

October 13, 2015
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held October 13, 2015 at 1:00 P.M. in City Council Chambers, Municipal Building, 626 State Street.

-- MINUTES --

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,107 by Edin Ibrakovic (5103-121) concerning property he owns located at 1228 East 26th Street in an R-2 district. The appellant is seeking a dimensional variance to expand a nonconforming use by 143% with a 50'x50' attached garage. Per Section 301.20 of the Erie City Zoning Ordinance, a nonconforming use shall only be expanded if it does not exceed a 50% maximum increase.

Findings of Fact

1. The appellant, Edin Ibrakovic, appeared to represent himself and told the Board that he proposes to build a storage garage on his property. He purchased the property in 2007, and uses it as an auto repair business. If approved, the new garage will replace an existing semi-trailer which he has been using for storage, and the trailer would be removed from the site.
2. If approved, the new building (which the appellant described as a "cold storage" garage) will be adjacent to the existing primary garage building on its east side. The new building would replace the existing trailer, which has been used for storage of parts and equipment needed for the business. The new addition would be approximately 50'x50', designed to match the existing building. The trailer now occupies about 53' in length, and is 8' wide.
3. As stated, the appellant told the Board that the new building would be attached to the main building on the east side of the property; opposite from the side from where he works out of. At this time the cold garage will not require any utilities since the use for the new building is for storage.
4. Since purchasing the property in 2007, Mr. Ibrakovic has made many improvements to the facility, including a new fence around the entire property, and a new sidewalk. He

added that the new addition would enhance both the appearance and value of the property.

5. The appellant told the Board that the proposed addition will help with the organization of the business overall. Presently, the cars brought to his business are parked in the grass area prior to being taken inside; instead the appellant said he will make improvements in the front of the new garage area, with either asphalt or concrete entrance way. The building itself will be made of concrete blocks also.
6. The Board had questions for the Erie Zoning Office regarding parking requirements for the appellant's proposal. Zoning official Matthew Puz indicated that since the business is in the form of a warehouse there are no parking requirements in the Code for the appellant's proposal.

Conclusions

1. The appellant is seeking a variance to allow him to build a storage garage for equipment for his auto repair business. The appellant has been using a semi-trailer for storage, which would be removed from the site.
2. If approved, the new garage, which will be approximately 50'x50', will replace a (53'x8') semi-trailer. This represents a 143% expansion of the nonconforming use storage facility.
3. According to Per Section 301.20 of the Erie City Zoning Ordinance, a nonconforming use shall only be expanded if it does not exceed a 50% maximum increase.

Decision

Prior to calling for the vote, Board member Jackie Spry proposed a condition, which was seconded, that would require the appellant to install some form of landscaping as screening along the front of the property. The screening would be a minimum of 36 inches, except within fifteen feet of a driveway, where the Code does not permit screening to exceed 30 inches for visibility purposes. By a three to two vote the proposed condition was denied.

By a four to one decision the Board voted to approve the appellant's request for a dimensional variance. Board Chairman Mike Hornyak said that the proposal is reasonable and he applauds the appellant for taking the initiative to expand his business. However, he said that in spite of the condition not being a part of the decision, he requests that the appellant make the new structure aesthetically pleasing by adding the screening. Board member Selena King likewise said that she supports the proposal, but requests that the appellant include the screening, so long as it does not deter from the visibility of his business from the street. Member Ed Dawson said that he is

basing his vote on the understanding that the material being used on the front of the new building will match that of the other building, which will enhance the aesthetic appeal of the property. Member Patty Szychowski added that the appellants business is an example for others to follow. All four members voted to approve the appellant's request.

The lone dissenting vote was from Board member Jackie Spry. She said that she could not approve of the more than double – 143% - expansion of the nonconforming use garage. She voted to deny the appellant's request.

It is So Ordered.

Appeal No. 12,108 by Lawrence and Marsha Kisielewski (6180-226) concerning property they own located at 4309 Elmwood Avenue in an R-1 district. The appellant is seeking a dimensional variance to construct a 14' x 16' rear addition with an 8'x32' covered deck. Per Section 205 of the Erie City Zoning Ordinance, the rear yard setback in the R-1 district is 30'. The appellant is proposing a rear yard setback of 13'.

Findings of Fact

1. Appearing on behalf of the appellants was Mr. Lloyd Davis of LD Construction Company, the contractor who will be constructing the proposed patio deck. Mr. Davis referred to the site plan drawing (which was included with the application) during his testimony, identifying the dimensions of the house and proposed extension, as well as the lot on which the dwelling sits.
2. Mr. Davis explained that the appellants hope to build a deck in the rear of their house. The proposal is to attach a 16'x14' patio room, with a canopy roof. The roof would cover the new room and a railing, as well as an additional overhang area - the entire covered area would be 8'x32'.
3. According to Mr. Davis, the proposal meets all zoning ordinance requirements with respect to the dwelling itself. He said that the hardship – and the reason for the requested variance – is because of the shape of the land. Referring again to the site plan, he showed that the rear of the appellant's property line is diagonal; therefore, the rear yard setback for the northern end of the house is not the same as it is for the opposite end.

Conclusions

1. The appellants are proposing to build an attached patio deck in the rear of their house, with a canopy roof that would extend beyond the patio area. The entire coverage area would be 32'x8'.
2. As a result of the unusual dimensions of the property line, which runs diagonally behind the rear of the house, the new patio extension would be setback only 13' from the rear property line.
3. According to Section 205 of the Erie City Zoning Ordinance, the rear yard setback in the R-1 district is 30'

Decision

By a unanimous vote the Board approved the appellant's request for a dimensional variance. Board chairman Mike Hornyak said that the way the property line is configured it creates the hardship for the appellants. He added that he does not think that the proposal will change the character of the neighborhood. The Board all agreed; members Selena King, Patty Szychowski, Edward Dawson and Jackie Spry all voted to approve the appellant's variance request.

It is So Ordered.

Appeal No. 12,109 by Lilly Broadcasting (3008-202) concerning property they own located at 1220 Peach Street in a C-3 district. The appellant is seeking a use variance for an off-street parking lot. Per Section 201.17 of the Erie City Zoning Ordinance, off-street parking lots are not permitted uses in the C-3 district.

Findings of Fact

1. Appearing on behalf of the appellant, Lilly Broadcasting, was Ms. Pamela Forsythe. Ms. Forsythe, the general manager of Lilly Broadcasting, told the Board that the company is requesting the variance to build a parking lot at the old WSEE station building near the corner of West 13th and Peach Streets. The building has been torn down, she said, and all that remains on the site is an unkempt, unseemly empty lot.

2. The parking lot, which would be privately funded and maintained by the appellants, would actually make the area more aesthetically pleasing, Ms. Forsythe said, compared to the empty lot that now exists. She said that she is not sure about the number of actual parking spots in the proposed lot although an urban engineer that she spoke to suggested that it could be up to 40-50 spaces.
3. Answering questions posed by Board members, Ms. Forsythe said that several neighborhood business owners (including the comedy club “Juniors”) have expressed a desperate need for additional parking in the downtown neighborhood. Part of the reason for this parking shortage, she suggested, was the park recently build across the street from the site. Much of the space where the park now sits had formerly been parking spaces for the old Griswald Plaza post office. Those parking spaces were lost when the post office closed and its parking lot was replaced by the park. The appellant’s proposal could restore many of those lost spaces, Ms. Forsythe said.
4. Also appearing to testify was Mr. Scott Henry, executive director of the Erie Redevelopment Authority. Mr. Henry stated that he was neutral on the proposal, but asks that if the variance is approved, the Board require the appellants to place some form of screening around the vacant parking lot area. He said that the aesthetic appearance of the parking lot could become more important in the future, as more businesses come into the area. Board member Jackie Spry suggested to the witness and to the Board that the property could be better used. Mr. Henry said that he trusts that Lilly Broadcasting will make the right decision as to the best use of the property.
5. Another witness, Mr. John Buchna of the Erie Downtown Partnership, a non-profit community development organization, also testified, and addressed the question of what is the best use of the property. Mr. Buchna said that while he is pleased that the appellants are making good short-term use of the property by providing needed parking, he also wants to encourage retail businesses, or some type of mixed use for the property. He acknowledged that while there is a demand for parking in that area of downtown Erie at the present time, there are parking ramps and other developments in the future that could make some alternative use of the property more appealing. Mr. Buchna added that his organization is always looking for alternative uses in the future (e.g. using shuttle buses); and said that the future of downtown Erie will be more of a “walking” issue than a “parking” issue.
6. Ms. Forsythe indicated that the appellants would agree to including a shrubbery frontage at the parking lot. Board member Jackie Fry then proposed a condition to the variance, which would give the Erie Redevelopment Authority the right of approval for the screening that the appellants include in their revised design. The condition was seconded, and by a three to two vote approved by the Board.

Conclusions

1. The appellants propose to build a parking lot (of approximately 40-50 spaces) at the old WSEE broadcast station at the corner of West 13th and Peach Streets. The property has been vacant for some time, and has not been maintained.
2. According to section 201.17 of the Erie City Zoning Ordinance, off-street parking lots are not permitted uses in the C-3 district.
3. Several downtown businesses would invite the new lot, as there has been a paucity of parking ever since the old Griswald Plaza post office parking lot was converted to a park.

Decision

With the condition attached, the Board voted to approve the variance by a four to one vote. Board chairman Mike Hornyak said that he thinks the appellants will be good stewards of the property now and in the future. Board member Selena King thanked Lilly Broadcasting for their continued support in the downtown development effort. Members Edward Dawson and Patty Szychowski both indicated that Lilly is making a positive contribution to the downtown business environment, which needs parking now.

The lone dissenting vote was cast by Board member Jackie Spry. She indicated that she sees the proposal as a long-term detriment to the downtown development, especially given the future parking ramps that are being discussed.

It is so Ordered.

Appeal No. 12,110 by Andrew and Tonya Karl (5205-103) concerning property they own located at 4142 Pine Avenue in an R-1 district. The appellant is seeking a use variance to continue using the property for multiple dwellings, a single-family dwelling and two-family dwelling. Per Section 204 of the Erie City Zoning Ordinance, an “R” district is only permitted to have one principal structure. Per Section 204.10 of the Erie City Zoning Ordinance, two-family dwellings are not permitted in the R-1 district.

Findings of Fact

1. The appellants appeared to represent themselves at the hearing, with Mr. Andrew Karl explaining their situation to the Board. The appellants purchased the property in

September 2012, with their autistic son in mind; the property provided two actual residences, one for the appellants to occupy and the other for their son and daughter to live in.

2. The appellant's son, who is semi-independent, lives on the first floor of the second residence, and their daughter lives upstairs. The appellants have made legal arrangements for their son to have a life estate in the residence (allowing him to remain at the dwelling for his entire lifetime), and having it put into their will that their daughter will inhabit the principle residence when the appellants die, and take care of her brother, the appellant's son.
3. The appellants indicated to the Board that they have made this purchase entirely for the long-term concern of them and their son. They have made no repairs or renovations to the properties, and have no intention of ever renting either of the houses. Both dwellings are intended to be entirely family-occupied. Mr. Karl presented that Board with a petition containing approximately 40-50 names of neighbors who are not opposed to the appellants keeping the properties as they are, with the appellant's children occupying the houses after the appellants die. (Additionally, one of the appellant's neighbors, Ms. Karen Miller, testified that the appellants have been great neighbors, and encouraged the Board to approve the variance that would permit the appellants to remain at the site.)
4. The appellants said that the only reason that they ever found out about the Code violation was when they had a lead-based paint inspection conducted. They reiterated that they have no intention of renting out either of the dwellings in the future. Ironically, according to Mrs. Karl, she has been informed by the Erie Redevelopment Authority that they will approve the lead-based paint inspection if the variance is granted (there are no children in the house that would be affected by the paint).
5. Mr. Karl said that when the appellants purchased the property in 2012, they did so with the understanding that it contained a main house, a second house with two stories, and a garage which was a converted carriage house. He added that his utilities cover all three buildings (i.e. one electric bill for all three structures).
6. The Board inquired about how this situation could have occurred. Zoning official Matthew Puz indicated that properties such as this, that have had two houses on them prior to 1968, are "grandfathered" in. He said that the Zoning officials found no permits or documents in the Zoning office that were filed prior to 1967.
7. Also answering questions from the Board was Mr. Andy Zimmerman, Manager of Code Enforcement for the City of Erie. He told the Board that the City has no building permits for this property, and said that it was converted illegally at some previous time. When the Redevelopment Authority assigned a contractor and reviewed the appellant's property, they identified the undocumented changes, and the appellant's taxes went up accordingly. Mr. Zimmerman added that if the Board approves the use variance, the appellants would have to get all applicable building permits, and comply with all City Codes.

Conclusions

1. The appellants purchased a property with two houses on it. The appellants live in one house, and their autistic, semi-independent son lives in the other house. They have no intention of ever renting either of the houses.
2. The appellants purchased the houses specifically with their autistic son in mind. The have drafted legal documents giving their son a life estate to live in the second house; and have drafted their will to specify that after their deaths their daughter will live in the primary house and care for her brother.
3. According to Section 204 of the Erie City Zoning Ordinance, an “R” district is only permitted to have one principal structure; Section 204.10 does not permit two-family dwellings in the R-1 district.
4. There is not documentation with City officials as to when the property was converted to include two residences; however, now that the situation has been discovered the appellants will have to obtain all building permits and comply with the City Codes.

Decision

By a unanimous decision the Board voted to approve the use variance. Board chairman Mike Hornyak said that given the information the Board heard from the neighbors and City officials, the appellants will continue to be good neighbors, and the Code will be enforced. Likewise, members Edward Dawson and Jackie Spry indicated that the variance will enable the family to stay together, while they will be required to comply with City regulations and Codes. Along with members Selena King and Patty Szychowski all five Board members voted to approve the appellant’s request.

It is So Ordered.