

November 10, 2015
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held November 10, 2015 at 1:00 P.M. in City Council Chambers, Municipal Building, 626 State Street.

-- MINUTES --

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,111 by William and Sherry Wagner (5103-121) concerning property they own located at 4329 Koehler Road in an R-1 district. The appellant is seeking a dimensional variance to construct a 12'x24' detached garage in the front yard of their lot. Per Section 205.18 of the Erie City Zoning Ordinance, accessory structures shall be located in the side or rear yard of the principal structure.

Findings of Fact

1. The appellant, William Wagner, appeared on his own behalf and told the Board that he proposes to build a garage on his corner property, which has two front yards. Mr. Wagner said that the proposed garage (which originally was to be 12'x24') would be 14'x24' in size, with a door that is 7' high. He said that as best as he can figure the structure would be approximately twelve to fifteen feet from the sidewalk.
2. When questioned by the Board about the positioning of the proposed garage, Mr. Wagner said that the structure will be evenly spaced on both sides of the lot, and he indicated that the proposed location is the only place that is feasible to place the garage on his property. Because of the contour of his property, to place the garage even slightly to the north would encroach on the slope of the land. He added that if he were to shift the garage even a few feet north, it would create an "S" shaped driveway, making it difficult to access 44th Street.
3. The appellant also said that he cannot place the garage in the rear of his house because of the ramp he has installed to his back door for his father, who requires a wheelchair. Mr. Wagner also confirmed that there are really two hardships associated with the contour of his property; first would be the construction of the driveway itself, and secondly, the run-

off and freezing driveway would become serious problems if the location of the garage was to be changed from where he proposes to build it.

4. Mr. Wagner said that while most houses on his street do have attached garages, there are some houses that do have detached structures, like the one he proposes (in addition to several detached garages on 43rd Street). He said that the garage will be built of plywood, with a vinyl siding matching the color of his house, so that it would not alter the character of the neighborhood.

Conclusions

1. The appellant is seeking a variance to allow him to build a garage on the side of his house, which is, because of the contour of the property, the only feasible location for the placement of the structure.
2. According to Section 205.18 of the Erie City Zoning Ordinance, accessory structures shall be located in the side or rear yard of the principal structure.
3. If the proposed garage is placed anywhere else on the appellant's property, it would encroach on a slope that would create a problem with the construction of the driveway, and cause problems with the run-off and freezing during the winter. It cannot be placed in the backyard because the appellant has a handicap ramp attached to his back door for his father to enter the appellant's house.

Decision

By a unanimous vote, the Board approved the appellant's request for a dimensional variance. Board Chairman Mike Hornyak said that the proposal is reasonable given the contour of the property, and the fact that the appellant essentially has two front yards. Board member Ed Dawson agreed, and added that he hopes the appellant considers the problems that water run-off may pose when he designs and builds his driveway. Board members Selena King, Jackie Spry and Patty Szychowski all agreed, and all voted to approve the variance request.

It is So Ordered.

Appeal No. 12,112 by George Simmons (5006-114) concerning property located at 133 East 23rd Street in an R-2 district. The appellant is seeking a use variance for a day care center. Per Section 204.12 of the Erie City Zoning Ordinance, day care centers are not permitted in the R-2 district.

Findings of Fact

1. The appellant, Reverend George Simmons, pastor of the True Holiness Church of Jesus Christ, represented himself at the hearing. The appellant is seeking a variance to use the East 23rd Street church as a day care center. Reverend Simmons told the Board that there is a need for a day care center in the neighborhood, and if approved, it would be administered through the church's congregation.
2. According to Reverend Simmons, the proposed day care center will not negatively alter the essential character of the neighborhood, nor impair or disrupt the use and development of any adjacent properties. Rather, the proposed center would be the best way to utilize the property, he said. The appellant included a detailed site plan with the variance application, showing how parking, screening, setbacks, etc... have all been considered and included in the proposal.
3. The Board had several questions for Reverend Simmons about the proposed day care facility and how it will operate. He indicated that the church, which was renovated in 1992, is approximately 940 square feet. He anticipates having two shifts at the day care center – one from 7:00 a.m. to 3:00 p.m., and the other from 3:00 to 11:00 p.m. When fully operating, Reverend Simmons said that the day care facility will have up to 15 children.
4. Reverend Simmons told the Board that he is familiar with the many local, state, and federal regulations that govern the operation of a day care center. He indicated that the facility would comply with all the applicable regulations, and that they are in fact in the process of satisfying some of those regulations already. He added that the safety of the children would always be given the highest priority; for example, every child would be dropped off and picked up on the church's property (i.e. no dropping off children at the street).
5. Also testifying in support of the proposed day care center was Mrs. Donna Jean Sampson. Mrs. Sampson, who said that she was a member of the church's congregation, is herself the mother and grandmother of several children, and agreed that the neighborhood is in need of a day care center. She told the Board that she would be one of the adults overseeing the facility, and that she has already received her approved background check.

Conclusions

1. The appellants are seeking a use variance for a day care center at the East 23rd Street church, True Holiness Church of Jesus Christ.
2. According to Section 204.12 of the Erie City Zoning Ordinance, day care centers are not a permitted use in the R-2 district.
3. The appellants claim that there is a need in their community for such a facility. The proposed day care center would operate in two shifts, from 7:00 a.m. to 11:00 p.m., and could facilitate up to 15 children.

Decision

By a unanimous vote, the Board approved the appellant's request for a use variance. Board chairman Mike Hornyak said that the day care center is necessary for the neighborhood, and the appellant is aware of the many regulations that govern the operation of the facility. Board member Ed Dawson agreed, and added that the appellant's focus is on the children, and the proposal will be a benefit for the neighborhood. Board members Selena King, Patty Szychowski and Jackie Spry all agreed, and all voted to approve the variance.

It is So Ordered.

Appeal No. 12,113 by Sardaar Ji Inc. (3046-218, 219) concerning property located at 1013 East 10th Street and 1001 East Avenue in an R-2/ C-4 district, respectively. The appellant is seeking a use variance for a convenience store with fuel pumps. Per Section 204.12 of the Erie City Zoning Ordinance, convenience stores with fuel pumps are not permitted in the R-2 district. Per Section 305.43(a) of the Erie City Zoning Ordinance, fuel pumps shall not be allowed at stores located in the C-4 zoning district.

Findings of Fact

1. Appearing on behalf of the appellant was Ms. Rose Nouri from Caldwell Banker. She told the Board that the appellant, Kulwant Lakhman, is the owner and operator of several other similar gas station/convenience stores in the City, including facilities on East 18th Street, East 6th and Holland, and two on Buffalo Road. Ms. Nouri indicated that Mr.

Lakhman will be investing a million dollars in the new proposed store, in an area of the City that is desperately in need of economic development.

2. The building on the one property is presently an auto repair garage, owned by Mr. Robert Brzezicki. Mr. Brzezicki purchased the property many years ago from Sun Oil Company; it was previously a gas station (when the area was zoned C-4), but has since had the gas tanks removed, and has received an Act II approval from the PA Department of Environmental Protection. The other adjacent lot is vacant.
3. According to Ms. Nouri, there is a need for gas stations in the vicinity. The nearby station at East Lake Road and Pennsylvania Avenue is relatively small, and it is not uncommon to see cars blocking traffic waiting in line for service. The new lot would not create a similar problem. By combining the property with the adjacent lot, which is zoned R-2 and is presently vacant, the appellant's proposed store would have ample space for gas pumps to be installed.
4. If approved by the Board, the two lots would be joined. The convenience store/gas station that would be erected would benefit the entire neighborhood, hopefully revitalizing the local economy in the process. This sentiment was shared by Ms. Sonya Arrington, eastside resident and City Councilwoman-elect, who appeared to testify in support of the appellant's proposal. She told the Board that she appreciates both the diversity and employment opportunities that Mr. Lakhmann offers at his other stores. She added that the employees at the appellant's other stores are respectful, and she applauds his efforts to bring needed jobs and a successful business model to the area.
5. Other Erie residents also appeared to testify in support of the appellant's proposal. Ms. Kim Hunter told the Board that Mr. Lakhman has been very generous to the entire community, in spite of being the target of hate speech. Ms. Hunter, a recent widow, said that the appellant was the only employer in all of Erie to give her a job when she desperately needed one. She also addressed concerns that the Board expressed about gas leaks and other potential hazards associated with a gas station in a residential area. Ms. Hunter said that she has previously worked at a Country Fair store, and that all convenience store/gas stations have specific instructions to follow in the event of an accident. She added that the appellant's stores train their employees even better than the standard training that all other stores provide.
6. Mr. Robert Tate, another lifelong east-Erie resident, also testified in support of the proposal. He said that he applauds the appellant's honesty and contribution to the community. Responding to concerns from the Board about the safety of the proposal, Mr. Tate said that he is sure that the appellant will make whatever changes necessary to correct any potential problems, noting the commitment to the community that the appellant has demonstrated with his previous business ventures.
7. There were many community members, including the appellant himself, who appeared at the hearing in support of the proposal, but did not testify. There were no witnesses in opposition to the proposal; however, Erie Zoning official Matthew Puz indicated that his

office received two letters, from eastside residents Loretta Duska and Mary Wierzbicki, opposing the proposed store. Mr. Puz read those letters into the record.

8. In response to the opposition letters, Ms. Nouri was permitted to make a rebuttal statement. She said that both letters essentially made the same arguments, and that the issues raised in the letters have already been addressed by the appellant in his application. Specifically with respect to the Quik-Fill station on East Lake Road, Ms. Nouri said that the fact that the small station cannot handle the number of customers it now has is proof that the area needs another gas station. The overflow of cars at that smaller station will no longer pose a danger when the appellant's new gas station is built. Ms. Nouri also reiterated that the appellant will continue to comply with all required regulations; his goal, she said, is to build a safe, clean store that will benefit the lower eastside area.

Conclusions

1. The appellants propose to build a convenience store and gas station at the corner of East 10th Street and East Avenue, on two lots in an R-2/ C-4 district, respectively. One of the parcels has an auto repair garage on it; the other lot is vacant.
2. According to Section 204.12 of the Erie City Zoning Ordinance, convenience stores with fuel pumps are not permitted in the R-2 district, and Section 305.43(a) of the Code does not permit fuel pumps at stores located in the C-4 zoning district.
3. The property has been received an Act II clearance by the Pennsylvania D.E.P.
4. The appellant is the owner and operator of several other convenience stores and gas stations in Erie, similar to the one in his proposal. By all accounts those other stores are well maintained, and have been an economic asset to their respective neighborhoods.
5. Many witnesses testified in favor of the appellant's proposal, citing the need for a gas station in the area, the jobs it will create, and the overall need for economic development in a distressed area of the City.

Decision

By a four to one vote, the Board approved the appellant's request for a use variance. Board member Mike Hornyak said that the Board has had previous experiences with the appellant, and that he has always done what he said he would do to improve his properties. Mr. Hornyak also indicated that he was persuaded by the strong support of the neighborhood residents. Board member Ed Dawson said that he knows how the appellant's Parade Street store contributed to the development of that area, and also cited the appellant's reputation for clean, well-run facilities.

Member Selena King likewise cited the appellant's other store as a model for the proposal. She said that the neighborhood desperately needs the economic improvement, and that while a convenience store may not be the best use for the property, it is better than a vacant, unproductive lot. Similarly, Board member Patty Szychowski said that the economic impact to the depressed area cannot be ignored. She noted that the hardship lays in the fact that the one lot is too small for a business to locate there, whereas the two parcels together make the development possible.

The lone dissenting vote was cast by Board member Jackie Spry. She indicated that while she also wants to see economic development on East Avenue, the Zoning Board cannot approve a variance without a hardship; in this case, she said, she does not think that the appellant demonstrated one.

It is so Ordered.
