

June 10, 2014
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held Tuesday, June 10, 2014 at 1:00 P.M. in City Council Chambers, Municipal Building, 626 State Street.

-- MINUTES --

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,070 by Darrell Orelski (6012-220) concerning property he owns located at 2409 Chestnut Street in an R-2 district. The appellant is seeking a dimensional variance to continue using the property as 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 each dwelling has at least 2,000 square feet of lot area per family. There is currently 1,503 square feet of lot area per family.

Findings of Fact

1. The appellant, Darrell Orelski, appeared on his own behalf, and told the Board that it was only after a December, 2013 fire at his house that City officials discovered that the dwelling was not compliant with the Erie City Zoning Ordinance, and that he only then became aware of the violation.
2. Mr. Orelski indicated that he purchased the house from his grandmother in November 1998. She had owned the house since the mid-1970's (probably 1975 or '76). In all the time since his grandmother purchased the property, Mr. Orelski said, it has been used as a 3-unit dwelling. The appellant presently lives in one of the apartments and rents out the other two – just as his grandmother had prior to Mr. Orelski purchasing the home.
3. According to Erie Zoning Office officials, the issue for the Board is the compliancy of third apartment. Records on the house since 1893 do not include any permits having been issued permitting the conversion to a multi-family dwelling. However, as the Zoning Office did see that there was a second phone number for the address in a 1937 city phone book. The second unit is “grandfathered” in.
4. The appellant told the Board that he is not aware of when the house was converted to include the third unit, but he said that he knows it had to have been before his

grandmother purchased the house in the mid-70's. Mr. Orelski said that he checked with National Fuel Gas to try to determine when the house was converted. According to National Fuel, the existing meters were installed in 1983, 1987 and 1994. The three existing meters all replaced older meters; however, there is no record of when the previous meters were installed. It is unknown if the previous meters were new or replacement meters, and cannot identify when the third unit was added to the house by the age of the gas meters.

5. One of the entrances to the house faces Chestnut Street, the other two are at the rear of the house. The appellant said that he had found a permit issued in October 1978 for the installation of a driveway and sidewalk. However, the Zoning Office said that they have no record of such a permit, and repeated that according to City records the dwelling is still listed as a 2-unit structure.

Conclusions

1. The appellant purchased the house from his grandmother in 1998 as a 3-unit dwelling. His grandmother owned the property since the mid-1970's. According to the appellant, the house has been used as a 3-unit dwelling since his grandmother purchased it.
2. According to the Erie City Zoning Ordinance, Section 305.24, in an R-2 zoning district a 3-family dwelling is permitted providing that each dwelling has at least 2,000 square feet of lot area per family. There is currently 1,503 square feet of lot area per family in the appellant's house.
3. The Erie City Zoning Office's records list the house as a 2-unit structure. There was never any permit issued, and there is no indication in the Zoning Office records of when the house was converted to add the third unit.

Decision

By a three to two decision, the Board denied the appellant's variance request. Board Chairman Mike Hornyak said that the appellant's request was for a dimensional variance, and his house provides only about seventy-five percent of the lot area required; because there was such a significant difference, Mr. Hornyak said that he decided to vote to deny the variance. For the same reasons, Board members Lisa Austin and John Drew also voted to reject the appellant's request. Members Patty Szychowski and Selina King voted to approve the variance.

Appeal No. 12,071 by John Mahoney (4106-117) concerning property he owns located at 1406 West 8th Street in an R-2 district. The appellant is seeking a dimensional variance to continue using the property as a two-family dwelling. Per Section 205 of the Erie City Zoning Ordinance, a two-family dwelling requires 6,000 square feet in the R-2 district. The lot is currently 4,180 square feet.

Findings of Fact

1. The appellant appeared together with his legal counsel and explained to the Board that he purchased the property in February 2012. At that time the house was listed as a two-unit property, and the appellant has operated the dwelling as a two-unit since he purchased it. The City only discovered the violation when the appellant registered the property with the Rental Registration Program.
2. The previous owner had converted the property to a two-unit structure in 1989 using government funding (believed to be either federal or city grants), and the house has been a 2-unit ever since.
3. The previous owner lived in the downstairs apartment and rented out the upstairs unit. The appellant does not occupy the lower unit, but the same tenant is still living in the upstairs unit. That tenant is now 68 years old and handicapped.
4. The appellant's property is one of eight houses on the north side of West 8th Street in the 1400 block – near the intersection of West 8th Street and the Bayfront Expressway. Located directly across the street is Reed Manufacturing. Mr. Mahoney argued that relative to the overall acreage size of his property, the lot size is under the minimum requirement in an R-2 district (6,000 feet), with or without a variance.
5. Mr. Mahoney discussed the other properties on the 1400 block of West 8th Street as well. Of the row of eight houses, he said, four of them are single-family and the other four dwellings with more than one unit. One of the other houses, which he owns, is listed as a two-unit, but the appellant said he purchased it as a 3-unit in 1996.
6. When asked about the hardship in this matter, Mr. Mahoney referred back to the handicapped upstairs tenant. He said that to now revert to a one-unit house would have the effect of evicting a 68 year old handicapped man now living in the upstairs apartment. The man has lived in the apartment for twenty-four years, and the house is equipped with special accommodations for his disabilities.

Conclusions

1. The appellant purchased the house in 2012; it was listed as a two-unit structure. The previous owner had used public funding to convert the house to a two-unit dwelling in 1989.

2. According to Section 205 of the Erie City Zoning Ordinance, a two-family dwelling in a R-2 district requires at least 6,000 square feet; the appellant's lot is 4,180 square feet.
3. The appellant's hardship is that his upstairs tenant is a 68 year old handicapped man who has had the apartment converted especially for his use. To revert back to a single-family dwelling would have the effect of displacing the man, who has lived in the upstairs apartment for twenty-four years.

Decision

By a three to two decision the Board voted to deny the variance request. Board member Lisa Austin said that this was a request for a dimensional variance, and that the Board should stay consistent with the Code in a case like this. She added that the only hardship expressed was really a financial one, and that to grant the variance would negatively affect the character of the neighborhood. Board members John Drew and Patty Szychowski agreed, and all three voted to reject the request.

Board chairman Mike Hornyak voted to approve the variance. Mr. Hornyak said that this is a common type of case heard by the Board. In his opinion, the appellant was an innocent purchaser; that, together with the presence of the handicapped man in the upstairs unit, entitles the appellant to receive the variance request. Board member Selina King also voted to approve the variance.

It is So Ordered.

Appeal No. 12,072 by David and Linda Krauza (6053-351) concerning property they own located at 2702-04 Peach Street in an RLB district. The appellant is seeking a dimensional variance regarding a rear yard setback for a replot. Per Section 205 of the Erie City Zoning Ordinance, the rear yard setback in a RLB district is 30'. The appellant is requesting an 11.7' rear yard setback after the replot.

Findings of Facts

1. Appearing to testify before the Board was Mr. Matthew Good, director of real estate development for the Housing and Neighborhood Development Service (hereafter referred to as H.A.N.D.S.). Mr. Good began by passing out a revised site plan for the project. The proposed development is called the "Freedom Square" Apartments – a design that includes a building of 19 one-bedroom, affordable apartments for veterans, in addition to

a smaller six-unit structure of 3-bedroom apartments for active military staff and their families.

2. The proposed site of Freedom Square is near the corner of Peach and Goodrich Streets (on the west side of Peach Street between West 26th and 29th Streets). The property, which was purchased by H.A.N.D.S. in December 2012, was the former senior nursing facility Living (previous to that, Battersby). Freedom Square would include some of the existing buildings of those previous facilities, in addition to the new larger, proposed 19-unit structure.
3. In drafting of the proposed site, which includes renovating the older buildings, the developers realized some problems. According to Mr. Good, the sloped contour of the land, lack of green space, and overall aesthetic appeal led them to design the current proposal presently before the Board.
4. The plan that H.A.N.D.S. is proposing includes a land swap with their neighbor, the Checks and Balances Computer Services, owned by Mr. David Krauza and his wife (the appellants). This swap would provide parking needs for both parties. According to Mr. Good, however, the drawback for the new proposal is that it would violate the existing zoning ordinance, which requires a 30 foot setback from the rear of a structure to the end of the property line.
5. While the proposed swap would give H.A.N.D.S' the parking lot space they require, the new parcel configuration would create a property line with a rear setback of approximately 12 feet, in violation of the Code. According to Mr. Good the appellants discussed the matter with the Erie City Zoning Office, who confirmed that the only City Code violations were the setback issues.
6. The hardship in this case is the contour of the land, which does not allow for handicapped parking. Mr. Good told the Board that if the variance was granted the only change will be a shift in the property lines (as indicated on the site plan he gave to the Board). There will be no physical change to the size or configuration of the existing parking lots behind Mr. Krauza's business. Mr. Good stressed that the proposal would create no visual change, and it will not impact the character of the neighborhood.
7. Mr. Krauza also addressed the Board. He said that he had an agreement with the previous owners, the nursing home. It was more convenient for Mr. Krauza's employees and customers to use the former nursing home's parking, and the nursing facility's employees used Mr. Krauza's property to park.
8. Referring to the site plan again, Mr. Good noted the similarity of the current proposal and the arrangement that previously existed between Mr. Krauza's business and the nursing home, and added that the new proposal was made with the overall consideration of all the businesses and residents in the area. Mr. Good also noted the access of the parking areas to and from the streets that the new proposal provides, as well as the "green" space that will surround the main buildings in the Freedom Square apartment complex. The

complex is well suited for transit he said, located near a bus line on Peach Street, a major thoroughfare.

Conclusions

1. The local neighborhood development agency, H.A.N.D.S., purchased the former Golden Living nursing home facility. The agency has a new development that includes both new and renovated buildings. The proposal would provide affordable apartments for veterans, active military staff and their families.
2. The agency and the neighboring property owner (the appellant) have an agreement for a land swap. This swap would provide the new development with the necessary parking it requires.
3. According to the Erie City Zoning Ordinance, Section 205, the rear yard setback in an RLB zoning district is 30'. After the replot, the appellant would have a rear yard setback of approximately 12'.
4. The proposal would not create any visual changes, and will not negatively affect the character of the neighborhood.

Decision

By a four to one decision, the Board approved the appellant's request for the dimensional variance. Board Chairman Mike Hornyak said the he thinks the reasons for the proposal are well understood, and the idea makes sense all around. Board members Patty Szcowski, John Drew and Selina King agreed, and all voted to approve the request. Member Lisa Austin cast the lone dissenting vote, indicating that she thinks the proposal will permanently leave large parking lots on Peach Street, and that those lots would have a negative effect on the area.

All of the Board members applauded H.A.N.D.S. for its continuing efforts to provide good, affordable housing in the Erie community.

It is So Ordered.