

August 12, 2014
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held Tuesday, August 12, 2014 at 1:00 P.M. in City Council Chambers, Municipal Building, 626 State Street.

-- MINUTES --

THE FOLLOWING APPEALS WERE HEARD:

Prior to the beginning of the hearing, Vice-Chairperson Patty Szychowski, acting as Chair, informed the parties and others in attendance that due to unexpected circumstances, three Board members would not be able to attend the hearing. Therefore, the Board was unable to convene a quorum.

As a result, pursuant to Section 908(2) of the Pennsylvania Municipalities Planning Code, the Board gave the parties the alternative of either continuing their case, or having it heard and decided by a Hearing Officer. That hearing officer would be the other Board member in attendance, Lisa Austin.

One of the appellants, Mr. Jim Bush (appeal no. 12,077) chose to have his case continued; the other two parties, Pyramid Network Services and Mr. Norb Belsterling, both agreed to have their cases heard by the hearing officer.

Appeal No. 12,078 Pyramid Network Services (1107-103) concerning property located at 1670 East Lake Road in an M-2 district. The appellant is seeking a height variance for 150' for a proposed communication tower. Per Section 205 of the Erie City Zoning Ordinance, the maximum height of a structure in the M-2 district is 100'. Per Section 204.20 of the Erie City Zoning Ordinance, communication towers are a special exception in the M-2 district and shall be referred to the Zoning Hearing Board for approval.

Findings of Fact

1. Appearing on behalf of the appellant, Pyramid Network Services, was Attorney William Kelly Jr.. Attorney Kelly indicated that he was also representing the owner of the proposed tower, Eco-Site. Attorney Kelly began by passing out an information packet to the Board that contained documents, letters, diagrams, and several maps. The appellants referred to these maps throughout their presentation to illustrate the importance of the proposed site, its relation to the lower eastside area, and perhaps most importantly, the tower's expanded range of coverage from the proposed location.
2. Attorney Kelly told the Board that Pyramid Network and Eco-Site, together with Verizon Wireless, are seeking a variance to construct a monopole tower that would stand 150' high. The proposed location for the tower is the former IP site on East Lake Road. The location was chosen because there is currently a gap in the coverage of Verizon customers that affects General Electric Company, East High School and significant portions of the lower eastside lakefront area.
3. According to Attorney Kelly, the site is ideal. Referring to the maps in the information packet, he showed the improvement in coverage for this heavily populated area if the proposed tower is installed, and the significant difference those customers would have in their cell service. Additionally, the proposed location is a vacant area; the installation would not encroach on any residential neighborhood, where the coverage would likely not be as good as the proposed site.
4. Referring to the photographs in the packet, Attorney Kelly indicated that Pyramid conducted what he called a "balloon test," to show the view of the tower from the Eastside Boys and Girls Club. The photos were intended to show that the proposed tower would not have a negative impact on the neighboring areas. On the other hand, Attorney Kelly said that to not grant the variance would require Verizon to install two (100') towers to obtain the same coverage, and those towers would be more intrusive on the neighboring residential areas - coverage that would be less effective than the proposed single, 150' tower will provide.
5. Attorney Kelly told the Board that the appellants have obtained all the required FCC permits. The proposed tower would be available to other cell providers, thereby not necessitating those companies to install towers which could have created more intrusion in the future.
6. Also appearing in support of the proposal was Mr. Richard Hanson of Pyramid Network, who was also representing Eco-Site and Verizon Wireless. Mr. Hanson reiterated much of what Attorney Kelly had already presented, and added some testimony about how his company locates and determines the best sites for their communication and/or cell towers. Mr. Hanson said that Verizon is seeking to install what is known as an "anchor-tenant" tower; other cell providers will also utilize the tower to provide access to their

customers. He was asked if any of the other providers presently have towers installed in the area. Mr. Hanson told the Board he can only speak for Verizon Wireless, but said that if Verizon does not have coverage in this area, he can almost guarantee that no other carrier has a tower, for if they did Verizon would be trying to co-opt the service.

7. Answering more questions from the Board, Mr. Hanson explained that his job for Pyramid Network is to locate ideal sites for the cell towers. He said that they first look for what he called “raw land builds” – vacant property where a tower could be placed. In a city like Erie, the proposed location is about as good a site as they could have expected to find; that is, vacant property near enough to highly populated areas to provide good service
8. In more rural area of the county, like near highways, the towers are usually in the 150’ range. Mr. Hanson described the proposed tower as being in the lower end of the standard range of cell towers. The proposed 150’ tower would provide good coverage for over a mile in all directions, thus encompassing the important residential and business areas as illustrated in the map. The alternative to the proposal would be for Verizon to install two 100’ towers.
9. This alternative of building two shorter towers, Mr. Hanson said, would be more intrusive to the community, and the shorter towers would not provide the same quality of coverage. It would be difficult, he said, for the appellants to locate two comparable sites, given how much of the eastern half of the City is residential. There would be no guarantee that the two 100’ towers will provide the same coverage as the single higher one, and equally important, Verizon would not be able to share the shorter towers with other cell providers; thus requiring even more towers being built in the City in the long run.

Conclusions

1. The appellants and local cell phone provider, Verizon Wireless, hope to install a monopole cell tower at the vacant, old IP site, in an M-2 zoning district. The proposed tower will stand 150’ high.
2. According to Section 205 of the Erie City Zoning Ordinance, the maximum height of a structure in the M-2 district is 100’.
3. The proposed tower would provide coverage to a densely populated part of the City – the lower eastside – that includes General Electric Company, East High School, and several residential neighborhoods that are presently not receiving adequate cell phone coverage.
4. The alternative to the single 150’ tower in the vacant area would be to find two locations to install 100’ towers, which the appellants believe would not provide the same quality of service as the single, proposed tower.

Decision

Hearing officer Lisa Austin voted to approve the requested special exception and dimensional variance to install a 150' cell tower. She indicated that although the appellants are requesting a significant increase to the required 100' limit, the proposal is mitigated by the several unique circumstances in this matter, making this proposed site ideal for the proposed tower.

Ms. Austin did express a concern that this decision not be seen as an opportunity for other similar proposals by other parties in the future. The many unique circumstances in this case made for an ideal proposal; one that is not likely to be duplicated.

It is So Ordered.

Appeal No. 12,079 by Norb Belsterling concerning property located on Pittsburgh Avenue and identified by tax parcel ID 3118-100 in a C-2 district. The appellant is seeking a variance to gravel a parking lot greater than 5,000 square feet. Per Section 305.11 of the Erie City Zoning Ordinance, parking lots that exceed 5,000 square feet shall be paved.

Findings of Fact

1. The appellant Norb Belsterling appeared to testify on his own behalf, and told the Board that he is the owner of a trailer company, presently located at 1367 West 12th Street, where he leases the property. He has recently purchased the old Pontillo landfill on Pittsburgh Avenue, with the intention of moving his trailer storage facility to this new location; he said that he also intends to use the new property for the storage of heavy equipment.
2. The appellant, who said he has applied for and received all pertinent state and local permits, is seeking a variance from the City of Erie's requirement to pave the new lot; instead, he proposes to gravel over a section of the new property that he expects will encounter heavy use.
3. Mr. Belsterling purchased the new property on March 7, 2014. He said in his variance application letter that the basis for his request is that the property has a unique hardship associated with it, due to the "historical environmental issues at the site." He explained

in the application that the property went through an Act 2 (environmental) cleanup, and received a release of liability. However, one of the restrictions on the Act 2 release is that the subsurface of the land not be disturbed. Mr. Belsterling maintains that the installation of a paved surface at the property will require subsurface disturbances that would violate the environmental restrictions.

4. According to Mr. Belsterling, as an alternative his intention is not to disturb the land by paving the entire surface – as the Code requires – but instead to gravel over just a small portion of the property. This will enable him to move heavy rigs without having them get bogged down in the mud during the foul weather months. He said that he anticipates having to gravel about one acre, rather than having to grade the entire property if he were to pave it. He said that with the gravel top he would only have to lay a fiber matting underneath the surface; and, most importantly, he would not have to disturb the subsoil.
5. On the morning of the Zoning Board hearing, the City of Erie Bureau of Code Enforcement, and the Erie Zoning Office, jointly received an email letter from the Northwest Regional Office of the Pennsylvania Department of Environmental Protection in Meadville. In the letter, the D.E.P. stated that they believe that a gravel surface of the appellant’s property would likely increase the infiltration of contaminated groundwater into Cascade Creek, whereas a paved, asphalt covering would reduce to amount of infiltration. For this reason, the D.E.P. was requesting that the [Board] not grant the variance. [A copy of the letter was provided to the appellant at the beginning of the hearing, and the letter was made part of the official record.]
6. In response to the claims made in the letter, the appellant said that he disagreed with the D.E.P.’s opinion, and reiterated that the gravel surface that he proposes would be less intrusive to the subsoil than paving the property. Mr. Belsterling said that he hired an engineering firm to test the site. This testing, together with D.E.P. records that the appellant also claims to have, indicate that the ground (landfill) has been properly “capped” with clay and silt. Mr. Belsterling said that the gravel surface would require that he dig the minimal depth, while not disturbing anything buried there. He believes that the asphalt paving construction process would be much more intrusive. He said that he does not want to disturb the cover on the landfill any more than necessary.
7. Although he had not seen the letter sent to the Erie officials prior to the hearing, Mr. Belsterling did say that he was contacted by the D.E.P. about their objection on the Friday prior to the hearing. He said that he is not looking for a fight with any local or state officials, and that he is willing to meet with D.E.P. officials. He said that he is working hard with the Erie officials to utilize the largest lot of unused property in the City. He also noted that there was nobody present at the hearing from the D.E.P. to defend the allegations made in the letter.
8. The appellant concluded by summarizing several of his important arguments. His hardship is in the unique history of the property. He said that for his purposes it does not make sense to pave (asphalt) the property. Paving the entire property would be much

more disruptive to the subsoil than the graveling that he proposes. Further, the heavy equipment used on his facility (tractors and trailers) would tear up the asphalt surface; therefore the surface would require additional ground disturbances by having to repave it every few years.

Conclusions

1. The appellant recently purchased property on Pittsburgh Avenue that was formerly a landfill. He plans to move his business, a trailer and heavy equipment storage facility, to this new location.
2. According to Section 305.11 of the Erie City Zoning Ordinance, lots that exceed 5,000 square feet must be paved (with asphalt). The appellant is proposing instead to gravel over a portion (approximately one acre) of the property.
3. The appellant is seeking a variance to allow him not to have to pave the entire lot. The hardship, he contends, is the unique history of the property – that it was formerly a landfill - and its use is now restricted. He claims that to pave the property would result in a subsurface disruption that would violate the environmental restrictions currently on the property.
4. On the morning of the hearing, the City of Erie Zoning Office received an email letter from the Pennsylvania Department of Environmental Protection. In the letter, the D.E.P. indicated that they do not want the Board to grant the variance. They believe that to gravel over the property would likely increase the infiltration of contaminated groundwater into Cascade Creek, whereas a paved, asphalt covering would reduce to amount of infiltration.
5. The appellant contends that to pave over the whole property would result in much more subsoil disruption than his proposal would, and added that an asphalt lot would likely require re-paving every few years, resulting in even further disturbance to the former landfill in the future.

Decision

Hearing officer Lisa Austin said that after much consideration she decided to deny the appellant's request for a variance. She said that while she agrees that the circumstances surrounding this property are unique, she still believes that the appellant's stated hardship is largely a business decision (to gravel a portion of the property instead of paving the entire lot); and that the hardship is one of the appellant's own making. She added that the City Zoning Ordinance, which requires that lots over 5,000 square feet be paved, is there for a reason. This, coupled with the D.E.P. letter indicating that an asphalt-paved lot is

preferable to his proposal to gravel a portion of the property, influenced her decision to not grant the variance.

It is So Ordered.