

**February 9, 2016**  
**City of Erie, Pennsylvania**  
**ZONING HEARING BOARD**  
**1:00 P.M.**

The regular meeting of the Zoning Hearing Board was held February 9, 2016 at 1:00 P.M. in City Council Chambers, Municipal Building, 626 State Street.

**-- MINUTES --**

**THE FOLLOWING APPEALS WERE HEARD:**

**Appeal No. 12,117 by Vitaliy and Marina Baranov (3051-137)** concerning property they own located at 1030 West 12<sup>th</sup> Street, in an M-2 district. The appellants are seeking a use variance to convert their property from a service garage to a service garage and used car sales lot. Per Section 204.20 of the Erie City Zoning Ordinance, used car sales lots are not permitted in the M-2 district.

**Findings of Fact**

1. The appellants appeared together with their representative, Attorney Greg Sesler; Mrs. Baranov served as a translator for her husband. Attorney Sesler provided the Board with a group of photographs, showing several different views of the property, together with a larger, detailed map of the entire block on which the appellant's property is located. He said that the appellants are an immigrant couple who have worked hard, and wish to expand their business and improve their ability to earn a better living
2. Attorney Sesler began by telling the Board that the appellant's property is a 165' x 165' lot where they have operated a small auto repair and service garage since the mid 1990's. The appellants have also used the property to offer cars for sale in a limited capacity (Section 205 of the City Code permits a service garage to display up to five cars for sale). The appellants now want to expand the sales portion of their business, and are seeking a variance which would allow them to show up to 80 cars for sale, while continuing to operate the service and repair garage. They presently employ two other people at the business (beside Mr. Baranov himself), but that could increase to four or five additional employees if the used car lot expands as they hope.
3. The appellant's property is in a mixed-use area with other similar businesses, including other auto sales lots. According to Attorney Sesler the variance would not alter the character of the neighborhood or adjacent properties. No modification to the existing site

would be required, and there would still be more than adequate industrial space in the West 12<sup>th</sup> Street area. The only opposition so far, he said, is from the appellant's next-door neighbor, who requests that the appellant's cars be kept a certain distance from the adjoining property.

4. The Board had several questions for both the appellants and for the Erie City Zoning officials. Referring to the photographs of the site, the appellants were questioned about a "road" that appears on the property, running the width of the block. The appellants told the Board that they do not plan on using the access road as a right-of-way; they indicated that they plan to erect a fence, running east-west, that would prevent using the "road" as a right of way onto West 11<sup>th</sup> Street from their property.
5. Attorney Sesler said that the appellant's long-term plan is to pave the lot; in the meantime, it would be a well maintained gravel surface. He added that it is unlikely that the business would ever have the maximum of 80 cars on the lot; the most they would probably ever have would be 60 cars on the property.
6. The Board also had questions regarding the property for the Erie Zoning Office. Zoning official Matthew Puz said that the used car lot lighting would be required to be screened from the neighboring properties. Also, he said that any lot over 5,000 square feet must be paved, and that there are stormwater regulations which the appellant's property would be required to meet. Attorney Sesler indicated that the appellant's are aware of the potential Code requirements for their proposal, and of the cost for those renovations.
7. The Board heard from witnesses who appeared in opposition to the proposal. Attorney Anthony Andrzweski appeared on behalf of S.R.S. (Sterilizer Refurbishing Solutions), who occupy the property next to the appellants. He said that S.R.S. understands the changing nature of business in the area, and that they support the variance request. However, Attorney Andrzweski said that S.R.S. requests that the appellants keep their cars at least five feet from the property line, and that they be aware of the many unintended problems that a proposal like this could create for its neighbors.
8. Also appearing in opposition to the proposal was Mr. Wesley Barczynski, owner of two houses on nearby West 11<sup>th</sup> Street. He told the Board that it is already difficult to rent the few single-family and two-unit dwellings on 11<sup>th</sup> Street, and he fears that the used car lot would create additional problems for the nearby residential street. He suggested that the Board require the appellants build a fence (minimum eight feet high), on the appellant's property, to screen the lot from the backyards of the 11<sup>th</sup> Street houses.

### **Conclusions**

1. The appellants own and operate a service garage, where they also sell cars.
2. According to Section 204.20 of the Erie City Zoning Ordinance, used car sales lots are not permitted in the M-2 district.

3. As per the Erie City Zoning Ordinance, a service garage in an M-2 district can show no more than five cars at a time. The appellants seek a variance that would allow for them to operate a full sales lot, showing up to 80 cars.
4. The proposal would not change the character of the neighborhood. There are other sales lots in the area, and there would still be ample space for future industrial use of nearby lots.

### **Decision**

Prior to the vote, the following condition was proposed and unanimously adopted:

The appellants will erect a fence, minimum of 8'6" high, at the rear of the appellant's lot, (between the M-2 and R-2 districts). The fence will be non-transparent (no chain link fences permitted), and will have minimal access to the residential area behind the appellant's property.

With the condition attached, the Board unanimously voted to approve the variance request. Board chairman Mike Hornyak said that with the condition the neighbor's concerns are addressed, and he added that the appellants seem to be aware of all the regulations that they must adhere to. Board members Jackie Spry and Edward Dawson both indicated that the proposal is good for the economy in an area of the City where there are many vacant lots; Ms. Spry adding that this is an example of how business can grow in a mixed-use area. Together with Board members Selena King and Patty Szychowski, all five members voted to approve the variance.

**It is So Ordered.**

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**Appeal No. 12,118 by Crown Castle (5372—100)** concerning property located at 501 East 38<sup>th</sup> Street in an R-3 district. The appellant is seeking approval for proposed communication tower/antenna at this address. Per Section 204.13 of the Erie City Zoning Ordinance, communication towers/antennas are special exceptions and shall be reviewed by the Zoning Hearing Board.

### **Findings of Fact**

1. The appellant is Crown Castle, a wireless network provider, who is working in conjunction with Mercyhurst University, to place a cell tower on the college campus. Crown Castle has its regional headquarters located near Pittsburgh. Appearing to represent the appellant was Mr. Robert Ritter, who was accompanied by two Mercyhurst students, Andrew Crouch and Steven Friel.
2. Mr. Ritter began by distributing three items to the Board: a copy of the presentation from the recent (December 21, 2015) community informational meeting; a photo simulation of the area that the antenna would cover; and a copy of the site plan for the project. Mr. Ritter said that the December 21<sup>st</sup> meeting was one of the many requirements that the appellants have already complied with for the proposal.
3. The appellants are seeking approval for the installation of a small cell, utility-scale antenna that would improve wireless reception service in the densely- populated university area. Referring to the photo simulation of the completed project, Mr. Ritter explained that the proposal is to install a small (24 inch) cylindrical antenna, to be placed on top of a pole, which stands approximately thirty feet high. The completed structure then would stand approximately 32' high; the top of the antenna would be below the roofline of the nearest buildings or the top of nearby trees.
4. According to Mr. Ritter, the proposed antenna installation would be part of a large network of almost fifty similar nodes, or antennas, in the greater Erie area. There are presently 43 similar nodes operating in the area, with another six under construction – all installed without the need of the Zoning Hearing Board approval. Mr. Ritter said that the proposed small cell node will work with other existing towers presently servicing the Mercyhurst campus community, and he reiterated that the appellants have been careful to meet all of the requirements for a special exception under Section 305 of the City Code.
5. Also appearing in support of the proposal was Ms. Jeannette Britt, the chief information officer for Mercyhurst University. She told the Board that Crown Castle has worked closely with the college, to determine the best placement for the tower, for better service for the students and for campus events.

### **Conclusions**

1. The appellants are proposing to install a communication tower and antenna on the campus of Mercyhurst University. The tower would include a 24 inch antenna on top of a thirty foot pole; the whole structure would stand approximately thirty-two feet high.
2. According to Section 204.13 of the Erie City Zoning Ordinance, communication towers/antennas are special exceptions.
3. The antenna would not exceed the height of nearby buildings or treetops.
4. The small cell, utility-scale antenna that would improve wireless reception service in the densely- populated Mercyhurst campus area.

### **Decision**

By a unanimous vote, the Board approved the request for a special exception to permit the appellants to install the communications tower and antenna. Board chairman Mike Hornyak said that the photographs provided by the appellants show that the structure would not be taller than the nearby trees and buildings, and that the proposal has the support of the Mercyhurst community. Member Edward Dawson said that he was basing his decision on the experience and success that Crown Castle has, and because of the benefit that the structure would provide for the students. Board members Jackie Spry, Selena King and Patty Szychowski all agreed, and voted to approve the special exception.

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

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**Appeal No. 12,119 by Robert Brzezicki (2033-301)** concerning property located at 657 East 12<sup>th</sup> Street in an R-2 district. The appellant is seeking a nonconforming change of use from a union office and meeting room to a used car sales lot. Per Section 301.20 of the Erie City Zoning Ordinance, a nonconforming change of use shall be referred to the Zoning Hearing Board.

### **Findings of Fact**

1. The appellant appeared on his own behalf and explained to the Board that he has been in the car business for many years, and is looking to downsize from his current sales lot on 10<sup>th</sup> Street. Mr. Brzezicki told the Board that he already has a deposit on the new, East

12<sup>th</sup> Street location plan to clean up the current site, and either pave or blacktop the new location.

2. Mr. Brzezicki said that there are other commercial establishments around the proposed new location, and that his business would provide a neat and clean setting for the area. He maintained that there is sufficient space for moving and placing cars at the new location; he assured the Board that he would not place cars in a position where people would not have access to the sidewalk, or have to walk in the street.
3. The appellant said that he anticipates having a maximum of about fifteen cars on the site. He said that he usually gets cars directly from the auction without the need of much repair. The quick turnover of cars that he purchases, he said, will mean that he expects to have an average of nine cars on the site at any given time.
4. Also appearing on behalf of the appellant was Ms. Rose Nouri from Coldwell Banker, representing the seller of the property. She told the Board that the property has been on the market for several years, and that it has been marketed in many different ways to various potential buyers. The appellant, she said, has been the only promising purchaser. She added that the corner in question desperately needs a business, given the many vacant, unproductive properties in the area.

### **Conclusions**

1. The appellant wishes to purchase the property where the old machine worker's union hall sits, and convert it into a used car sales lot. He is seeking a nonconforming change of use from the meeting hall to the used car sales lot.
2. According to Section 301.20 of the Erie City Zoning Ordinance, a nonconforming change of use requires Zoning Hearing Board approval.
3. The appellant told the Board that he would either pave or blacktop the property if the change of use is approved.
4. The East 12<sup>th</sup> Street property has been on the market for years, and the appellant is the only party who has agreed to purchase the lot.

### **Decision**

By a four to one vote the Board approved the proposed nonconforming change of use. Board chairman Mike Hornyak said that while he was sad to see the union meeting building go, he thinks that the boost to the City that the new business will provide is positive. Board member Edward Dawson said that he based his decision in part on the proven record of compliance that the appellant has demonstrated at his previous site. Member Selena King added that she thinks that both the appellant and the realtor have done a good job to bring a business to this area of the City. Along with Board member Patty Szychowski, all four voted to approve the proposal.

The lone dissenting vote was cast by Board member Jackie Spry. She said that she does not think that the location is a good fit for the proposed sales lot.

**It is So Ordered.**

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**Appeal No. 12,120 by John Mann (1102-204)** concerning property located at 1357 East Lake Road in an RLB district. The appellant is seeking a use variance to convert the property from a car wash to a service garage/retail. Per Section 204.13 of the Erie City Zoning Ordinance, service garages/retail are not permitted in the RLB district.

**Findings of Fact**

1. The appellant, John Mann, appeared together with his brother, Mark Mann (hereafter collectively referred to as “the appellants”), and a consultant, Bryan Jones. Mr. Jones addressed the Board by explaining that the appellants are seeking a variance to renovate an abandon car wash that is in a state of disrepair. They propose to open a basic motorcycle repair shop in what is now the third bay of the unused car wash. The appellants also plan to offer a line of motorcycle-related clothing and accessories.
2. The appellants are laid off from their jobs at General Electric. They told the Board that they want to remain in Erie, and are willing to invest their life savings for this revitalization effort. This includes repaving the lot and converting the third car wash bay into a fully functioning service garage. The appellants told the Board that the area has several unused lots that were former service stations, as well as some service stations that are still in business. They believe that their clean-up efforts will revitalize the corner, and provide a retail outlet in an area of the City that is in need of business.
3. The owner of the property, Mr. Ron Bajalski, also addressed the Board. He said that he has owned the former car wash since 1996, having received it through an inheritance. He has not been able to keep the property maintained in recent years, accounting for the broken sidewalk and general disrepair of the site. Mr. Bajalski’s health has led him to decide to sell the property, which has been in his family for fifty years; he said that he is happy that it will be renovated and used productively by the appellants.
4. The appellants told the Board that there is no licensing required to service motorcycles. At some point, they said, they would hope to acquire a license to inspect motorcycles. They said that they plan to own the property and are well aware of the amount of renovation that is required to bring the project to completion. The appellants told the Board that they are prepared to invest up to one hundred thousand dollars, and will do a good deal of the renovation work themselves.

5. The plan is to open a basic start-up repair shop, and eventually expand so that the venture can become profitable and the appellants can stay in Erie. They have the ability to make any small engine repairs (e.g. lawnmowers, snow blowers, etc...), and said that they would be happy to help any neighbors with such repairs. They plan to fix all types of bikes.
6. The appellants said that they have the resources to make any repairs and will do whatever they can to benefit the area. They told the Board that they plan to have signs forbidding loud or disruptive behavior with the motorcycles brought to their facility. They also plan to make the bay sound proof, so as to not disrupt the neighbors.
7. There were several neighborhood residents who appeared in opposition to the proposal. Ms. Beverly Potts lives directly behind the car wash and cited the Code where a business of this type is not permitted. She also said that the former car wash negatively impacted the neighbors, remembering the dust and noise, and she fears that the proposed motorcycle shop would pose similar problems.
8. Likewise, Ms. Carla Ely operates a business on the same side of East Lake Road as the car wash, and she opposes the proposal on the basis of the narrowing of the street, which she believes will create excessive pedestrian and vehicle (including school bus) traffic. She also thinks that the size of the lot could not accompany all the vehicles that the business would attract. Mr. John Higham, another nearby business owner, likewise believes that the building is too small for the repair/service/retail establishment. He also fears that the appellants' motorcycle business will eventually begin repairing automobiles.
9. In rebuttal, Mr. Jones, speaking for the appellants, said that the way that former car wash building sits now is not how it will look when the renovations are completed. He said that there will be renovations that will alleviate the visibility and sound concerns. He reiterated that there will be no motorcycles worked on outside, and that the bay will be soundproofed. Lastly, he told the Board that the appellants would agree to a condition that they would never repair any four-wheeled vehicles as long as they own the shop.

### **Conclusions**

1. The appellant and his brother propose to convert a vacant and poorly maintained car wash into a motorcycle repair shop, and retail store offering bike-related accessories.
2. According to Section 204.13 of the Erie City Zoning Ordinance, service garages/retail stores are not permitted in an RLB district.
3. The appellants plan to convert the last bay of the former car wash into a garage. They plan to sound proof the new work area, so as to minimize the noise to neighborhood residents.
4. The appellants agreed to a condition that, if the variance was approved, they would not accept any four-wheel vehicles for service or sale.

## **Decision**

Prior to the vote, the following condition was proposed and unanimously approved by the Board:

The service garage will be permitted to service two-wheel vehicles only (e.g. motorcycles); the service bay will be sound proof, with noise levels not to exceed that which would be permissible in any “commercial” district.

With the condition attached, the Board unanimously approved the use variance. Board chairman Mike Hornyak said that he considered the testimony for both sides, and believes that the proposed service garage will revitalize the area. He added that East Lake Road is traditionally a well-traveled area, and that the new business would not change that very much. Board member Edward Dawson said that he believes that the appellants will hold up their agreement to improve the property and sound proof the building. Board members Selena King and Patty Szychowski both agreed, and all four voted to approve the variance.

## **It is So Ordered.**

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### **Appeal No. 12,121 by Erie Properties (4021-203, 209, 215, 217, 218, 220, 222-233)**

concerning eighteen properties they own located between West 2<sup>nd</sup> and West 3<sup>rd</sup> Streets and Poplar and Cherry Streets in the R-2 and WR districts. The appellants are seeking a use variance for multifamily dwellings in the R-2 district, a height variance in the R-2 district, and a density variance in the R-2 district. Per Section 204.12 of the Erie City Zoning Ordinance, multifamily dwellings are not permitted in the R-2 district. Per Section 205 of the Erie City Zoning Ordinance, the maximum height in R-2 is 35'; 50' is proposed. The density requirement in R-2 is 3,000 square feet per dwelling, 1,483 square feet per dwelling is proposed.

### **Findings of Fact**

1. The appellant was represented by one of their own representatives, as well as the real estate agent and architectural firm. Prior to their testimony, the appellants provided the Board with an updated conceptual site plan for the proposed structure; as well as a map which included the entire city block, including the location of parking areas, entrance and exit points, etc...
2. Using the revised site plan as a guide, the appellants began with the real estate agent, Sherry Bauer, who told the Board that the proposed development comprises parts of 18

separate parcels. The development would be in the form of a three story building, running the width of the block from West 2<sup>nd</sup> to West 3<sup>rd</sup> Street, between Cherry and Poplar Streets.

3. Ms. Bauer indicated that the original owner of the properties is now deceased, but his son has proposed this new development, which will include up to 80 units in the three floor building. Presently, she said, the tax base for the 18 parcels is only \$4,200.00 annually. In addition to the increased tax base, she pointed out the number of new jobs that would be created, both in the construction and continuing upkeep of the structure. In the new structure, 75% of the units would be in the form of “affordable senior housing,” Ms. Bauer said, with the other 25% open to the general public.
4. Also appearing was Mr. Joseph Dorris, representing the Dorris-Graves real estate investment company. He said that along with his father, they began purchasing properties starting in the mid-1980’s, with an eye on future development of the lake front area. As it turned out, however, the real estate in this particular area in the lower west side has been stagnant for some time. This development, he said, would be a boom for the City in an otherwise dormant area.
5. The next to testify was Mr. Brett Moses of M.O.T.A., the architectural company for the project, located in Cuyahoga Falls, OH. He indicated that the architectural firm has been working for the best way to develop senior housing of the type proposed. The large senior housing portion of this project would be eligible for state grants, which will be the major source of the funding for this project, he said.
6. Mr. Moses said that the zoning for a project like this is always the first thing his company seeks to obtain. Once the zoning is obtained, they can target financing. This is why he is unable to give specific design features at this point, he said.
7. As the design goes down the middle of the block, it is not directly facing either Cherry or Poplar Streets. Of all of the 18 separate parcels, there is one that still has a house sitting on it. The planners have not yet determined what they will do with that property. Answering specific questions from Board members, Mr. Moses said that the lot at 214 Cherry Street will not serve as an entrance or exit point. He also said that the two parcels that directly face Poplar Street, and the one that faces Cherry Street, are not included in the design, and will not be used as entrance or exit points.
8. Responding to several concerns from the Board, Mr. Moses stressed that it is in the best interest of the developers to fill the units as quickly as possible. If, for example, the units that are intended for seniors are not sold within a certain number of years, the developers would lose the tax benefit. On the issue of parking, Mr. Moses said that given the large number of senior citizens who will occupy the building, there should be less of a need for parking spaces than there would be in a typical development.
9. There were several residents of the lower west side neighborhood who appeared to testify in opposition to the proposal. Mr. Jim Hayes, who owns properties on both West 2<sup>nd</sup> and 3<sup>rd</sup> Streets, said that he does not think the property values are as stagnant as the appellants

claim. He added that the three-story building would not be congruent with the houses in the area, and is also concerned how the one-way traffic on 3<sup>rd</sup> Street will affect the project. Similarly, Mr. Ronald Steele, who lives directly next door to the proposed parking lot of the development, told the Board that the area has always been single-family homes. A large, multi-unit building goes against the flavor of the neighborhood, he said, and added that this project would have a long term effect on how younger, potential first time home owners will look at the neighborhood. Mr. Steele also added that after reviewing the revised design plan, he is concerned that 3<sup>rd</sup> Street will become a parking lot for the development.

10. Other neighborhood residents who testified against the project were Ms. Cathy Songer, Mr. William Holmgran and Mr. Glen Cessna. They expressed concerns about how the large inclusion of people will strain the resources of the neighborhood, and how traffic will be affected in an area where children play. They also questioned how property values will be affected when the project is in the various stages of development. Mr. Johnny Johnson, a forty year resident of the neighborhood, told the Board that he is concerned about the social and economic impact of the proposal, particularly with the issue of gentrification. Mr. Johnson pointed out to the Board that the neighborhood is already occupied by a large number of college students and other “short term” renters. He said that with the inclusion of a senior apartment building, it will become even harder to attract young, potential home owners.
11. Also addressing the Board was Mr. James Sherrod, the Executive Director of Bayfront N.A.T.O. and the Martin Luther King Center. Mr. Sherrod said that the M.L.K Center has worked for years to encourage and cultivate single-family home ownership, which they believe has an overall positive effect for the neighborhood. If the proposed project were approved, he said, the multi-unit structure would alter the character of the neighborhood, which has been carefully crafted for single-family owners.
12. In response to the opposition witnesses, Ms. Bauer briefly addressed the Board. She said that acquiring the variance is just the first step, and that the project still has many phases to go through. Many of the neighborhood citizens’ concerns may be addressed as the project moves forward. She added that as a real estate service agent, she can attest that there are not many offers for developments like this in the City of Erie, and that this is an opportunity that should not be passed up.

### **Findings of Fact**

1. The Appellants propose to build a three-story, multi-unit development, which will run the width of the block between West 2<sup>nd</sup> and 3<sup>rd</sup> Street, between Cherry and Poplar Streets.

2. The building, which would run down the center of the block, would comprise parts of 18 different parcels, in both an R-2 and WR district.
3. The proposed development will have up to 80 units when completed. Of those units, 75% will be reserved for affordable senior housing; the balance will be open to the general public.
4. According to Section 204.12 of the Erie City Zoning Ordinance, multifamily dwellings are not permitted in the R-2 district; also, according to Section 205 of the City Code, the maximum height in R-2 is 35', and the density requirement is 3,000 square feet per dwelling.
5. The proposed development will be 50' high, and have an average of 1,483 square feet per unit.
6. Many residents of the lower west side neighborhood expressed opposition to the proposal. They fear that the inclusion of a multi-unit development of this type would not fit well into a neighborhood made up primarily of single-family houses.

### **Decision**

By a two to zero decision, with one member abstaining, the Board denied the appellant's request for the variances. Board member Mike Hornyak said that he was not comfortable granting variances for so many parcels at once. He also said that he was influenced by the neighbor's concerns about how the development would affect the largely single-family residential neighborhood. Member Selena King also said that the Board must concern itself with changing the character of the neighborhood in the manner proposed. She also said that she would like to see the development eventually built, but in a different location. Both members voted to deny the variance request. Board member Edward Dawson, while abstaining from voting, also said that he would like to see the appellants come back with a revised plan for the development. He added that he would hope the developers consider another plan, but one that includes more communication with the neighbors.

**It is So Ordered.**