

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

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

**-- MINUTES --**

**THE FOLLOWING APPEALS WERE HEARD:**

**Appeal No. 12,082 by Ty's Daycare Pre-K Center (3026-137 and 138)** concerning properties located at 504 and 506 West 18<sup>th</sup> Street in a C-4 district. The appellant is seeking a use variance to convert the properties from a daycare center to a public/semi-public use. Per Section 204.18 of the Erie City Zoning Ordinance, public/semi-public uses are not a permitted use in the C-4 district.

**Findings of Fact**

1. The appellant was represented at the hearing by Attorney Michael Agresti. Attorney Agresti introduced Ms. Deborah Martin to the Board. Ms. Martin, who will be one of the administrators who would oversee the day to day operations of the proposed facility, explained the appellant's proposal to the Board. Ms. Martin began by explaining that the appellant hopes to set up a home for at-risk teenage mothers, which would be located at the present location of Ty's Daycare & Pre K Center. The appellant proposes to convert the existing daycare facility into the new "Teen Parent Community Shelter (hereafter referred to as the "Shelter"), in an effort to assist in the growing problem of teenage parents and homelessness in Erie.
2. Ms. Martin, who told the Board that she herself had been a teenage mother, said that she has been mentoring teen mothers for ten years. She explained the downward cycle that many teenage mothers experience; often dropping out of school, ending up homeless and drug addicted, many of these young people become prey to criminal predators. In an attempt to change this cycle, Ms. Martin said that the proposed Shelter would provide housing, schooling and a safe environment for both teenage mothers and pregnant teens (available to girls 16-21).

3. The Shelter itself would be located in the same buildings as the present daycare center on West 18<sup>th</sup> Street – ideally situated for the target community, according to Ms. Martin. The dwelling, located in a C-4 zoning district, would contain a total of six bedrooms, with two beds in each room – maximum 12 mothers. The appellant also anticipates emergency arrivals, and would be equipped to house up to 24 people (mothers and children included) at any given time.
4. Answering questions from the Board, Ms. Martin said that the expected length of stay for the young mothers would be from one to six months. However, she added that she could see that time frame expanding as the situation demands. She stressed that the goal of the Shelter is to help the girls with parenting skills, technical training, seeking good housing, and generally giving the young mothers a start to a productive life. Ms. Martin admitted that under some circumstances a girl could stay for as long as 18 months.
5. In addition to Ms. Martin, the Board also heard testimony from the owner of Ty's Daycare Center, Ms. Lashawn Sanders. Ms. Sanders, who has operated the daycare facility since August 2014, told the Board that she saw a more dramatic need for change in the community, so decided to open the teen mother facility. The only similar facility currently operating in the City, she said, is the Florence Crittendon Center, which is on the east side, and has many restrictive regulations that limit the accessibility for the girls who need help.
6. The girls would be referred to the Shelter, which is a non-profit organization, from many outside sources. Ms. Sanders agreed that the 18<sup>th</sup> Street site is ideal for several reasons. In addition to being in the part of the City where many homeless teens end up, the location has other advantages; the Shelter would be on a bus route, and near many other support-type facilities, like the St. Paul's Neighborhood Clinic. Ms. Saunders added that the Shelter would have a 24-hour staff on hand, and already has many amenities – like the existing playground – from the daycare center. She said that all the same rules and regulations that apply to the daycare center would apply to the new facility. The Shelter would have policies on how to deal with tenants who do not obey the rules of the facility, that would be enforced as the situation dictates.
7. Appearing to testify in opposition to the proposal was Mr. Wally Brown, from the Little Italy Neighborhood Watch, and also speaking for the Sisters of St. Joseph. Mr. Brown told the Board that many neighborhood residents are opposed to the proposed homeless shelter at the suggested location. He said that the buildings, along with much of West 18<sup>th</sup> Street, have been built or renovated in order to encourage businesses to move in. Mr. Brown said that the redevelopment project as a whole should have at least ten years to determine if it is successful; to introduce other facilities, like the proposed non-profit shelter, would undermine that business redevelopment effort, he said.
8. Mr. Brown also indicated serious concerns about the location of the Shelter. For example, he indicated that the Shelter would have taverns on either side of it. He added that the other similar facilities in the City – Florence Crittendon Center and Perseus

House – are having serious behavior problems, and he suspects that the proposed Shelter could experience the same such problems given the location. Mr. Brown also said that many other questions have not been answered, such as what would be the result from the Shelter having many vacancies for an extended period.

9. In addition to Mr. Brown, also appearing to testify in opposition to the proposal was Ms. Rose Graham executive director of the Sisters of St. Joseph. Ms. Graham confirmed that Mr. Brown did accurately express the Sister's opposition to the proposed Shelter. Ms. Graham indicated that the Sisters of St. Joseph thought the facility was going to be a daycare center, not a homeless shelter, which is a much more aggressive enterprise, and requires more resources. She added that the appellants did not address the question of funding; where they expect to receive it and what, if any, business partnerships the appellants have developed.
10. The appellant's representative, Attorney Agresti, then made several remarks in rebuttal to the opposition witnesses. He said that the daycare facility, and other similar non-profit facilities in the area, have operated for many years with the taverns on the same block. He added that the Board should not give much weight to the hearsay testimony made by the opposition witnesses about other facilities in the area. Attorney Agresti said that the appellants are seeking a use variance for the group home facility, and asked the Board to consider the demonstrated need for the proposed Shelter, which he said is all based on first-hand observations, not speculation.
11. Ms. Sanders, the owner of Ty's Daycare Center, also made some closing remarks in rebuttal to the opposition witnesses. She said that the proposed Shelter is a non-profit organization, and as such will apply for various grants. Ms. Sanders said that the appellants have reached out to the Sisters of St. Joseph, and received no support; she added that she is surprised that they are opposing the plan, as the appellants are basing their proposal on a real and immediate need in the neighborhood, and overall Erie community.

### **Conclusions**

1. The appellants are proposing to convert an existing daycare center into a public/semi-public non-profit facility to help teenage mothers. The buildings housing the present daycare center are located on West 18<sup>th</sup> Street, in a C-4 zoning district.
2. According to Section 204.18 of the Erie City Zoning Ordinance, public/semi-public uses are not a permitted use in the C-4 zoning district.
3. The need in the community is great, according to the appellants. The downward cycle that many single, teenage mothers experience – dropping out of school, homelessness and drug addiction - could be replaced with the young girls getting their G.E.D., receiving parenting skills, learning a trade, etc...

4. The City Ordinance defines “semi-public uses” as: ...[institutions] of an educational, religious, charitable or philanthropic nature. The appellants indicated that they are a non-profit agency that hopes to fulfill an important need in the community.

### **Decision**

By a unanimous vote the Board approved the appellant’s request for a use variance. Board chairman Mike Hornyak said that he thinks the most important factor is that there is a need in the community, and not whether the proposal is likely to be a successful business. Board member Selena King said that the Board has an opportunity to guarantee that a population of citizens who need this type service will be served. She added that the statements made about other shelters in the City were untrue, as the other centers discussed are very selective in who they accept (women must be court-ordered sometimes). Board member Ed Dawson said that for 32 years he has been in the drug and alcohol field, as well as being a landlord for many years. He said that he recognizes when a need exists, as it does in this case. He added that the proposal conforms with the City Ordinance definition for semi-public use facilities. Board members Lisa Austin and Patty Szychowski agreed, and both voted in favor of the variance request.

### **It is So Ordered.**

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### **Appeal No. 12,083 by S.O.N.S. of Lake Erie Fishing Org. and Ed Kissell (4148-100)**

concerning property located at 216 Bayfront Road in a WC district. The appellants are appealing the Zoning Office’s determination regarding a public access walkway constructed at the property. The Zoning Office has determined that per Section 306 and 306.10 of the Erie City Zoning Ordinance, the public access walkway meets the provisions set forth in the Zoning Ordinance for width and materials used for the constructed public access walkway.

### **Findings of Fact**

1. This appeal is brought by the S.O.N.S. of Lake Erie, a community action group that is active in issues relating to the bay and waterfront development. The S.O.N.S. of Lake Erie, together with several concerned citizens, are challenging the decision by the Erie Zoning Office to permit the public access walkway, designed and built by the Erie County Convention Center near the old G.A.F. site.

2. Prior to presenting their case, the S.O.N.S. of Lake Erie asked the Board to hear from several children from the class of Sister Pat Lupo, a Benedictine Nun who teaches at the Erie Neighborhood Art House. The children and Sister Lupo read prepared statements indicating that they want a safe waterfront and walkway, as they all use the bayfront for fishing and other activities. Sister Lupo said that she had two specific concerns: that the waterfront walkway be made from suitable material, not gravel or stones, and that there were not enough what she called “safety spheres” installed at the waterfront. She specifically requested that the design include stairways from the shore into the water.
3. After the children and Sister Lupo finished speaking, representatives from the S.O.N.S. of Lake Erie addressed the Board. Mr. Jerry Skrypzak began by telling the Board about the organization. The S.O.N.S. of Lake Erie was formed in 1981 to enhance fishing and fishery in Lake Erie. He said that as the lake has become more developed over recent years, local ordinances have been honored for the most part. However, he added that access to the waterfront has often been limited.
4. Using a multi-media display, Mr. Skrypzak showed photos of several points along the waterfront – like Liberty Park and the rear of the Water Works – which he indicated have proper access. Even at places along the waterfront that are fenced in for safety, he said, there are access points for fishermen. All of the previous places included large (12 foot wide), free public walkways that allowed access to the waterfront – access that Mr. Skrypzak and the S.O.N.S. of Lake Erie claim the area along the Convention Center does not provide.
5. Next to address the Board on behalf of the appellants was Mr. Ed Kissell. He began his testimony by handing out a series of photographs to the Board, which he also showed to the audience with the multi-media display. The photos, he said, showed several different views of the former G.A.F. site that he himself took, which he maintains violate the City Ordinance. The photographs show a stone surface barrier against the water, which is only five (5) feet wide. The narrow surface is far short of the required twelve (12) foot-enough access for people who want to fish or use the waterfront.
6. Mr. Kissell also handed out to the Board the passage of the Erie City Zoning Ordinance that governs waterfront property – Section 306 and 306.10. Mr. Kissell had highlighted several portions of the Code, specifying that the walkway “shall” be at least 12 feet wide, and not be made of stones or pebbles. The language of the Code, he said, is unambiguous, and does not leave room for the City to allow an alternate design. He added that the language of the Code is for a free public access walkway, not merely a sidewalk. The Code requires that the walkway “abut” the water, and not be inland. Mr. Kissell questioned whether the Erie County Convention Center applied for a permit for their design, as he said he was told by City Zoning officials that the Convention Center never acquired a City permit.
7. Several other witnesses testified in opposition to the City’s decision to permit the walkway as it was designed. Mr. Randy Barnes told the Board that he thinks the

walkway is too narrow. He demonstrated that if two people in wheelchairs were using the walkway there would be no room for any other pedestrians. He also expressed concerns about the stone abutment on the water's edge, claiming that it creates a hazard (i.e. children playing and slipping into the water) rather than serve as a safety feature.

8. Other opposition witnesses included Mr. Ralph Carvaglia, a member of the S.O.N.S. of Lake Erie for thirty years. Mr. Carvaglia said that the organization has helped to transform a non-productive fishing area into a worldwide attraction. He believes that the walkway was designed to discourage people from using the waterfront; citing the fact that there are no safety stairs installed anywhere along the walkway. Mr. Bob Zawazcki also believes that the Port Authority have done their best to discourage public access to the waterfront. He said that he thinks that the Port Authority's ultimate goal is to establish a pay for use set-up; the waterfront, he said, belongs to all the taxpayers, and people should have unobstructed access to it. Mr. Paul Fischer told the Board that this may be the last piece of prime real estate to be developed on the bayfront. He said that the remediation project should consist of more than just removing rocks. Mr. Fischer cited for the Board similar water front projects in Providence, Rhode Island and Croatia, where he said millions of dollars were spent on sophisticated renovation projects, which in turn will generate millions from tourists and water-related activities.
9. Several witnesses appeared to testify in opposition to the appellant's challenge, and in support of the City's decision to permit the existing walkway. Mr. Armand Chimenti, the Chief Zoning Officer for the City of Erie, testified first. He told the Board that the Zoning Office's decision to permit the design was reaffirmed after Zoning and other City officials recently visited the site. The officials saw the 12' wide asphalt walkway as being in compliance with the Code, and the stone abutment against the water serving as a safety barrier. There was no evidence in the Zoning Office records, he said, of any permits having been issued for this site in the past. Since this design was for the construction of a sidewalk, and not for a building or other structure, the Erie County Convention Authority did not need to obtain a zoning permit.
10. Mr. Chimenti told the Board that much of the testimony that they had heard up to this point is not in the City Ordinance. For example, the Zoning Office did not evaluate the need for a staircase, running from the walkway into the water, because it is not mentioned as a requirement in the Code. He went on to say that the Pennsylvania Municipalities Planning Code (M.P.C.), Section 603.1, addresses the issue of interpretation of ordinances. Mr. Chimenti said that according to the M.P.C., any ambiguity in the (Erie) Code should be considered in favor of the property owner – in this case the Erie County Convention Center. He added that the walkway need not provide the entire area for fishing. The walkway provides enough areas for fishermen. The walkway should accommodate other waterfront activities as well (e.g. jogging, bicycling, etc...) he said.
11. Attorney Jerry Vilella of the City Solicitor's Office agreed with Mr. Chimenti. Attorney Vilella said that the design of the walkway does not violate Section 306.10 of the City

Ordinance, as Mr. Kissell had previously indicated that it did. Attorney Villella quoted another portion of Section 306.10, which indicates that where a danger exists, the design may allow for a safety zone. This, he said, is exactly what the design presented by the Erie Convention Authority included, and is why the City Zoning Office was correct in permitting the design.

12. Mr. Ashley Porter, the President and Services Engineer for the Erie County Convention Authority, addressed the Board next. Mr. Porter said that while his engineering firm did not specifically design the walkway, they are the firm that engineered the sea wall and stream enclosure; as well as being the firm that designed the Liberty Park walkway. He stated that on this Convention Center walkway project, his firm was charged with obtaining the necessary federal and state permits. The permits, which were submitted in 2012 he said, received design approval from both the Pennsylvania Department of Environmental Protection and the federal Army Corps of Engineers.
13. There were many considerations that went into the design of the walkway, and permit requests, Mr. Porter told the Board. He said that the width of the paved walkway, and the stone barrier that abuts the water, meet the City Ordinance. There were no stairs included in the design, as neither the PA Dept. of Environmental Protection nor the Army Corps of Engineers required stairs in their applications for a permit. There was no attempt to mislead any federal, state or local agency, Mr. Porter said, as was previously alleged by Mr. Kissell. Mr. Porter submitted a copy of the completed permit, to show the Board that stairs were not required in the design, and that everything he testified about was accurate. (Mr. Porter said that he believes that a document previously submitted by the appellant, was actually a portion of the permit, which was obtained by Mr. Kissell conducting an electronic D.E.P. record search. Mr. Porter told the Board that the document that he submitted was the entire permit.)
14. Attorney Patrick Delaney, speaking on behalf of the Convention Authority, reiterated that the PA Municipalities Planning Code states that an ordinance (like the section of the Code in question – 306.10) should be construed in favor of the property owner – in this case the Erie County Convention Center. Attorney Delaney said that the Erie City Zoning Ordinance does define “abut”. The Code definition for “abut” is: “to have a common boundary or being along contiguous lot lines that are not separated by a street or alley.”
15. There must be a common sense application to evaluating a design like this, Attorney Delaney said. The development meets the spirit of what the Code requires, he said; that the public will not be impeded from walking, jogging, biking, etc... , and also that the public use not be construed to accommodate one group exclusively (i.e. fishermen). He went on to say that the Code does not say that the walkway must be at the water’s edge. It would be impossible, given the differing slope and contour of the land, for the walkway to go directly to the water, as the appellants and others have suggested. In this case,

Attorney Delaney said, there is an approximately 30' wide public access way, of which 12' is a paved, asphalt walkway.

16. Mr. Jeff Kidder also testified in support of the City's decision to permit the walkway design. Mr. Kidder is an architect who was not involved with the Convention Center walkway, but is familiar with the site as he was previously the architect for G.A.F., the former occupants of the site. Mr. Kidder reiterated what Mr. Chimenti of the Erie Zoning Office had indicated previously - that the reason that the Convention Center did not require a permit is because the design was for a sidewalk, and not for a building or other structure. The whole project, he said, was discussed in lengthy public hearings, including debate before City Council. Mr. Kidder said that the asphalt walkway would in itself be enough to comply with the City Ordinance. However, he said that the Convention Center went further by installing safety barriers, including a guard rail where there is a dangerous drop-off. The walkway, he said, is in total compliance with the Code, and meets the needs of the community.
17. Attorney Matthew McLaughlin, the solicitor for the Erie County Convention Authority, agreed with the previous witnesses. He told the Board that the Convention Authority went through all proper channels, and is now an important asset to the community. Attorney McLaughlin then introduced the Executive Director of the Erie County Convention Authority, Mr. Casey Wells.
18. Mr. Wells began by telling the Board that he is a long-time friend of the S.O.N.S. of Lake Erie, and commends the organization's efforts over the years. In this case, however, Mr. Wells believes that their objections are not valid. He said that the Convention Authority completed the entire regulatory process, and followed every rule in completing a \$100 million project that now provides a benefit to the entire community.
19. The G.A.F. site project is consistent with other projects undertaken by the Convention Authority, Mr. Wells said. They have opened a  $\frac{3}{4}$  mile long access to the waterway – including the addition of a dock along the west basin of the Convention Center. He said that by not having one long, extended fishing pier, the design enables the entire public to utilize the bayfront. Lastly, Mr. Wells told the Board that the reason that steps into the water were not included is because the designers believed that the steps would have been an attractive nuisance, especially for children. Also, the steps would have posed a dangerous hazard when frozen.

### **Conclusions**

1. The appellants are challenging the decision by the Erie Zoning Office, permitting the design of a public access walkway by the Erie County Convention Center, in a WC zoning district.

2. Section 306.10 of the Erie City Zoning Ordinance sets forth the provisions of the required walkway. The public access walkway must be at least twelve (12) feet wide, abutting and parallel to the water's edge, and made with appropriate material (not gravel, stone, grass or any other unapproved material). Where a danger exists, there should be a safety barrier installed.
3. The design, which the City Zoning Office approved, has a five-foot wide barrier, made of small and medium size stones, along the immediate water front. Parallel to the stone barrier, several feet inland from the water front, is a 12' wide asphalt sidewalk that extends the entire length of the Convention Center's property.
4. Since the design was for a sidewalk, and not for a building or other structure, the Convention Center did not need to obtain a permit from the City. The Zoning Office approved the design determining that it was compliant with the provisions of Section 306 and 306.10 of the City Ordinance.

### **Decision**

By a unanimous decision, the Board voted to deny the challenge brought by the appellants, and affirmed the determination of the City Zoning Office to permit the design of a public access walkway installed by the Erie County Convention Center.

Board chairman Mike Hornyak said that he understands the position of the S.O.N.S. of Lake Erie and their supporters, but feels that the rocks that run along the water's edge are a safety feature, and not in violation of the Code. Board member Selena King said that she carefully reviewed the law and how the Code was written, and she thinks the design and walkway are consistent with the Code. Member Ed Dawson said that he visited the site and measured the pathway himself. He found the sidewalk to be compliant, and said that in the areas where there are fishing rails, the walkway is actually more than 12 feet wide. Board members Lisa Austin and Patty Szychowski agreed, and both voted affirm the City's decision, denying the appellant's challenge.

**It is So Ordered.**