the schedule of construction of the new facility over the next year, depending on many factors. They will comply with all state and federal environmental regulations, and plan on consulting with the Erie County Conservation Committee before deciding on any final development plans.

Decision

By a vote of 4 to 1, the Board approved the variance request. Board chairman Mike Hornyak said that he thought the appellant has used their resources well, and made a proposal for a parcel of land that has been and could have remained undeveloped for many years. He added that once the flagship business goes in to the site, it will attract other, similar small enterprises. Member Patty Szychowski agreed, and added that having an established facility is preferable to keeping the property vacant. Members John Drew and Selina King both expressed concerns about the environmental questions raised. They said that they hope the appellants work with local groups that monitor the environmental impact that a new construction project like this can cause. While expressing concerns, all five Board members voted to approve the variance. Board member Lisa Austin, casting the lone dissenting vote, was concerned that the

manufacturing base of the City is being eroded and that no justifiable hardship was present.

It is So Ordered.