

March 8, 2016
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held Tuesday, March 8, 2016 at 1:00 P.M. in City Council Chambers, Municipal Building, 626 State Street.

-- MINUTES --

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,122 by Curtis Jones, Sr. (2017-234) concerning property located at 314, 316 East 11th Street in an R-2 district. The appellant is seeking approval for a proposed group home at this address. Per Section 204.12 of the Erie City Zoning Ordinance, group homes are special exceptions in the R-2 district and shall be reviewed by the Zoning Hearing Board.

Findings of Fact

1. The appellant, Mr. Curtis Jones Sr., appeared on his own behalf and told the Board about “Climate Changes”, the social service agency that he represents, and explained why they are seeking approval for the group home facility. Mr. Jones is the C.E.O. of Climate Changes (a.k.a. “Total Change”), which is a program for people who require re-entry into society.
2. For the past six to eight months, the program has been run out of the Erie County Prison. It has expanded to the point where it requires its own facility. The goal of Climate Changes is not just to offer temporary housing, Mr. Jones told the Board, but to provide the skills and training – through tutoring and counseling – that the participants need in order to re-integrate themselves successfully back into society as productive citizens.
3. According to the appellant, Total Change is more than just a group home; they consider themselves to be more of a “re-entry” program. Mr. Jones went on to say that their proposal is similar to a “half-way” house; a transition institution where the participants become better prepared citizens upon completion.
4. Mr. Jones explained that the service is really a three-phase program. Phase one, which is usually conducted while the participant is still in prison, is to provide them with Social Security cards and other documents that they will require when they return to the work force. Phase two is the residential placement. Mr. Jones explained that this is more than

just a place to sleep, but is intended to prepare the participant with the counseling and training they will need in order to make them good candidates to find a job. The last phase is to serve as a link with other businesses and agencies in the community. Where there is a need for services that Climate Change cannot provide, they send the participant to someone who can provide those services, thus enabling the participants to receive the skills and training that they need.

5. As for the participants themselves, Mr. Jones said that they will not accept anyone with a violent criminal history. Until now, the program has serviced mostly male participants, but they plan to include women, and eventually hope to address complete families. Mr. Jones indicated that if they do expand as they hope to, there would be a separate section for women; the facility would not be “co-ed”, he said.
6. The appellant fielded several questions from the Board. Mr. Jones admitted that the location they are seeking approval for is due to availability; there is no specific reason why the facility will benefit from being on East 11th Street. Potential residents would be carefully screened, he said, as Total Change has specific criteria for admission. Once the facility is in full operation, Mr. Jones said, it would have a full-time staff to monitor the residents and daily operations. On average, Mr. Jones expects there to be approximately nine residents at any time, and three full time staff; thus, an average ratio of three to four residents for every staff member.
7. There was serious concern expressed, from both the Board and from several neighborhood and other concerned citizens, about the facility being in such close proximity to a school, and in the middle of a residential area. Mr. Jones reiterated that the location was chosen strictly because of its availability. He said that there was no consideration given to other institutions in the area, including Pfeifer Burleigh School and the City Mission. He also said that Climate Changes officials have spoken to a few of the neighbors of the proposed site, but have not had any discussion with anyone from the school.
8. Among the other witnesses who addressed the Board was Attorney Tim Wachter, Solicitor for the Erie School District. The School District’s concern, according to Attorney Wachter, is that the proposed facility, which will house former convicts, will be directly across the street from Pfeifer Burleigh. He said that the School District will not oppose the proposal if the Board attaches a condition addressing Megan’s Law restrictions (for convicted sex offenders). At a minimum, Attorney Wachter said, they request specific restrictions such as those specified in the statute, preventing sex offenders from being within a certain distance from a school; this is in addition to any additional restrictions that the convict may have as a condition of their probation.
9. Another witness who spoke in opposition to the proposal was Reverend James Keeton, whose church is across the street from Pfeifer Burleigh School. Reverend Keeton said that his opposition is to the location, not to the program itself, which he applauds. He said that the Board should keep the best interest of the young people and neighborhood

residents in mind. In addition to Pfeifer Burleigh, he said that there is a neighborhood art center, and a youth activities program run by nearby St. James Church. Reverend Keeton said that he sees a difference between the proposed facility and the nearby Emmeas Soup Kitchen and the City Mission, in that the proposed facility will be attempting to house people coming from prison – some who he fears may be violent offenders.

10. Several neighborhood residents also appeared to testify in opposition to the proposal. Ms. Mary Cooley, who said she lives around the corner from the proposed location, has herself been the victim of a break-in. She told the Board that the trauma she still carries from the burglary has made her change her attitude about proposals like the one being discussed; she is not comfortable living in such close proximity with convicted criminals, she said. Similarly, Mr. John Oless, whose parents live across the street from the property, said that his family was never notified about the proposal. He said that a day care center, previously at the same location, was the site of loud parties and disruptive behavior that scared many of the neighbors. For this reason, he said, his parents are now opposed to a new facility like the one being proposed.
11. The appellant, Mr. Jones, was permitted to respond to the opposition witnesses. Mr. Jones said that he does not own the property, and has never operated a day care center or any other facility at the location. He vehemently denied having anything to do with any previous disturbances at the site, and reiterated that the building is being proposed only because it was the best available location they could find. Mr. Jones also reiterated that Climate Change has a strict policy about screening its applicants, and that no violent offenders or people with a history of sexual crimes will be admitted into the program.

Conclusions

1. The appellant is seeking a special exception for a proposed group home at the East 11th Street property. The group home would be similar to a “pre-release” center, as it will provide housing and training for recently released convicts, as well as homeless people, recovering alcoholics, etc...
2. According to Section 204.12 of the Erie City Zoning Ordinance, group homes are special exceptions in the R-2 district.
3. The program to be housed in the group home is known as “Climate Changes”. The program provides the training and overall support that its participants need in order to re-integrate themselves back into society.
4. If approved, the facility will not house violent offenders, or people with a history of sexual offenses.

Decision

Condition:

Prior to voting, a condition was proposed and unanimously accepted by the Board to restrict anybody with a history of violent or sexual offenses from being a resident of the proposed facility. It read:

Any person admitted to Climate Changes will not have a criminal history of violent or sexual-related offenses.

With the condition attached, by a four to one decision, the Board voted to approve the appellant's request for a special exception. Board member Edward Dawson said that with the condition, which specifies a person's prior criminal history, and not just previous convictions, he is comfortable voting to approve the request. He added that the appellants should strive for better communication and cooperation with its neighbors. Similarly, members Patty Szychowski and Jackie Spry both indicated that with the condition attached they are comfortable voting to approve the special exception; Ms. Spry adding that based on the appellant's history and the expression of concern heard by several of the neighbors, she feels that the facility will be run with transparency. Board member Selena King said that the program has the potential to do good, and that people deserve a second chance. Based on the appellant's history, and the capability of his staff, she believes the program will benefit the community.

The lone dissenting vote was by Board Chairman Mike Hornyak. He said that he is not comfortable with the facility being so close to a school, and before he could support the proposal it would have to have much more community support than it does.

It is So Ordered.

Appeal No. 12,123 by 140 E. 16th Street Inc. (2009-100) concerning property they own located at 140 East 16th Street in an M-1 district. The appellant is seeking a use variance for a recycling center at this address. Per Section 204.19 of the Erie City Zoning Ordinance, recycling centers are not permitted in the M-1 district.

Findings of Fact

1. The appellant is a metal recycling company which currently operates two large recycling facilities in Buffalo, NY, and another in DePew, NY where they are headquartered. Representing the appellant was Mr. Russell Cirino. Mr. Cirino began his presentation by passing out an aerial view of the entire city block where the proposed facility will be located, to be viewed in addition to the site plan which was included with the appellant's variance application.
2. Mr. Cirino told the Board that the appellant is a consumer friendly metal recycling facility that allows people to conveniently bring scrap metal for cash. Their goal, he said, is to provide a place for the Erie community to bring their old disposable metal. Typical scrap items that people bring, he said, usually include larger items, such as lawn mowers, old bicycles, grills, swing sets, etc... These larger scrap items are usually the types of appliances that are otherwise difficult for people to dispose of.
3. The service (taking larger scrap items) would reduce pressure on landfills. The proposed facility is not a waste processing plant; therefore, there would be no smell, dust or noise associated with other waste plants. Given that most of the people bringing scrap items would be regular citizens, Mr. Cirino said that there should be no large dump trucks, and anticipates that there would be only one or two smaller trucks arriving at the facility each day.
4. The appellants purchased the property in 2008. According to Mr. Cirino, the employees of the business that previously occupied the site tried to maintain the business themselves, but failed. Referring to the aerial photo, Mr. Cirino said that the appellants purchased a total of seven acres. One lot, identified in the photograph, has already been sold to Penelec. He said that the appellants have a history of working closely with City officials to eliminate safety hazards at their sites, and have already cleaned up the property and consulted with current and former Erie City officials about how to make further changes.
5. The proposed recycling facility would have approximately three to five employees to start, and should employ more depending on how much the facility expands. Eventually the appellants plan to utilize the remainder of the block, which will also provide jobs to the local community.
6. There were several community members who appeared to speak in opposition to the proposal. Mr. Charles Peters, representing Altair Real Estate Services, a company that runs many of the recently developed sites in the City including Lovell Place and Union

Square, told the Board that the appellants have demonstrated no unique physical hardship which would entitle them to a variance. Mr. Peters said that the developments that his company administers represent a combined investment of over one hundred million dollars in the inner-city area, and that the appellant's proposal would represent a reversal of that re-development effort.

7. Mr. Richard Griffith appeared and told the Board that his company has amassed over twelve acres of ground, including several acres in the mid-downtown area, which he hopes to develop. He said that this proposed facility would be right in the middle of what is becoming a residential area of the City, and for that reason his company is opposed to the proposed recycling center. Similarly, Ms. Michelle Griffith-Aresco, who has been the owner of Lovell Place (near the proposed facility) for the past five years, told the Board that they have made a significant investment in the redevelopment of this site, which now includes 90-95% residential occupancy. She said that to grant the variance and permit the proposed facility would set back all of the positive changes that they have achieved over these past several years.
8. Mr. Mark DiPlacido, who is the C.E.O. of Perseus House and a tenant of Lovell Place said that they would be neighbors with the recycling facility. Given that his organization has approximately 300 students at the Lovell Place site, Mr. DiPlacido also thinks the location of the proposed facility is a bad idea, and would like to see a different tenant in its place. Likewise, Mr. Ken Brasington, the president of the Manerchor Club, said that the proposal would have an overall negative impact on the area. He said that it would create a safety hazard for pedestrians, noise and other nuisances. Mr. Brasington also submitted photos and information that he had acquired, which indicated that the appellant's other facilities in New York state have expanded to include large scale processing operations. He fears that this would eventually happen here, if the appellants were permitted to build their facility. [Erie Zoning official Matthew Puz also read into the record four emails he received in opposition to the proposal; three of which were from members of the Manerchor Club.]
9. Attorney Tim Wachter is the counsel for the Erie Downtown Partnership, an organization charged with the marketing and developing of a 70 square block area in the mid-downtown section of the City. He said that part of his organization's goals is to avoid the impediments to developing the area properly. They feel that the appellant's proposal would be such an impediment. Attorney Wachter said that the only positive that the proposed facility would offer is the few jobs that it would create. Legally, he said, the appellants have not demonstrated a hardship, as required in order to receive the variance. Referring to the criteria of Section 508(9) of the City Ordinance, Attorney Wachter said that there is no circumstance that would prevent the appellants from finding a more suitable location, the property can be used for other things, and there has been ample testimony to show that the character of the neighborhood would be negatively affected.

10. Two additional opposition witnesses included Pastor John Crosby and Mr. Michael Tam, executive director of the E.M.T.A. Both would also be neighbors of the proposed facility. Pastor Crosby said that his church is directly across the street from the appellant's property. He said that his church has already been experiencing trouble from wild animals harboring on the appellant's site, and he fears that the situation will only worsen if the recycling center is open. Mr. Tam told the Board that his company is in the process of making a \$64 million improvement project, with the goal of making long-term improvements in area of the City over 12th Street. This process, he feels, will be hampered by the proposed recycling site.
11. In response to the opposition witnesses, Mr. Cirino was permitted to make a rebuttal statement on behalf of the appellants. He summarized his earlier comments by pointing out to the Board that the appellants have made a significant investment in money and time by purchasing and trying to develop the large seven acre site, and returning it into a tax generating property. He said that the hardship is in the fact that the previous business proved not to be viable, and appellants have maintained the building since then, making business opportunities like the current proposal possible.

Conclusions

1. The appellants are a company located in New York state that runs several recycling operations. They have purchased an approximately seven acre piece of property on East 16th Street, and propose building a consumer friendly metal recycling facility, where people can bring large metal items like old appliances, bicycles, lawn mowers, etc...
2. According to Section 204.19 of the Erie City Zoning Ordinance, recycling centers are not permitted in the M-1 district.
3. The appellants claim that their operation would reduce the pressure on local landfills. The facility would not be a traditional waste processing plant; therefore, there would not be the problems (e.g. smell, dust and debris, etc...) that are associated with such plants.
4. Several neighborhood members and community developers testified against the proposed facility, claiming that the mid-downtown area has undergone a successful development project in recent years, transforming much of the area into a residential section. The installation of the recycling facility would serve as a reversal of that process.
5. Those opposed to the proposal also claimed that the appellants have not demonstrated any hardship to warrant the variance request. They claim that the property can be used for other things, that there is nothing unique in the property that would require the facility be built there, and that the recycling operation would negatively affect the neighborhood.

Decision

By a unanimous decision the Board denied the appellant's request for a use variance. Board chairman Mike Hornyak said that he is familiar with the property in question and feels that the proposal has both positive and negative aspects. However, he said that he was influenced by the level of concern voiced by the neighbors and people operating the development of the area. Member Selena King indicated that there was no hardship shown by the appellants, and that this section of the City is transitioning into a residential area, with children playing and other similar concerns. Similarly, member Jackie Spry said that any variance must comply with the hardship provision of the City Code, and this proposal does not. She also said that the development of the mid-downtown area is a serious concern for her, and this proposal would frustrate that process. Along with Board member Patty Szychowski, who also cited the lack of a hardship, all four members voted to deny the variance request.

It is So Ordered.