

March 14, 2017
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held Tuesday, March 14, 2017 at 1:00 P.M. in City Council Chambers, Municipal Building, 626 State Street.

-- MINUTES --

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,148 by VTL Properties, LLC (4038-114) concerning the property located at 946 West 2nd Street in a WR district. The appellant is seeking a dimensional variance for a single family dwelling. Per Section 205.11 of the Erie City Zoning Ordinance, the front yard setback shall be the average depth of 10 feet +/- five (5) feet; 126 feet is proposed.

Findings of Fact

1. The appellant Mark Gusek appeared together with his architect, Gary Matczak, and informed the Board that the house they are proposing to build will fit perfectly with the existing pattern of homes on West Front Street overlooking the bay.
2. Using a large aerial view of the block, together with a site plan map showing the property, Mr. Matczak said that the proposed design is to construct what he referred to as a "low profile, ranch-style" house. The lot is presently vacant, and if approved, the appellant will build a small, single-family dwelling near the bluff, overlooking the bay.
3. According to Mr. Matczak, due to the placement of the lot and configuration of the lower west side streets, the property can only be accessed by 2nd Street, and will therefore have a West 2nd Street address. The area on the property where the house will be built is set back a long distance from West 2nd Street, creating the need for a variance. Mr. Matczak reiterated that the modest home being proposed will fit in with the pattern of homes along Front Street, all overlooking the bay.

Conclusions

1. The appellant proposes to build a modest ranch-style, single-family house on the property overlooking the bay. As a result of the unusual configuration of the streets, the house will only have access from 2nd Street, and will therefore have a West 2nd Street address.
2. According to Section 205.11 of the Erie City Zoning Ordinance, the front yard setback for a home in the WR district shall have an average depth of 10 feet, +/- five (5) feet.
3. Even though the proposed house will overlook the bay, it will be set back 126 feet from West 2nd Street.

Decision

By a unanimous decision, the Board approved the appellant's request for the dimensional variance. Board members Edward Dawson, Mike Hornyak and Jeffrey Johnson all indicated that they appreciate the efforts that the appellant is making to build a house on the vacant lot. Board members Selena King and Jaqueline Spry both indicated that they liked how the house is consistent with the pattern of homes overlooking the bay, and applauded the collaboration that the appellant has shown in working with the other residents in the neighborhood.

It is So Ordered.

Appeal No. 12,149 by World Resources Recovery Systems, Inc. (2040-100) concerning the property located at 1422 East Avenue, in an M-2 district. The appellant is seeking a use variance to operate a used car sales lot. Per Section 204.20 of the Erie City Zoning Ordinance, a used car sales lot is not permitted in the M-2 district.

Findings of Fact

1. The appellant was represented by Mr. Frank Lasky, the president of World Resource Recovery Systems, located near the northeast base of the old East Avenue bridge. Mr. Lasky told the Board that he is not proposing to make any changes to his property, rather he is only seeking a variance to operate a small used car lot on the premises.
2. The appellant's property was previously owned by Zurn Industries; the appellants purchased it in 1996. The appellants are presently only using the lot for storage, with a warehouse being the only structure on the property. The lot would have good visibility, being adjacent to the Bayfront Expressway, and the appellants believe that the lower eastside neighborhood is in need of a small, low-end used car business.
3. Answering questions from Board members, Mr. Lasky indicated that there are presently some street lights near the property, and the building is lighted at night. If approved, the sales lot would be well lit, and comply with all City ordinances and obtain the necessary permits.

Conclusions

1. The appellants own property near the East Avenue bridge, which is being used only for storage. The appellants wish to put a small used car lot on the site.
2. According to Section 204.20 of the Erie City Zoning Ordinance, a used car sales lot is not permitted in the M-2 district.
3. The site is well suited for the business, the appellants believe, largely because of the visibility it would have from the traffic on the Bayfront Expressway.

Decision

By a unanimous decision, the Board voted to approve the variance request. Board member Mike Hornyak indicated that it is not the role of the Board to determine if the site is a good location for the proposed business; but added that if the East Avenue bridge is torn down it may turn out to be a great location. Similarly, chairwoman Selena King said that this may not be the best use of the property, but given that the appellants wish to take the chance to invest there, they should be given the opportunity. Board members Jaqueline Spry, Edward Dawson and Jeffrey Johnson all agreed, and all voted to approve the variance request.

It is So Ordered.

Appeal No. 12,150 by the Erie Metropolitan Transit Authority (2009-202) concerning property located at 127 East 14th Street in an M-2 district. The appellant is seeking a use variance for retail business. Per Section 204.20 of the Erie City Zoning Ordinance, a retail business is not permitted in the M-2 district.

Findings of Fact

1. The appellants were represented at the hearing by Mr. Mike Tann, executive director of the Erie Metropolitan Transit Authority. Mr. Tann told the Board that the proposed new building project represents Phase II of the redevelopment project begun in 2015. He added that the proposal represents a significant neighborhood improvement; including amenities that will improve the quality of life for the entire inner-city area, including providing access to whole foods and fresh produce at the new food market.
2. Mr. Tann provided a packet of information for the Board to review, including letters of support from community leaders, several aerial and street level view images, and a detailed site plan drawing of the proposed new development. With the overall goal of servicing the entire community, Mr. Tann said that the E.M.T.A. is an important part of the Erie Downtown Partnership – an organization including several community-minded groups whose express intent is to revitalize the downtown area. The corridor between French and Parade Streets, anchored by the new E.M.T.A. facility, is an important part of that revitalization goal.
3. The funding for the proposed new facility is being provided in large part by the Pennsylvania Department of Transportation, as well as the Federal Transit Administration (part of the U.S. Dept. of Transportation). According to Mr. Tann, it is specifically listed in the grants that the appellants received that some type of retail space be provided in the new development. The fresh food produce store would not only meet the requirement of the grants, but also meet an important need for the Erie community.

4. Using the images of the proposed new facility, Mr. Tann said that the first floor of the new structure would include the retail food service facility. The second level would be used for public parking, and any use(s) for the upper levels of the new structure are not yet determined. The food store would allow walking access to Lovell Place residents as well as other residents of the downtown neighborhood; and the new facility would also provide what Mr. Tann referred to as a “destination”, with easy access to the food store for anyone who uses public transportation.
5. While expressing that they are not in direct competition with other independent retailers in Erie, the appellants believe that the new proposed development has two advantages over other potential retail sites: first, it is a new facility, and can cater to the specific needs of today’s consumer, and secondly, it can offer a central location to various businesses that can benefit the people who will shop there.
6. Also speaking in support of the proposal was Mr. Scott Henry, former director of the Erie Redevelopment Authority. Mr. Henry reiterated that the Erie Downtown Partnership is committed to seeing the “Union Square” district of downtown Erie become a fully developed area. The idea of a wholesale and retail fresh food store is a good idea, he said, in that it includes retail products to local residents as well as wholesale service to nearby restaurants and other establishments.
7. Several other community leaders also spoke in support of the proposed development. Ms. Emily Fetcko, the assistant director of the Erie Downtown Partnership, told the Board that her organization recently conducted a survey that showed that a “community hub”, like the proposed E.M.T.A./retail development, would be beneficial to the City. The proposed food store, Ms. Fetcko said, is a good fit in the downtown development effort, and added that it would not hurt those businesses currently operating in the area.
8. Mr. Matthew Good, director of business operations for H.A.N.D.S., who has placed at least thirty nearby residents, commends the E.M.T.A. for reaching out to community groups like his to determine what needs those local residents have. Similarly Mr. Chuck Peters, managing partner of Altair Real Estate Services, an organization that represents commercial real estate developments in the area, indicated that Altair’s members have voiced a need for such a retail outlet facility, like the one proposed by the appellants.

NOTE: Erie Zoning Official Matthew Puz confirmed that the retail outlet is the only violation of the proposal; if the plan was only for the administration building and parking structure it would not require the requested variance.

Conclusions

1. The appellants, the Erie Metropolitan Transit Authority, are proposing a new administration building that would also include a parking structure and retail outlet facility. The proposal represents Phase II of the redevelopment project that the appellants began in 2015.
2. The proposed retail shop would be a food store, both retail and wholesale, that would provide fresh food and produce to the community. It is designed so as to be accessible

to downtown residents who can walk to the facility, as well as those who regularly use public transportation.

3. According to Section 204.20 of the Erie City Zoning Ordinance, retail businesses are not permitted in the M-2 district. If the proposal was only for the administration building and parking structure it would not require a variance.
4. The proposed development is funded by the state Dept. of Transportation and the Federal Transit Administration; a condition of these grants is that the new development includes retail stores.

Decision

By a unanimous decision the Board approved the variance to allow the appellants to include a retail store in their proposed development project. Board member Mike Hornyak said that he is familiar with the neighborhood, and thinks the food hub is needed and will enhance the area, much like the old Erie Central Market did years ago. Member Jaqueline Spry commented on the well drafted proposal, and said that she recognizes the major changes currently underway for the downtown area. Together with chairwoman Selena King, who indicated that she was part some of these previous development proposals, they both hope that this new development will serve as a catalyst for similar future developments. Along with members Edward Dawson and Jeffrey Johnson, all five members voted to approve the variance request.

It is So Ordered.

Appeal No. 12,151 by Rubino Realty LLC (3104-105) concerning property located at 1556 West 12th Street in an M-1 district. The appellant is appealing the determination of the zoning officer of classifying a medical marijuana dispensary as a “professional service.” The appellant contends a medical marijuana dispensary should be classified as a “retail business.”

Findings of Fact

1. The Appellant, Rubino Realty Co. was represented at the hearing by Attorney John Knox, and Mr. Daryl Tarella, an officer of Rubino Realty. The appellants are seeking permission to open and operate a new medical marijuana dispensary at their property near the corner of West 12th Street and Greengarden Boulevard (the old Dunlap Trucking Co.). The location for the new facility will be leased from Rubino Realty, at the specified site.
2. The Appellants contend that the dispensary would constitute a retail establishment, as its sole function would be selling marijuana to those people who have permission to purchase it.

3. By contrast, the Erie City Zoning Office claims that the proposed dispensary should be classified as a professional service facility, under the terms of Pennsylvania's recent medical marijuana law (28 PA. CODE CHAPTER 1161; passed December 2016), and the Erie City Zoning Ordinance.
4. The Appellants referred to a Board decision from 2015, where they granted a variance for a diving equipment store, located at the same property as the proposed dispensary, to operate as a retail business. The Appellants claim that not only is this a superb location for a retail facility, but also that it satisfies one of the many requirements that a potential licensee must meet – that the dispensary be located in close proximity to main transportation arteries. In this case the proposed dispensary would be located on West 12th Street, just off the I-79 interchange.
5. According to Attorney Knox, it would be difficult to find a more suitable location in Erie. The Pennsylvania legislature and Department of Health have attached many requirements to the new law, he said. Answering questions from the Board, Attorney Knox said that during hours of operation, when the store is open, there will always be a guard on duty. The facility will also have 24-hour video monitoring. Additionally, in accordance with another of the regulations, the building will have a secure entrance way, for when the trucks make their deliveries.
6. The Appellants are applying for one of a handful of licenses that will be granted in the whole state, under the present law. Attorney Knox indicated that there will only be two licenses granted in this part of the state – one in the Erie/Crawford County area (which the Appellants are seeking), and one in the McKean County area. If the Appellants do receive the license, they will be operating three dispensaries: one each in Erie, Meadville and Cool Springs Township, with the Erie site the main operation. Attorney Knox told the Board that the Appellants have already received zoning approval in the other two sites.
7. The Appellants argue that the dispensary should be considered a retail establishment, and not a personal or professional service. Attorney Knox said that the dispensary would just be selling a product (i.e. the marijuana); they would not be offering any other service. The dispensary is not going to be offering medical advice, like determining who could benefit from medicinal marijuana, nor providing any medical service, like writing the recommendation (similar to a prescription) for the marijuana. Therefore, the dispensary should not be considered a professional service, as the Zoning Office contends; rather, it would be a retail facility, like a pharmacy, that only sells the medicine that another health provider has determined the person requires.
8. Testifying on behalf of the City, and explaining the Zoning Office's decision to classify the dispensary as a professional service, was Erie Zoning Official Matthew Puz. Citing appropriate sections of the recent Pennsylvania law, Mr. Puz explained to the Board that after examining the state regulations, the Zoning Office determined that the medical marijuana dispensary will provide professional services.
9. Under Section 1161.25 of the state Code, either a physician, pharmacist, practicing nurse or certified physician's assistant must be present at all times while the marijuana dispensary is open to the public. Further, these professionals must successfully complete a training course before they can be certified to oversee the dispensary's

operations. The Zoning Office believes that this passage of the state regulations alone would lead one to determine that the dispensary is a professional service, but there are also several other regulations that support the Zoning Office's decision; these include the specifications of how the facility is to operate, and where it is permitted and not permitted to be located.

10. Answering questions from the Board, Mr. Puz rejected the analogy of the marijuana dispensary to a traditional pharmacy, as suggested by the Appellants. A normal pharmacy, he said, offers all kinds of retail products (e.g. personal products, food and candy, magazines, etc.) in addition to the medicine that the store sells. By contrast, Mr. Puz said, the medical marijuana dispensary has only one function and will provide only one product. A typical pharmacy chain store may still be open to the public to sell the other items even when the pharmacist is off duty; whereas the proposed dispensary will only be open when the professional is on hand.

Conclusions

1. The Appellants are seeking a license from the Pennsylvania Department of Health to operate a medical marijuana dispensary. If the Appellants receive the license, under the present law it will be the only license granted to anyone in Erie County.
2. The Appellants claim that the proposed marijuana dispensary will constitute a retail establishment, as it is only going to be selling the marijuana that some other professional has ordered. The Appellants will not be providing any professional service, like determining who should be permitted to purchase the medicinal marijuana.
3. The Erie City Zoning Office has determined that the proposed dispensary is a professional service, which is not permitted in the M-1 district according to the Erie City Zoning Ordinance.
4. The Zoning Office's determination that the proposed operation constitutes a professional service was made after reading pertinent portions of the new Pennsylvania law: 28 PA. CODE CHAPTER 1161, governing medical marijuana dispensaries. Specifically Section 1161.25 of that state Code requires that either a physician, pharmacist, practicing nurse or certified physician's assistant be present at all times that the marijuana dispensary is open to the public, and that these professionals must successfully complete a training course before they can be certified to oversee the dispensary's operations.

Decision

By a unanimous decision, the Board voted that the Zoning Office's determination that the medical marijuana dispensary is not a retail establishment was incorrect, and the Board voted in favor of the Appellant's request.

Board members Mike Hornyak and Edward Dawson both indicated that the fault is not with the Zoning Office, who based their decision on the language of the new state law, but rather is with the vague language of the Erie City Ordinance's definition of "professional

services.” Mr. Hornyak said that he does not like to reverse a Zoning Office determination, but that the City Code is so gray, he is willing to give the benefit of the doubt to the Appellants. Mr. Dawson likewise pointed out that under the City Code, professional services includes such vague occupations as “philosopher” and “artist”, so that it is hard to say for sure what other services should be included. Board members Jaqueline Spry, Selena King and Jeffrey Johnson also cited the “gray language” of the City Code, and added that they believe that the whole body of law is so new that City Council will clarify the Code in the near future. Ms. Spry also cited the ideal location as a factor for her vote.

All five members voted to accept the Appellant’s contention that the Zoning Office’s determination that the proposed marijuana dispensary constitutes a professional service is incorrect.

It is So Ordered.