

April 14, 2015
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held Tuesday, April 14, 2015 at 1:00 P.M. in City Council Chambers, Municipal Building, 626 State Street.

-- MINUTES --

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,089 by Muthanna Jabbar (5009-214) concerning properties he owns located at 212 East 21st Street in an M-1 district. The appellant is seeking a use variance to convert the property from a service garage to a convenience store and service garage. Per Section 204.19 of the Erie City Zoning Ordinance, convenience stores are not permitted in the M-1 district.

Findings of Fact

1. The appellant Muthanna Jabbar appeared with his attorney, Gregory Sessler. Mr. Jabbar testified by answering questions from Attorney Sessler, who also provided photographs showing several different views of the property, for the Board to review. Attorney Sessler also supplemented Mr. Jabbar's testimony, by providing certain facts about the property and the photographs as the questioning progressed
2. The property is located in an M-1 zoning district, directly across the street from an RLB district, where a convenience store is permitted. Therefore, the appellant said that the proposed store would not alter the character of the area. For example, just west of the appellant's property, on the same street, is a car wash/restaurant; the appellant said that the proposed convenience store would not create as much noise, traffic, dust or other negative effects that this or other businesses in the area.
3. The property and building are both badly in need of repair. If the variance is granted, the appellant indicated that he plans to invest significantly in upgrading the property, including new windows, doors, ceiling, lighting, floors and painting, as well as installing exterior lighting, and making improvements to the landscaping and parking areas. The appellant expects to spend approximately \$15,000 to \$20,000, a figure the Board disputed. Mr. Jabbar, who lives less than a block away from the property, admitted that

the figure is low; but said that the reason for the low figure, in part, is because he does construction work professionally, and expects to do much of the renovation work himself. Attorney Sessler added that the figure represents only the building, and would not include renovating the parking lot, or what he referred to as other exterior “site work”.

4. The appellant said that he surveyed nearby residents and property owners, and told the Board that the neighbors had no objection to the proposed convenience store. The appellant added that there are many residents in the area that have limited availability to transportation, and would benefit from a convenience store located nearby. The appellant said that in addition to the service that the store would provide to the neighborhood, he expects that the new proposal will provide several new jobs, which would also benefit the local economy.
5. During the questioning Attorney Sessler made several statements himself; the Board asked Mr. Jabbar to confirm several points. Mr. Jabbar said that all the testimony that the Board heard was accurate. Specifically, he said that he will make the necessary repairs to the building and exterior, and that he has received no negative feedback from the neighbors. The photographs that were given to the Board were taken by the appellant about one or one and a half months ago.
6. Mr. Jabbar testified that he recently purchased the property in a tax sale, about two months ago. He lives four houses away from the property, and if he opens the store, he expects the hours of operation would be from 9:00 a.m. to 9:00 p.m. The use variance is for a convenience store only; no gasoline pumps would be installed. After repairing the front of the building, the appellant said that he expects to renovate the entire front, which will include paving for about ten parking spaces.
7. Lastly, Attorney Sessler concluded by telling the Board that all of the proposed improvements will enhance the value of the property. The project will provide construction jobs, as well as longer term employment for clerks and other store personnel. He added that the fact that the property went to a tax sale indicates that there are likely to be very few people willing to invest in the area; Mr. Jabbar should be commended for at least trying to renovate a vacant property, especially one in an “M” district.

Conclusions

1. The appellant purchased the property at a tax sale two months ago. He proposes to install a convenience store and service garage at the location.
2. According to Section 204.19 of the Erie City Zoning Ordinance, convenience stores are not permitted in the M-1 district. However, the appellant’s property is situated on a border of two zoning districts; if it were across the street, in an RLB district, the store would be a permitted use.

3. The property is in need of extensive repairs. The appellant testified that he expects to spend approximately \$15-20 thousand dollars for renovation. He is a construction worker, and expects to perform many of the interior repairs himself.

Decision

By a four to one decision, the Board voted to approve the appellant's request for a use variance. Board Chairman Mike Hornyak said that he has lived in the area his entire life, and can verify that the neighborhood is badly in need of this type of business. He said that he commends the appellant for making the effort to build a store in a neighborhood that needs one. Member Jaqueline Spry said that she expects the appellant to make the repairs as he indicated, including the clean-up of the rear area, where the garage would operate. Members Selena King and Patty Szychowski also indicated their approval, saying that they anticipate positive changes to the neighborhood with the proposal. All four Board members voted to approve the variance.

The lone dissenting vote was Board member Ed Dawson. He expressed his concern that a convenience store located on the high traffic East 21st Street presents a dangerous situation; especially since much of the expected clientele would be via foot traffic, and there is no traffic light on the corner of East 21st and Holland Streets.

It is So Ordered.

Appeal No. 12,090 by Angela McNair (1103-103) concerning property located at 1540 East Lake Road in an M-2 district. The appellant is seeking a use variance to convert a portion of the property from a corporate office to a day care center. Per Section 204.20 of the Erie City Zoning Ordinance, daycare centers are not permitted in an M-2 districts.

Findings of Fact

1. The appellant, Angela McNair, appeared on her own behalf to testify in support of the proposal, and described for the Board the importance the facility would be to the community. Ms. McNair was accompanied by Ms. Tashana Pullium, who is another nearby resident who has children that will benefit from a day care center in the area. Prior to her testimony, Ms. McNair provided a small packet to the Board that contained photos of the site, and letters of support from leaders of other community service organizations.

2. The name of the proposed center is JumpStart. It will provide day care for children from 6 weeks to 12 years old. The property is located directly across the street from a school; the appellant indicated that one of the primary goals of the Center is to prepare children for school. Ms. McNair, the mother of 5-year old twins who have special needs, said that she recognizes the need in the community for this important service; the only current provider, she said, is the Barber Center, and they only provide the care until the child enters kindergarten.
3. Ms. McNair, who herself is a licensed child therapist, said that part of the Center's mission goals are to provide skills training for children. This service would be available after the regular day care hours. She also said that they recognize the importance of providing resources for parents, who must travel to drop off and pick up their children
4. Two of the letters of support came from Mr. Cory Coleman, CEO and Chairman of the Keystone Athletic Development Organization, and from Mr. Peter Russo, CEO of the Benjamin Wiley Charter School District. Both letters attested to Ms. McNair's personal qualifications and commitment, and indicated that she is the perfect person to lead this proposal. More than just a good fit for the neighborhood, JumpStart is part of a larger community effort to provide services and facilities for Erie's children.
5. Eventually, the Center hopes to provide outdoor playgrounds and basketball courts for neighborhood children. Long range, they hope to offer summer camp. Ms. McNair told the Board that the proposed facility is in a safe location. She said that the property is gated, with a large fence blocking access to the adjacent vacant property in the rear. Citing the photographs that were in the packet that she passed out, Ms. McNair showed the entire vicinity, including an area for children to play. The building itself is finished, she said, only requiring furniture, and outside, playground equipment.
6. The Board had several questions for the appellant regarding the day to day function of the facility. Ms. McNair said that all background checks (both health related and criminal history) will be conducted for any employee of the day care center. The hours of operation for now will be from Monday thru Saturday, from 6:30 a.m. to 6:30 p.m., (these hours do not include the skill's training, which may be held after hours). Eventually, she said, they hope to provide 24-hour care. The appellant could not say how many children she anticipates at this point. She did say that the PA Department of Public Welfare regulates the capacity of facilities like this. However, Ms. McNair said that they will probably have more children than originally anticipated, because the nearby Boys & Girls Club has recently shut down their facilities for older children.
7. Also appearing in support of the project was Ms. Tashana Pullium. Ms. Pullium told the Board that she has a two-year old son and a small daughter. She confirmed the need in the community for a day care facility, especially one that will provide all of the ancillary benefits that the appellant described.
8. Another witness in support of the proposal was Mr. Patrick Fuhrman, representing the Erie Management Group, owner of the property. Mr. Fuhrman said that while his group

supports the proposal, they have a much larger “footprint” in the community, with JumpStart being but one of several projects that the Group is engaged with.

Conclusions

1. The appellant proposes to establish a day care center for children from 6 weeks to 12 years old. The goal of the center would be to prepare children for school. This is a service that the community needs badly since the only similar facility does not care for children after they go into kindergarten.
2. According to Section 204.20 of the Erie City Zoning Ordinance, day care centers are not permitted in an M-2 zoning district. The appellant is seeking a use variance.
3. The proposal has the support of several other local service organizations in the Erie community. The facility will be open from 6:30 a.m. to 6:30 p.m. at first, but the appellants are hoping to provide 24-hour care eventually. It will provide outdoor playgrounds and a wooded area where children can play.

Decision

By a unanimous decision, the Board voted to approve the use variance. Board chairman Mike Hornyak said that based on what he heard the facility will be a good fit for the neighborhood, and will provide a good day care center for the community. Board member Selena King said that she is excited about the proposal, indicating that she recognizes the need in the community for the facility. Members Edward Dawson, Patty Szychowski, and Jaqueline Spry all agreed, and all voted to approve the variance.

It is So Ordered.

Appeal No. 12,091 by Iron Wings MC, Inc. (2044-105) concerning property they own located at 1102 East Avenue in a C-4 district. The appellant is seeking a use variance to convert the property from an eating/drinking establishment to a private club. Per Section 204.18 of the Erie City Zoning Ordinance, private clubs are not permitted in a C-4 zoning district.

Findings of Fact

1. The appellant, Iron Wings motorcycle club, was represented at the hearing by club member and Sargent at Arms Officer, John Purvis. Mr. Purvis told the Board that he has

the authority to represent and testify on behalf of the appellants. Mr. Purvis was accompanied by Iron Wings' attorney, Matthew Fuchs. Attorney Fuchs provided several photographs and supporting documents to each Board member, and asked that the Board allow him to ask questions of Mr. Purvis.

2. Like many of the 20-25 members of Iron Wings, Mr. Purvis told the Board that he is a local businessman; he has owned Solar Revolution since 2008. Like him, other members of Iron Wings who are construction professionals have done work on the building, which was in deplorable condition when the appellants acquired it.
3. Iron Wings purchased the property – a red brick building that sits on the corner of East Avenue and East 11th Street – in 2011. It is just north of the East Avenue viaduct. Formerly a bar, the property had at least three prior owners. The most recent owner, Lamas, closed after a murder was committed at the bar. The premise fell into a terrible state of disrepair. Because of the condition of the building, Iron Wings received a Code violation from the City soon after purchasing it, and another later. It was these violations, together with the poor condition of the building (which included a badly leaking roof), that prompted Iron Wings to make the renovations it has before it received a variance to operate as a club.
4. According to Mr. Purvis, Iron Wings has no liquor license, and if granted the variance, they will not apply for one. They would use the location to plan events, meet with other members, and generally host activities and events related to a motorcycle club. In the past, they have held charitable fund-raising events (like bingo) to help raise money for veterans. Mr. Purvis told the Board that the appellants have a very strict set of by-laws that are rigorously adhered to; for example, he said that in the past they have evicted members from the club for illegal or improper behavior. This will continue to be Iron Wings' policy if granted the variance.
5. Among the documents Attorney Fuchs presented to the Board was a petition that the appellants received with the signatures of 131 residents or business owners within a thousand foot vicinity of the property. Upon further questioning from Board members, Mr. Purvis acknowledged that the petition may contain names of people other than those who actually live in the thousand foot radius (for example, patrons at a local business). He said that the club waited until neighborhood residents received the notices from the Erie City Zoning Office regarding the April 14th hearing, and then went about the area in an effort to gauge support or opposition from neighbors. Erie Zoning Office official Matthew Puz confirmed for the Board that the Erie Zoning Office sends notices to everyone within a 500 foot radius of the subject property.
6. Within a mile or so of the appellant's property are several other private clubs (including the Polish Sharpshooters, the Housars Club and the Slovic Club), all operating in the area Mr. Purvis said. Attorney Fuchs pointed out that all of these other clubs are in "R" districts. However, as a result of the closing of the East Avenue viaduct, no other

business has moved into the East Avenue area since Iron Wings purchased their building in 2011.

7. The repairs that were made by the appellants to the outside of the building were intended to refurbish the appearance of the property, adding to the aesthetic quality of the neighborhood. Mr. Purvis said that Iron Wings wants to be good neighbors, involved in the betterment of the area. He said representatives from the club attended last fall's neighborhood watch meeting, and that the appellants will continue to participate in future neighborhood watch activities. In addition to the petition previously mentioned, the appellants provided the Board with letters and Facebook notices of support from other neighborhood residents, including one letter from Father Donald Valasek, pastor from the church across the street from the appellant's property.
8. The Board had several more questions for Mr. Purvis. He indicated that up to this point the club has been holding their meetings at Scooters (a local tavern frequented by bikers) and other locations; they have only been renovating the East Avenue property because of the Code violations that they received. Mr. Purvis confirmed that a murder had been committed at the club's previous residence, on East 18th and Parade Streets; a club member was killed in an apartment in the same building as the club. However, Mr. Purvis adamantly maintained that no criminal activity will be permitted by club members. He admitted that potential club members may have a previous criminal record, but insisted that Iron Wings has and will continue to expel members for drug use or other illegal conduct.
9. Mr. Purvis said that membership in the club is male only, but said that it is very common for spouses or significant others to be included in picnics and other activities. He said that the biker club is not a notorious gang as often portrayed in the media. There have been some noise complaints because of the inevitable design of motorcycles, but he added that members do their best to reduce the noise made by their bikes.
10. When asked about the parking at the proposed club, Mr. Purvis said that some members do park their bikes in the front of the building, but always on the grass, and never on the sidewalk. He said that he does not anticipate any event where more than 70 or so people would attend, and that the appellants do have permission to park cars in the church parking lot across the street. Eventually there will be room for all member's bikes and cars to park in the rear of the property.
11. Appearing to speak in support of the appellant's proposal were neighbors Scott Pohl, Stephen Drake and Robert Bizzaro, all of whom said that Iron Wings has done a much better job at maintaining the property, and have ended the disruptive and dangerous behavior of the previous owners. Mr. Pohl said that the previous owner's bar created chaos at all hours, and at times he had to use rubber gloves to clean up drug paraphernalia and condoms from the surrounding area. At one point, the Erie Police Department actually used his house to conduct surveillance on the previous establishment. Mr.

Bizzaro added that he thinks that Iron Wings now has one of the cleanest, most well maintained properties on East Avenue.

12. Attorney Fuchs summarized the appellant's argument by addressing the principle hardship in this case – the closing of the East Avenue viaduct. Citing several news articles which he submitted to the Board, Attorney Fuchs discussed the detrimental impact that the closing has had on the economy of the lower east side, and the Erie community as a whole. He said that the hardship was not created by the appellants, and the proposed use will not alter or negatively impact the character of the neighborhood. Once the previous owners closed the bar, the abandoned structure quickly became an attractive nuisance, resulting in graffiti, broken windows, etc..., and would have remained another blighted property in this area of the City.
13. Given the closing of the viaduct, Attorney Fuchs argued that it is unlikely that any other viable tenant would be willing to purchase and renovate the property as the appellants have. Citing previous witness' testimony, he indicated that there has been no other new businesses that have moved onto the block since the time Iron Wings purchased the property. Attorney Fuchs went on to say that the motorcycle industry, as a whole, has had a tremendous effect on the Erie economy in recent years (i.e. the annual "Roar on the Shore"), and that this trend is likely to continue. Iron Wings encourages these types of events, he said, and will continue to enhance the lower east side area by being cooperative, involved residents.
14. In opposition to the appellant's proposal were several witnesses. First to testify was Mr. Richard Wagner, former Zoning Hearing Board member, and chairman of the Board when the appellants first sought, and were denied, a variance in May 2012. Mr. Wagner said that above all of the impassioned rhetoric from both sides, the main fact for the Board to consider is that a private club is not a permitted use in a C-4 zoning district. Nothing has changed, he said, since the same group of people filed for and were denied a variance three years ago. He also said that the appellants have flagrantly ignored the Board's previous decision, and that the City should have been even more aggressive in enforcing that decision. Lastly, Mr. Wagner added that the appellants simply did not do their due diligence in looking for another suitable location in one of the many zoning districts in the City where private clubs are allowed – something he said could have avoided this whole process and controversy.
15. Next to testify in opposition to the appellant's proposal was Father Jerry Priscaro, coordinator of the East Avenue / Hess Avenue Neighborhood Watch group. Father Priscaro said that he represents 121 members of that group, in addition to appearing as a priest who lives in the area and resides over several parishes in the lower east side. In no uncertain terms Father Priscaro said that the area residents as a whole believe that the neighborhood is negatively affected by the noise and activity of the motorcycle club. Despite several pleas from the community and at least two citations from City officials, the appellants continue to refuse to leave the premises. Having counted as many as thirty

motorcycles at the property at one time, Father Priscaro told the Board that Iron Wings has now created a “gang mentality” in this community, after being forced to leave two previous locations for similar behaviors.

16. The difference between Iron Wings and the other established clubs in the area (e.g. Polish Sharpshooters, Huzars Club, etc...) is that the appellants are serving food and providing other services without having to obey food and other health regulations, Father Priscaro said. In addition to a lack of parking, he said that when Iron Wings holds events there is alcohol and money on the premises, inviting more problems. He pointed out to the Board that there are no less than six other zoning districts in the City where the appellants could legally reside (including C-1, C-2, C-3, WC, WC2, and WC3); instead, they have chosen to disobey the law and the previous Zoning Hearing Board decision and remain at the East Avenue site. This, Father Priscaro said, indicated that the appellants have created their own hardship, and that as past behavior is an indicator, they will not obey the law in the future.
17. Father Priscaro also introduced into evidence several photographs and documents of the subject property, which included the previous (May 2012) Zoning Hearing Board decision, and several photographs of various activities at the property since the 2012 decision. In particular, a photograph of a sign currently on the side of the building, which Fr. Priscaro said was identical to the club logo on their jackets, and which, he claimed, was proof that Iron Wings has operated as a private club, openly contradicting the law and previous Board decision.
18. In addition to Father Priscaro, also testifying in opposition to the proposal were longtime neighborhood residents Beth Berti and Barb Szustak. Ms. Berti is the co-coordinator with Father Priscaro of the neighborhood watch group. She said that there is still activity at the location, often very late at night, and in particular a terrible problem with the noise. Likewise, Ms. Szustak said that when there is a large number of motorcycles coming and going from the site, the noise presents a very serious problem. While acknowledging that the appellants have renovated the building, and indicating that she has no problem with any club member in particular, she still maintained that the motorcycle club is not an asset to the neighborhood.

Conclusions

1. The appellant is Iron Wings motorcycle club. The appellant has owned the property since 2011. They had previously applied for a variance to operate a private club in 2012, but were denied at that time by the Zoning Hearing Board.
2. According to Section 204.18 of the Erie City Zoning Ordinance, private clubs are not permitted in a C-4 zoning district. Since the 2012 Board decision denying a variance, the appellants have been cited at least two times by City officials for illegally operating a private club.

3. The hardship in this case, according to the appellants, is the effect that the closing of the East Avenue viaduct has had on the lower east side community. It is unlikely that any other prospective buyer will purchase the property on East Avenue, and the building would become another vacant, blighted parcel. By contrast, the appellants have done much work to renovate the building, and will continue to maintain the property if they are permitted to stay there.
4. There are at least six other zoning districts in the City where private clubs are permitted to operate.
5. Several neighbors, who spoke in opposition to the appellant's variance request, say that the noise created by the motorcycle riders is a disruption to the neighborhood, and would only get worse if the club were allowed to operate openly.

Decision

By a four to one decision, the Board voted to approve the use variance request. Board chairman Mike Hornyak said that he is a biker himself, and that he has changed his mind from what he said at the 2012 hearing. He said that he does believe that this is a suitable location for the club, and has decided to error on the side of allowing the appellants to stay. Members Patty Szychowski and Selena King both said that they are disappointed in the level of discourse on both sides in this case, and both expressed a hope that the appellants would follow through on the promises they made. Both members said that they are willing to give the appellants a chance to operate their club at the location. Likewise, Board member Jacqueline Spry said that she is voting to give the appellants a chance, but hopes that they stay true to what they have said. She added that the petition and letters in support of the proposed club influenced her. She also said that she did not see any other concern for her other than the noise, which the appellants have promised to keep at a minimum. All four members voted to approve the use variance request.

Board member Ed Dawson voted to deny the variance request. He said that notices were sent out to everyone in the vicinity of the property, which are meant to illicit opinions of the neighbors. In this case, he said, the appellants did not do a good enough job of convincing the neighboring residents that the club should stay. Along with the fact that the appellants have not been in compliance, he voted to deny the variance request.

It is So Ordered.