

**October 10, 2017**  
**City of Erie, Pennsylvania**  
**ZONING HEARING BOARD**  
**1:00 P.M.**

The regular meeting of the Zoning Hearing Board was held Tuesday, October 10, 2017 at 1:00 P.M. in City Council Chambers, City of Erie Municipal Building, 626 State Street.

**-- MINUTES --**

**THE FOLLOWING APPEALS WERE HEARD:**

**Appeal No. 12,164 by Maria Schamber (4024-215)** concerning the property located at 205 Liberty Street a WR district. The appellant is seeking a dimensional variance for a 12' x 20' detached garage. Per Section 205.18 of the Erie City Zoning Ordinance, detached accessory structures must be a minimum of 3 feet from the side property line; 1 foot is proposed.

**Findings of Fact**

1. The appellant, Maria Schamber, appeared on her own behalf and told the Board that she recently moved to Erie and purchased her lower west-side house. She wants to build a 12' x 20', detached one-car garage. Currently the property does not have a garage, and the appellant indicated that she was hoping to have the structure completed before winter.
2. Using a site plan that was included with the appellant's application, Ms. Schamber showed the Board where she hopes to place the garage on her property. She explained that her hardship is where her driveway is situated. In order to line up with the driveway the garage will have to be placed in the location that the appellant proposes. That location, however, would place the garage only one foot from the neighbor's property.
3. The garage that the appellant is proposing to build is a pre-fabricated, free-standing structure. If the variance is approved, the new garage must still meet inspection, and is subject to the City's building inspector's approval. The appellant told the Board that the new structure would not alter the character of the neighborhood, as many of the properties in the area have garages. She added that her neighbors have only a small shed immediately next to where the proposed garage will be located.

**Conclusions**

1. The appellant is seeking to install a detached garage in the rear of her property, behind her house. The proposed garage will be a free-standing, detached structure that will be only one foot from the neighbor's property. In order for the garage to hold the appellant's car, the new garage must be 12'x20'. That would put the structure one foot from the neighboring property.

2. According to Section 205.18 of the Erie City Zoning Ordinance, detached accessory structures must be a minimum of 3 feet from the side property line.
3. The hardship is where her driveway is situated. In order to line up with the driveway, the garage will have to be placed in the location that the appellant proposes; only one foot from the neighbor's property.

### **Decision**

The Board unanimously approved the appellant's variance request. Board member Mike Hornyak said that he recognizes the need for someone to shelter their car in the harsh Erie winters, and since there is no objection from the neighbors, he decided to approve the variance request. Member Edward Dawson said that his concern is that the one foot setback could create drainage problems in the future, but added that the building inspectors will address this issue before granting any required permits. Member Jaqueline Spry added that it does not make sense to move the driveway, and that the appellant demonstrated a hardship. Along with Board members Selena King and Jeffrey Johnson, all five members voted to approve the variance request.

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

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**Appeal No. 12,165 by Amanda Buchner Fadely (5073-101)** concerning property located at 3119 Pine Avenue in an R-1 district. The appellant is seeking a use variance for a two-family dwelling. Per Section 204.10 of the Erie City Zoning Ordinance, two-family dwellings are not a permitted use in the R-1 district.

### **Findings of Fact**

1. The appellant, Amanda Fadely, appeared on her own behalf and told the Board that she purchased her home in 2010 with the understanding that it was a two-family dwelling. She said that it was advertised as a two-unit house by the previous owner, and that the Erie County website also has the property classified as a two-family home. Ms. Fadely said that she only learned of the violation when she recently attempted to sell the house.
2. Appearing along with the appellant was Ms. Janet Orr. Ms. Orr is a friend of the appellant, and is also a listing agent for Howard Hanna who trying to sell Ms. Fadely's house. Ms. Orr told the Board that it would be a great expense for the appellant to convert the property to a single-family house. The dwelling has two separate kitchens, baths, entrances, etc., and has been operating as a two-family dwelling for several years.
3. The appellant further testified that she had just returned from Texas approximately eight years ago when she purchased the house in 2010. She reiterated that the house was appraised as a two-unit dwelling when she purchased it. She added that the Pine Avenue neighborhood where the house is located is a mix of vacant lots, commercial properties and

several other single and multi-family dwellings; the two-family dwelling, she said, does not affect the character of the neighborhood.

4. Ms. Fadely pointed out to the Board, and an Erie Zoning Office official confirmed, that the house had previously been a legal two-unit dwelling, until a former owner received a zoning certificate to have the house converted to a single-family house. The appellant added that her brother has lived in one of the apartments in recent years while the other unit has been occupied by the party who wishes to purchase the house. She said that there have not been any negative consequences to anyone when both units were occupied.

### **Conclusion**

1. The appellant purchased her house in 2010, believing it to be a two-family dwelling. It was listed as a two-unit, and the Erie County website has it classified as such. The appellant said that she only learned about the violation when she recently went to sell the property.
2. According to Section 204.10 of the Erie City Zoning Ordinance, two-family dwellings are not a permitted use in the R-1 district.
3. The house was formerly a two-unit dwelling, until a former owner received a permit for the house to be converted to a single-family dwelling in 1970.
4. The potential purchaser of the house has lived in one of the units in recent years. The appellant claims that there are other similar two-unit houses in the neighborhood, and that the variance will not negatively affect the area.

### **Decision**

By a unanimous decision, the Board voted to approve the variance. Board member Edward Dawson indicated that there is adequate space for a two-unit house, and with the prospective buyer, the appellant demonstrated a legitimate hardship. Board members Selena King, Jeffrey Johnson, Mike Hornyak and Jackie Spry also voted to approve the variance, all noting that the appellant was an innocent purchaser, believing that the house was a two-unit dwelling when she purchased it.

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

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**Appeal No. 12,166 by LPUSA Ltd. (3018-101)** concerning property located at 337 West 12<sup>th</sup> Street in an M-2 district. The appellant is seeking a use variance for auto sales (truck and trailer rentals). Per Section 204.20 of the Erie City Zoning Ordinance, auto sales (truck and trailer rentals) are not a permitted use in an M-2 district.

### **Findings of Fact**

1. Appearing on behalf of the appellants at the hearing was Mr. Ean Livingood, an official of U-Haul, who was also representing the real estate company AMERCO. Mr. Livingood told the

Board that the appellants are seeking a use variance before purchasing the building in question. The building is currently owned by Logistics Inc., and is currently being used as a storage facility, which is permitted in the M-2 zoning district; the use variance is being sought for the truck and trailer rental portion of the business.

2. The appellants are looking to purchase the building for the specified use, but will only do so if they receive the variance. If purchased, the appellants indicated that they will make considerable upgrades to the building, and the expanded business will be an economic benefit to the 12<sup>th</sup> Street area in the City. Mr. Livingood indicated that there are four other U-Haul facilities in the Erie area, all of which provide both storage and truck rental services. The proposed new location would be the smallest of the local U-Haul businesses.
3. In making the presentation to the Board, Mr. Livingood provided a written summary of the proposal, which included site plan drawings of the location, and charts that indicated the volume of traffic and other concerns that could be of interest to local officials. He said that the storage facility, which is already operating, comprises approximately 600 units. The truck sharing, trailer rental portion of the business, for which the appellants are seeking the variance, would be a small percentage of the overall operation. He estimated that on any given day there would be 20-30 trucks running through the facility; the real purpose of having the truck rental is to bring in more business for the storage facilities.
4. In addition to the documents included with the application, Mr. Livingood provided pictures of similar facilities in other cities (including Pittsburgh, Chicago and Detroit), and a rendering of the proposed Erie site. He answered concerns from Board members, and indicated that there will be no large signs, and that before anything is built, the appellants will make sure that the constructions are compliant with the City Code.
5. Also appearing in support of the proposal was Attorney Chris Orton, general counsel for Logistics Inc. He told the Board that the proposal will benefit the Erie economy and business community; he said that his clients are relocating to Pittsburgh Avenue, and are not leaving the city.

### **Conclusions**

1. The appellants are seeking a use variance to operate a truck and trailer operation. The appellants will also be renting storage units, which is a permitted use, at the location. They want to include the renting of trucks and trailers, similar to the other four businesses that they own in the Erie area.
2. According to Section 204.20 of the Erie City Zoning Ordinance, auto sales, including truck and trailer rentals, are not a permitted use in an M-2 district.
3. The appellants are hoping to purchase and upgrade the building in question, but will only be able to do so if the variance request is approved.

### **Decision**

By a unanimous decision the Board voted to approve the appellant's variance request. Board members Edward Dawson and Jaqueline Spry both said that they felt the appellant met their hardship requirement, and that the proposal can be an economic benefit to the West 12<sup>th</sup>

Street corridor. Members Selena King and Mike Hornyak both indicated that while the Board members may have different points of view, they decide each case on its own merits, and that this proposal meets the criteria for the variance. Along with member Jeffrey Johnson, all five voted to approve the use variance request.

**It is So Ordered.**

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**Appeal No. 12,167 by School District of the City of Erie (6201-100)** concerning property located at 2300 Cranberry Street in an R-2 district. The appellant is seeking a special exception for a tower-based wireless communications facility. Per Section 204.12 of the Erie City Zoning Ordinance, wireless communications facilities are a special exception use in an R-2 district.

NOTE: Board Chairwoman Selena King recused herself from voting on the proposal, citing a potential conflict of interest because of her affiliation with the neighborhood and the Erie School District.

**Findings of Fact**

1. The appellants were represented by Mr. Mike Daubenmire of Fortune Wireless, who said that he was appearing on behalf of both the Erie School District and T-Mobile, the satellite communications provider. The appellants provided each Board member with a large informational booklet containing maps, renderings of the proposed installation, site plans, lease documents, etc. to assist the Board in making its decision.
2. The appellants are seeking to replace a 100' light pole behind Ainsworth Field with a 120' light-standard monopole tower. Referring to the maps of Erie County in the booklet, Mr. Daubenmire showed the significant difference in coverage area by using the higher tower.
3. Mr. Daubenmire said that the communication tower pole will not differ much from the existing light poles around the stadium, although the new tower would have a bulkier base. The proposed pole is constructed in such a way as to prevent ever toppling over, or putting residential areas in danger. The appellant's spokesman further explained to the Board that the pole is designed to buckle, or "pancake", and not fall over. Even so, he said that the nearest residential structures are approximately 200' away, so the pole is not tall enough to collapse on to any nearby structures.
4. Answering questions from Board members, Mr. Daubenmire noted that the proposal is a special exception, and will meet City Code setback and other requirements. The tower will not make any noise nor present any negative effects to the neighboring area. The pole will not be lit, he said, although the stadium lights will still be operational.
5. The structure is designed to accommodate similar wireless carriers in the future. This shared use design was confirmed by Mr. Kit Nickel, the site development manager for T-Mobile. He told the Board that the company originally looked at sites that were east of the Ainsworth location, but settled on the proposed location for several reasons, including the shared use feature. The present design and location meets all Pennsylvania and local

specifications; additionally, Mr. Nickel said that the designers structure the towers at locations where they have the best ability for shared use with other providers, which will minimize the number of new towers that will be required in the future.

6. Also appearing on behalf of the proposal was Mr. Eric Seibert, the director of facilities and maintenance for the Erie School District. He told the Board that the proposed special exception would provide an economic benefit to the School District without any negative effects.
7. Two local neighborhood residents appeared to testify. Ms. Carol Snippet and Mr. Aaron Findlay both told the Board that they were not necessarily opposed to the new pole, but did have some questions and concerns for pedestrians, children and other potential dangers to the residential neighborhood. Mr. Findlay asked about whether there would be barbed wire fencing, structural support wires, or other possible hazards.
8. In response to the neighbor's concerns, Mr. Daubemire told the Board that the fence surrounding the pole will probably be wooden, but could be chain link if it is preferred by the neighboring residents. The pole would be free-standing, with no support wires, and the structure will meet all state and federal specifications, reiterating that it is designed to collapse onto itself rather than fall on any other nearby properties.

### **Conclusions**

1. The appellants are seeking a special exception to install a wireless communications tower behind Ainsworth Field, where there are already several light poles. The existing poles are approximately 100' high; the proposed wireless tower is slated to be 120'.
2. According to Section 204.12 of the Erie City Zoning Ordinance, wireless communications facilities are a special exception use in an R-2 district.
3. The slightly higher tower will provide service to a vastly wider segment of Erie County, and will enable other wireless providers to share its use in the future, requiring fewer similar towers in the years to come.
4. The proposal will provide an economic benefit for the Erie School District as well.

### **Decision**

The Board voted unanimously to approve the special exception request. Board member Mike Hornyak said that the appellants have done their due diligence in making the proposal to the Board, and, along with member Jacqueline Spry, indicated that they have met the requirements for the special exception. Along with members Edward Dawson and Jeffrey Johnson, all four members voted to approve the proposal.

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

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**Appeal No. 12,169 by George Dieter III et al (2102-313)** concerning property located at 1305 East 10<sup>th</sup> Street in an R-2 district. The appellant is seeking a change of a non-conforming use

from a service garage to light manufacturing; and dimensional variances for lot coverage, rear yard setback, and expansion of a non-conforming use. Per Section 205 of the Erie City Zoning Ordinance, the maximum lot coverage is 50%; 81% is proposed. Per Section 205, the minimum rear yard setback is 20 feet; 1 foot is proposed. Per Section 301.20, an expansion of a non-conforming use is not to exceed 50%; 71.4% is proposed.

### **Findings of Fact**

1. The appellant George Dieter was represented at the hearing by Mr. Dave Ferrell, who is the co-owner of the property with Mr. Dieter. Mr. Ferrell told the Board that they bought the building in question in 1981. The property had previously been an M-1 district, and on two occasions, in 1989 and 2012, received zoning permits to operate as a tool and die shop and as a service garage respectively.
2. Mr. Ferrell said that he is seeking to have the property re-zoned, because he has a prospective buyer who wants the building, but will not purchase it with the current zoning restrictions the property has on it. When informed that only City Council can re-zone an area, the appellants filed the applications with the Zoning Office; they are asking the Zoning Hearing Board for a change of a nonconforming use and dimensional variances that will enable the prospective buyer to utilize the property as he requires for his business.
3. The party who is attempting to purchase the property is Mr. Dean Tabich, owner of a local tool and die shop. Mr. Tabich, who presently employs approximately six people, told the Board that he is planning to make significant expansions if he does purchase the appellant's building, and said that he expects to employ more people.
4. Mr. Tabich said that he has tentative plans to renovate the existing property, which was formerly a tool and die shop. He provided a site plan drawing of the property, and provided photos of the building and adjacent properties for the Board to examine. He said that the plan calls for two 25' x 40' expansions, but added that he would reduce the design if necessary. Mr. Tabich reiterated what Mr. Ferrell had told the Board already – that Mr. Tabich would only be interested in the property if the variance requests were approved.
5. The Board questioned Mr. Tabich about his current business, and about the proposed new tool and die shop. He said that his operation does not produce fumes, noise or any other disruptions that would negatively affect the neighborhood. He added that if necessary he could install a chain-link fence or other screen, and while acknowledging that the parking situation would be affected by the expansion, he said that the Code allows for off-street parking around the site.

### **Conclusions**

1. The appellant owns a building which had previously been used as a tool and die shop and a service garage. There is a prospective purchaser for the appellant's property, but only if it could be used as a tool and die operation again.
2. The appellant's property is in an R-2 zoning district; the appellant would need to receive a nonconforming change of use status for the business. Additionally the appellant would

have to receive dimensional variances for setbacks and lot coverage under Section 205 of the Erie City Zoning Ordinance.

3. If the variances are approved, the prospective buyer plans to make extensive renovations to the property, and potentially increase the number of people his tool and die shop employs.

### **Decision**

#### **Nonconforming Change of Use:**

The Board unanimously voted to approve the nonconforming change of use for the business to convert to a tool and die shop. Board member Mike Hornyak said that he is familiar with the area, and that neither the service garage nor the tool and die shop disrupt the neighborhood. Member Jaqueline Spry added that without the change of use the business could not expand. For the same reasons, members Selena King, Edward Dawson and Jeffrey Johnson also voted to approve the request.

#### **Dimensional Variance – Lot Coverage:**

[CONDITION: The Board approved a condition to be attached to the variance that the lot coverage could not exceed 65%.]

The Board unanimously voted to approve the total lot coverage from a maximum of 50% to the amount approved in the condition to the variance - 65%.

#### **Dimensional Variance – Rear Yard Setback:**

The Board unanimously approved the variance for the rear yard setback to be reduced from a minimum of 20' to the proposed 1'.

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

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**Appeal No. 12,171 by Karar Al Dafaai (1010-100)** concerning property located at 732 Parade Street in a C-4 district. The appellant is seeking a dimensional variance for 298 square feet of signage. Per Section 303.12 of the Erie City Zoning Ordinance, signage on this property is not to exceed 48 square feet; 298 square feet is proposed.

### **Findings of Fact**

1. The appellant Karar Al Dafaai appeared on his own behalf at the hearing, and told the Board that he purchased the property located on the northwest corner of East 8<sup>th</sup> and Parade Streets; the building had previously been a tavern. The appellant's long range goal is to open a restaurant at the location, but has been operating the premises as a convenience store, with a residential apartment on the second floor.

2. The building has a large side exterior facing 8<sup>th</sup> Street. It is ideal for the placing of signs advertising the store and items sold at the store. The Code restricts the signage to 48 square feet, which the appellant asserts is not enough space to advertise the staple items he sells, such as cigarettes, or that he has an ATM machine, or that the store accepts EBT for food purchases, let alone the advertising that he anticipates for the future restaurant. Mr. Al Dafaai indicated that he could utilize the nearly three hundred square feet of space on the exterior of the building if the Board approves his variance request.
3. The appellant told the Board that he is investing in the lower eastside location, trying to renovate the building and will hopefully provide jobs and revitalize the area. He said that other nearby commercial establishments, especially those larger, chain-stores on the corner of 6<sup>th</sup> and Parade, are permitted to use the larger signs to advertise. This disadvantage is one of the hardships he faces.
4. The types of advertising signs that the appellant proposes will look professional, and will not affect the neighborhood in a negative way. The signs would not be lighted, or neon, but would rather be vinyl, all-weather types of advertisements.

### **Conclusions**

1. The appellant owns the building on the northwest corner of East 8<sup>th</sup> and Parade Streets; formerly a tavern, it is now a convenience store with a residential apartment upstairs.
2. The appellant has almost three hundred squared feet of space that can be used for advertising, including for some of the products and services the store offers.
3. According to Section 303.12 of the Erie City Zoning Ordinance, signage in the C-4 district is not to exceed 48 square feet.
4. Several other nearby stores, including some large chain establishments, are permitted to put up more signage than the appellant can.

### **Decision**

The Board voted to place a condition on the variance that the additional signage could not exceed 75 square feet.

With the condition attached, the Board voted to approve the dimensional variance. Board members Selena King, Mike Hornyak, Edward Dawson and Jeffrey Johnson all voted to approve the request. Board member Jaqueline Spry was the lone dissenting vote.

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