

May 10, 2016
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held Tuesday, May 10, 2016 at 1:00 P.M. in City Council Chambers, Municipal Building, 626 State Street.

-- MINUTES --

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,126 by Janet Ferguson (4022-123) concerning property located at 726 West 8th Street in an R-2 district. The appellant is seeking a density variance for a three-family dwelling. Per Section 305.24(a) of the Erie City Zoning Ordinance, three-family dwellings are permitted in the R-2 district provided each dwelling has at least 2,000 square feet of lot area per family. The appellant is proposing 1,377 square feet of lot area per family.

Findings of Fact

1. The appellant, Janet Ferguson, appeared on her own behalf. She told the Board that she is the owner of a building near the corner of West 8th and Liberty Streets which has been used commercially for the past several years, housing a small second-hand store. Ms. Ferguson said that the previous occupants have vacated the property, and the market for commercial property in the area is very limited; as a result she proposes to convert the property to a residential unit, for which she believes there is a demand.
2. Ms. Ferguson provided several reasons as hardships, in support of her request. The property in question – the commercial unit – is presently a nonconforming use. To revert back to a residential dwelling would be in conformity with the Code. There are two occupied residential apartments upstairs of the vacant property. Additionally, the appellant owns the building next door to the west, with added parking space; therefore, she said that street parking should not be a concern.
3. The appellant said that the small commercial property uses up approximately a quarter of the space in the entire building; this, she said, constitutes a loss of value of space in the building. The high crime rate in the area is another factor why it is not feasible to try to market the property to another commercial enterprise.

4. The appellant answered questions from the Board concerning the conversion of the property. She said that she does not necessarily intend to remove the two large, storefront windows in the front of the building although she does plan on replacing the door. Several Board members expressed their opinions that if the appellant were to obtain the variance and convert the commercial property to a residential unit, it should include replacing the large front windows. The appellant said that she would take this under advisement, and in any event would convert the property so that it has the appearance of a residential dwelling.

Conclusions

1. The appellant owns the building near the corner of West 8th and Liberty Streets, which until recently housed a small commercial business on the first floor and two residential units upstairs. The tenants of the commercial property vacated the building, and the appellant now proposes to convert the first floor back to a residential dwelling.
2. The vacant commercial dwelling is presently a nonconforming use; residential dwellings – in this case a three-family structure – are permitted in the R-2 zoning district. In converting to a residential dwelling, however, the new unit would not conform with the density requirements of the City Code.
3. According to Section 305.24(a) of the Erie City Zoning Ordinance, three-family dwellings are permitted in the R-2 district, but lot size must have at least 2,000 square feet of lot area per family. The appellant's additional unit would lower the density requirement to 1,377 square feet of lot area, below the required 2,000 square feet per unit of lot area.
4. The appellant also owns the house next door to the commercial building to the west. There is additional parking at this next door property, so excessive street parking will not be a concern if the variance were approved.

Decision

The Board unanimously approved the appellant's request for a density variance. Board member Selena King said that while the Board does not usually approve a variance request just for economic reasons, in this case the property is being converted back to a residential unit, which is what it was originally. The other four Board members, Mike Hornyak, Edward Dawson, Patty Szychowski and Jackie Spry all indicated the same reason for their approving the variance. Both Ms. King and Ms. Spry also indicated to the appellant that they expect her to remove the large, front storefront windows, so that the renovated building will look more like a residential property.

It is So Ordered.

Appeal No. 12,127 by Steven and Monica Atkinson (1101-118) concerning property they own located at 1316 East 8th Street in an R-2 district. The appellants are seeking a use variance for a day care center. Per Section 204.12 of the Erie City Zoning Ordinance, day care centers are not a permitted use in the R-2 district.

Findings of Fact

1. The appellants, Steven and Monica Atkinson, appeared on their own behalf and provided several reasons to the Board why their variance request should be granted. For the past nine years the appellants have provided childcare at their home. However, their present operation only has the capacity to care for six children, and only for first shift. They are constantly getting requests from neighborhood residents to expand their service and open a full-time day care center.
2. Mrs. Atkinson addressed the Board and said that the many requests the appellants receive reflect a need in the community for day care service. Her goal is to provide high quality family childcare to a low income area of the City. The appellant's house is on a bus route, making it an ideal location for a day care center, and is another reason why they have a waiting list of several children who want to be enrolled in their program.
3. Another important consideration regarding the facility is the location of the proposed center. The appellant's neighbors like the idea of a day care center because the surrounding area has many clubs, bars, taverns and other adult-oriented establishments, in addition to grocery stores and other businesses. The day care facility will provide a safe place where the children of the neighborhood have to go to.
4. According to Mrs. Atkinson, her program is overseen by the Pennsylvania Department of Human Services and the Office of Child Development, and has received a three star (out of a possible four) rating. The high rating is determined by the educational benefits, activity schedule, and overall quality of service provided to the children by the facility. Mrs. Atkinson said that she is proud of the high standards for health, safety and education that her program provides. She added that her facility would provide a more home-like atmosphere for the children, as opposed to larger centers where they have less personal relationships.
5. Mr. Atkinson described for the Board the physical layout of the house and proposed day care facility. The appellants live on the second floor of the house, with the day care facility downstairs. If the variance were granted, he said, the appellants would not have to make any revisions to the exterior of the house. The backyard is completely fenced in, and is approximately 40' x 50', providing plenty of space for the children to run and play in a safe, supervised environment. Both appellants acknowledged to the Board that if the

variance were granted they may have to make some changes to the facility in order to comply with City regulations, and said that if necessary, they would be willing to do so.

6. The proposed facility would be capable of having up to twelve children per shift. However, the appellants indicated that the first and second shifts would be the predominant times of operation; they would discourage having a full capacity of children on third shift. As for the supervisory staff, the current arrangement is six children cared for by one staff member. If the variance was granted and the size of the day care facility went to twelve children, the appellants would have to add at least one more staff member per shift, in order to maintain a six to one ratio.
7. The only other witness to testify on behalf of the appellant's proposal was their son, Steven Atkinson Jr. Mr. Atkinson told the Board that his mother runs the house so well that visitors that he occasionally brings to the dwelling often do not know that it is a day care facility. He reiterated what his parents had previously said, indicating that if the variance were granted it would not change the structure or appearance of the property, and would not alter the character of the neighborhood. He too feels that the day care facility is a welcome addition for children in a neighborhood populated with many businesses suited for adults.

Conclusions

1. The appellants are proposing the operation of a day care center in their house. They currently run a small day care program on the first floor of their house, first shift only, with six children. Their proposal is to run a full-time facility with up to twelve children, on all three shifts.
2. The appellants indicated that there is a demand for the expanded facility, as they have a waiting list of several children.
3. According to Section 204.12 of the Erie City Zoning Ordinance, day care centers are not a permitted use in the R-2 district.
4. The proposed variance will not alter the character of the neighborhood; the backyard is entirely fenced in, and large enough to accommodate the children. The appellants will not have to make any renovations or changes to the outside of the dwelling.

Decision

The Board unanimously voted to approve the use variance for the appellants to run a full-time day care center. Board chairman Mike Hornyak said that he was impressed with the appellant's well run operation, and he is happy to see the expanded facility for a service that is very necessary for the area. Board member Selena King indicated that she is aware of another day

care facility in the general area that has recently relocated, increasing the need that the appellants are offering. She added that the high rating that the appellant's current program received from the state is a great statement of approval for the job they are doing. For the same reasons, Board members Edward Dawson, Jackie Spry and Patty Szychowski all agreed, and all five members voted to approve the variance request.

It is So Ordered.

Appeal No. 12,128 by Fikreta Feratovic (5056-115) concerning property located at 853, 855 East 26th Street in an RLB district. The appellant is seeking a use variance for a retail establishment. Per Section 204.13 of the Erie City Zoning Ordinance, retail is not a permitted use in the RLB district.

Findings of Fact

1. The appellant, Fiereta Ferotovic, was represented at the hearing by her husband, Ermin Meskivic, who told the Board that the appellant owns the East 26th Street building in question. The appellant had rented the building, but the proposed occupants never opened their business. In its place, the appellant is now seeking to open a second-hand thrift store in the vacant site.
2. The building has had a long history with the Zoning Office, having gone through several incarnations as a variety of businesses. In 1959 the site was denied a variance to become a minor auto repair shop. In 1961 that variance was approved. In 2003, when the area was designated as an RLB district and there was several nonconforming businesses on the street, the owners of the building received a variance to run a take-out restaurant. A year later, the other portion of the existing rental building (where the garage was located) was converted into an office space.
3. The appellant is seeking a use variance to put a thrift store into the section of the property where the office space was located. In that thrift store, the appellants plan to sell all sorts of second-hand type goods; as described by the appellant, similar to a large garage sale.
4. A friend of the appellant's husband, Mujo Music, also appeared to support the proposal. He also indicated that the inclusion of the proposed second-hand thrift store would not alter the character of the neighborhood. He added that there are still several other various businesses on the section of East 26th Street where the appellant's property is located. Zoning official Matthew Puz told the Board that the usual notifications about the hearing were sent to all the surrounding neighbors, and nobody contacted the office in opposition

Conclusions

1. The appellant proposes to open a second-hand thrift store at the location. The commercial building is divided into two sections; one half has a business presently operating in it, and the appellant proposes to occupy the other, vacant half.
2. According to Section 204.13 of the Erie City Zoning Ordinance, a retail store is not a permitted use in the RLB district.
3. If approved, the variance would not alter the character of the neighborhood, as there are several other various businesses in the area.

Decision

By a four to one vote the Board approved the appellant's request for the use variance. Board chairman Mike Hornyak said that he is approving of the request in part because there is a similar store next door to the appellant's building. Along with Board member Patty Szychowski, Mr. Hornyak encouraged the appellant to make their building look more like a store, and to keep their merchandise inside, and not on the sidewalk. Along with members Edward Dawson and Selena King, all four members voted to approve the variance.

The lone dissenting vote was member Jackie Spry, who indicated that she did not believe that the appellant demonstrated a hardship that would warrant a variance.

It is So Ordered.

Other Business:

The Erie City Zoning Hearing Board discussed reducing the notification radius for all variances to zero feet, which is in compliance with the Pennsylvania Municipalities Planning Code. By a vote of three to zero, the radius was reduced to zero feet. This change goes into effect on June 1, 2016.