

July 10, 2018
City of Erie, Pennsylvania
ZONING HEARING BOARD
1:00 P.M.

The regular meeting of the Zoning Hearing Board was held Tuesday, July 10, 2018 at 1:00 P.M. in City Council Chambers, City of Erie Municipal Building, 626 State Street, Erie, PA.

-- MINUTES --

THE FOLLOWING APPEALS WERE HEARD:

Appeal No. 12,188 by Highpoint Towers Associates (6007-100) concerning property located in an RLB District at 2314 Sassafras Street. The appellant is seeking a variance for a reduction in the required number of parking spaces. Per Section 302 of the Erie City Zoning Ordinance, and based off the proposed mixed uses of residential units, bank, and office space, the required number of parking spaces would be 178. Highpoint Towers Associates is proposing a reduction of spaces to a total of 106 for the development.

NOTE: The Appellant's case was listed on the June 2018 Zoning Hearing Board Agenda. The Appellants presented their case, however, prior to announcing their vote, the Board convened privately to discuss several points of concern relating to the proposal. The Board unanimously voted to withhold their decision, and continue the hearing. The Board gave the appellants the opportunity to introduce new evidence, addressing the Board's concerns, at the Board's July hearing.

Findings of Fact

1. The appellants were represented at the hearing by Ms. Gina Martinez of Beacon Communications, the development director for the project, and Mr. Charles Wooster, a traffic engineer whose Pittsburgh-based company is working as consultants for the appellants. The proposal involves the repair and replacement of the exterior and infrastructure of Highpoint Towers (e.g. windows, roofs, masonry, common area units, etc.), as well as adding new offices to the building.
2. As part of the proposed renovations, the appellants have drafted a reconfiguration of the parking spaces that serve the 14 story, mixed-use building. According to Ms. Martinez,

changes in the demographics of the building's residential tenants, together with the businesses that occupy much of the lower floors, the parking needs of the building have changed. Based on these proposed new parking requirements, the appellants drafted two site plans to show the Board how the new parking areas will look, and how the reduced number of spots would be enough to satisfy the needs of Highpoint Towers after the renovations have been completed.

3. There are three groups of tenants at Highpoint: residential apartments, offices that operate primarily during traditional daytime business hours, and other offices that are associated with St. Vincent Health Center, the building's neighbor to the south. Having identified the parking demands for the three categories of users, Mr. Wooster told the Board that his research has determined that the Appellant's new design would allow for a reduction in parking spaces from the current 178, to the proposed 106.
4. The building has two tiers of parking: one entering and exiting onto West 24th Street, which used primarily by the businesses, and the other an indoor facility, that is accessed by West 23rd Street. The proposal would greatly reduce the number of spaces on the upper tier.
5. Mr. Wooster provided the Board with a copy of the parking demand evaluation study that his company completed, and explained the findings of the study to the Board. He indicated that the 132 residential tenants in the apartments could be serviced by 66 parking spaces (.5 spaces per household). This would reduce the number of upper level (the parking lot that is accessed from West 24th Street) to 11 spaces. Mr. Wooster went on to explain that the proposal considered several other factors, such as the times of day that the business offices and St. Vincent-related offices would typically be using the parking areas. He added that the situation is ideal for a shared parking arrangement as with those spaces for the offices needed mostly for daytime use, while many of the residential parking spaces are needed for evening and overnight use.
6. Also addressing the Board was Mr. Paul Matters, representing St. Vincent Health Center. Mr. Matters told the Board that the hospital is very encouraged about the proposed changes that Highpoint Towers is making. He added that St. Vincent is responsible for many of the parking problems that Highpoint residents have experienced, and he believes that the new proposal will be successful, and provide an improvement to future development projects in the area.

Conclusions

1. The appellants are in the process of making significant repairs to their 14 story building, Highpoint Towers. The building is mixed use, with the lower floors containing a credit union office as well as several businesses and offices from St. Vincent Health Center, operating primarily during daytime, business hours.

2. The appellant's contractors have drafted a site plan that eliminates or re-arranges many of the parking spaces that the building presently has. The proposed reduction would eliminate much of the top tier of the building's parking area, reduce the number of parking spaces from 178 to 106.
3. According to Section 302 of the Erie City Zoning Ordinance, given the number of residential units and office spaces in the appellant's proposal, Highpoint Towers the required to have 178 parking spaces.
4. The Appellants have conducted a study that identifies the volume and demand of parking spaces that the building will require, and how the proposal will satisfy the need for both the professional and residential tenants of Highpoint Towers.

Decision

By a four to one vote, the Board approved the variance request. Board chairwoman Selena King said that the proposal will be a benefit to the community. Board member Jaqueline Spry indicated that the Appellants did their due diligence in conducting the thorough studies that addressed the parking needs. She also said that the proposal will benefit the area, and is appropriate for the needs of the building. For the same reasons, members Jeffrey Johnson and Mike Hornyak also approved the variance.

Board member Edward Dawson was the lone dissenting vote, saying that the ordinance was written to ensure that there is adequate parking for all the residents, and that the Code should be enforced.

It is So Ordered.

Appeal No. 12,189 by PTP Better Properties (Index #4019-210) concerning property located at 633 West 6th Street, in an R-1 district. The appellant is seeking for a use variance for a rooming/boarding house. Per Section 204.10 of the Erie City Zoning Ordinance, rooming/boarding houses are not a permitted use in an R-1 zoning district.

Findings of Fact

1. The Appellant was representing at the hearing by Ms. Vivian Tate, the property manager of PTP Better Properties, a company that is owned by her son, Mark Anthony Tate. Ms. Tate told the Board that the property owner is presently in Florida, but that his goal is to purchase as many as twenty blighted or damaged properties in Erie, hoping to improve the community by making the investment to renovate these unused houses.

2. PTP Better Properties purchased the building in question, and has spent upward of \$55,000. Ms. Tate indicated that given the capital investment that the appellants have made, and factoring in taxes and upkeep, they would have to rent out at least five (5) rooms in the building; it is their hope to rent these rooms to Gannon students. Ms. Tate also said that in the past the company has rented out apartments to Section 8 tenants (financial support for housing for single mothers and their children, provided by the Commonwealth of Pennsylvania), and may do so in the future. For now, however, she said that renting out the five rooms is the preferred, given the space in the building and investment already made by the company; the Appellants did not rule out expanding the number of rooms they may rent in the future.
3. The building manager for PTP Better Properties, Mr. Robert Tate, also addressed the Board. Mr. Tate is the father of the company's owner, and he reiterated that the intention of PTP is to purchase and renovate low income properties, and that the company's efforts will benefit the community.
4. There were several witnesses present at the hearing to speak in opposition of the proposed boarding house. Mr. Thomas Maggio, the president of the Civic Art Realty Company, commonly referred to as "Garden Court", addressed the Board on behalf of the organization. He indicated that Garden Court is an incorporated entity responsible for the maintenance and upkeep of the common areas of the block, which includes an access road and half-acre courtyard. Mr. Maggio said that there are deed restrictions which govern all of the properties and parcels on the block; the Appellant's property is located on Garden Court, and therefore subject to the restrictions.
5. Mr. Maggio provided several other reasons why the Garden Court is opposed to the proposed variance. He told the Board that the addition of the boarding house would negatively affect the character of the neighborhood (the central courtyard would be particularly affected). The house, he said, is habitable, and that the Appellants have not demonstrated any hardship that would warrant the variance.
6. Also addressing the Board in opposition to the variance request was Mr. Robert LeSuer and his wife, Mrs. Lori LeSuer. Mr. LeSuer expanded on Mr. Maggio's comments, stressing that the Appellants have not met any of the hardships as required under Section 508(9) of the City Ordinance. Mr. LeSuer added that Garden Court is a very special historic area that needs to be protected, and that the deed restrictions need to be recognized. There is no question, he said, that the proposed change to make the property a boarding house would unalterably change the character of the neighborhood.
7. Mrs. LeSuer described for the Board how Garden Court is a real community, largely because of the sense of responsibility that its homeowners have. It is not a "gated" community, she said, but rather a real family-oriented neighborhood. Mrs. LeSuer presented the Board with a petition - signed by all of the Garden Court residents except for the Appellants - that opposes the proposed boarding house.

8. Other Garden Court residents who spoke in opposition to the variance request included Ms. Anna Franz and Mr. Ian Murray. Ms. Franz, representing “Our West Bayfront” community organization, told the Board that there are many other nearby, suitable locations for the Appellants to operate a boarding house. Mr. Murray indicated that he has lived in every area of the City at one time, and that when he sought to buy a suitable house with an eye on retirement, Garden Court was really the only place in the City that he could find that had the qualities he was seeking.
9. The Appellants had the opportunity for rebuttal. Mrs. Tate said that the house was in a worse state of disrepair when the Appellants purchased it than the witnesses suggested. She added that although many Garden Court residents said they were concerned about how the house will negatively affect the neighborhood, nobody but the Appellants were willing to purchase and renovate the dwelling. Mr. Tate added that the Appellants have spent a good deal of money to bring the house up to code, and that they are not trying to alter the character of the neighborhood; rather, he said, they are trying to improve the community.

Conclusions

1. The Appellants purchased a vacant house on West 6th Street in an R-1 zoning district. The house is in the area of the City commonly known as “Garden Court”.
2. The Appellants have spent approximately fifty thousand dollars to purchase and renovate the dwelling, with the intention of making it a rooming/boarding house primarily for Gannon students. The Appellants said they need to have five (5) rentable units in the building in order for it to be financially feasible.
3. According to Section 204.10 of the Erie City Zoning Ordinance, rooming/boarding houses are not a permitted use in an R-1 zoning district.
4. Several residents of the neighborhood oppose the proposed boarding house, citing that the leases for homes in the Garden Court area contain restrictions for this type of use of the properties.

Decision

By a unanimous vote, the Board refused to grant the Appellant’s request for a variance. All five Board members, Selena King, Mike Hornyak, Edward Dawson, Jaqueline Spry and Jeffrey Johnson indicated that the Appellants did not meet the criteria for a variance, in that they did not show any hardship as required by the Code.

It is So Ordered.

Appeal No. 12,190 by Waydell Johnson (index No.: 2128-100) concerning property located at 2070 Buffalo Road in an RLB district. The appellant is seeking a use variance for an Auto Repair Shop with minor sales (up to four vehicles). Per Section 204.14 of the Erie City Zoning Ordinance, auto repair is not a permitted use in an RLB district.

Findings of Fact

- 1 The Appellant Waydell Johnson appeared on his own behalf and told the Board that the building in question had formerly been in a C-1 zoning district, and served as a gas station for many years. He said that in his research about the site, he found out that most everyone who has expressed interest in the property in the past several years has wanted it for an auto repair shop.
- 2 Mr. Johnson said that the Buffalo Road corridor has a variety of mixed use businesses. When he first purchased the property he used it to operate his painting company from; mostly using the site to store his equipment. His real hope, however, and the reason he bought the property, was to operate an auto repair shop, eventually having up to 3-4 cars for sale on the front lot.
- 3 The hardship is in the limited options the location of the property offers, given the zoning restrictions, and the heavy traffic and limited parking on Buffalo Road. The Appellant added that his proposal would not negatively affect the neighborhood, but would instead provide a benefit to the community in an area of the City that needs economic relief. He provided several letters in support of his proposal from other neighborhood residents.
- 4 The three neighbors that border the Appellant's property (one on each side and the other to the rear) all support the proposal. The Appellant has agreed to screen the property lines; this includes erecting a fence facing his neighbors to the west and rear.

Conclusions

1. The Appellant owns the property on Buffalo Road that was formerly a gas station, among other commercial businesses. He now wants to operate an auto repair shop, and eventually a small (3-4 cars) sales lot.
2. According to Section 204.14 of the Erie City Zoning Ordinance, auto repair shops are not a permitted use in an RLB district.
3. The hardship is in the limited potential use of the property since the area was re-zoned several years ago from a C-1 to an RLB district. The Appellant's neighbors support the proposal, and believe that the business will benefit the area.

Decision

Condition:

The Board proposed and unanimously approved a condition that if the variance is approved, the Appellant will erect a fence along the property lines to the west and rear, where the neighbors are residential properties.

With the condition attached, and with one abstention, the Board unanimously approved the use variance. Board member Edward Dawson said that he was satisfied that the Appellant has demonstrated the hardship, and that he thinks the proposal will improve the neighborhood. Members Selena King and Jaqueline Spry both noted that the Appellant is not responsible for the situation, where the location limits the uses for the property; Ms. Spry adding that the proposed auto repair shop was permitted under the former zoning designation. Along with member Jeffrey Johnson, all four voted to approve the variance request.

It is So Ordered.

Appeal No. 12,191 by Hussain Al-Thabhwai (Index No.: 2106-125) concerning property located at 1240 Buffalo Road in an RLB/R-2 district. The appellant is seeking a use variance for an Auto Repair Shop with minor sales (up to four vehicles). Per Section 204.14 of the Erie City Zoning Ordinance, auto repair is not a permitted use in an RLB district. Per Section 204.12, auto repair is not a permitted use in an R-2 district.

Findings of Fact

1. Representing the Appellant at the hearing was Ms. Monica Ray from Coldwell Banker real estate agency. Ms. Ray had included a proposed site plan with the variance application, and an old zoning certificate from 1983 that allowed the site to be used as a day care center. She told the Board that the former day care facility caught fire several years ago, and the property has been vacant since.
2. The Appellant has run an auto repair shop/state inspection garage since 2006. However, he only rents the current location of his business, and is looking to purchase some land in order to build a new garage himself. There is no parking at the present location (on Brown Ave.), and there is a need for the Appellant's service in the proposed new location. The Appellant added that he does not know if he can find another suitable site for the type of garage he wishes to run.
3. Ms. Ray also told the Board that there is a need for the Appellant's auto repair and inspection shop in the area. She said that there are other similar businesses in the mixed

use area, businesses that are near residential structures; but, there is no facility like the Appellant's business to service the local residents.

Conclusion

1. The Appellant presently operates an auto repair/state inspection garage. He rents the location where his business is located; he now wants to purchase the subject property in order to build a new shop, with the hope of also having a small sales lot on the site.
2. According to Section 204.14 of the Erie City Zoning Ordinance, auto repair shops are not a permitted use in an RLB district; and as per Section 204.12 of the Code, auto repair shop are also not a permitted use in an R-2 district.
3. The Appellant indicated that there is a need for the service he offers in the area; and that there are other businesses that are near residential areas near the site.

Decision

By a two to two vote, with one abstention, the Board denied the Appellant's variance request. Board members Selena King and Jeffrey Johnson both voted to approve the request, citing the need for the business in the area, together with the fact that the Appellant's proposal will still need to pass all building codes. Members Jaqueline Spry and Mike Hornyak both cited that although there may be a need for the business in the area, the Appellant did not demonstrate any hardship that would enable them to approve the variance.

It is So Ordered.

Appeal No. 12,192 by J. Philip and Eileen McCormick (Index No.: 5322-208) concerning property located at the southeast corner of Hilltop and West Arlington Road in an R-1 district. The appellant is seeking a use variance in order to place a warehouse on a residential lot. Per Section 204.10 of the Erie City Zoning Ordinance, warehouses are not a permitted use in an R-1 district.

Findings of Fact

1. The Appellants were represented at the hearing by their attorney, Bryan Baumann, who provided the Board with a handout containing photographs of the Appellant's property, documents pertaining to the property, and a site plan showing the proposed new addition. He also provided a set of affidavits from neighboring property owners expressing support of the Appellant's proposal.

2. Attorney Baumann told the Board that the property itself has an interesting history. Its previous owners erected a tennis court next to the house in 1980. The tennis court – later converted into a basketball court – has stood on the same site since its construction; however the previous owners sub-divided the property after the court was built.
3. The new owners (the Appellants) made improvements to the tennis/basketball court since purchasing the property. They now want to build a large, shed-type structure for storage of sports equipment, lawn furniture, etc..... Attorney Baumann said that the proposed structure will make the property more aesthetically appealing.
4. Attorney Baumann also told the Board that the proposal meets all of the criteria for a hardship under the City Ordinance. He pointed out the continued use of the property as a recreational court, the fact that the contour of the land makes the construction of any other structures unlikely, and that the structure will improve the character of the neighborhood. He also pointed out that had the previous owner not sub-divided the land, the current owners would not require a variance.

Conclusions

1. The Appellants propose building a shed-type structure for storage, next to a basketball court that is adjacent to their house.
2. According to Section 204.10 of the Erie City Zoning Ordinance, warehouses are not a permitted use in an R-1 district.
3. The Appellants demonstrated the hardships as defined in Section 508(9) of the Code; including the unique contour of the land, the fact that it has been used as a recreational court uninterrupted since 1980, and that the construction of the structure will improve the character of the neighborhood.

Decision

The Board unanimously voted to approve the variance request. Board member Edward Dawson said that the Appellants presented a well drafted plan, and clearly demonstrated the hardships under the Code. Board members Selena King, Mike Hornyak, Jeffrey Johnson and Jaqueline Spry agreed, and all voted to approve the variance.