

BOARD OF ZONING APPEALS

January 16, 2014

The Board of Zoning Appeals met in Courtroom No. 1 for their regularly scheduled meeting. Mr. Behrens, the Chairperson, called the meeting to order at 7:30 p.m. and asked the Secretary to call the roll. Members in attendance were Ms. Condon, Mr. Bartholomew, Mr. Callender and Mr. Horacek. Also in attendance were the Law Director, James Lyons; the City Planner, Russell Schaedlich; the Assistant City Manager, Doug Lewis and the Secretary, Tina B. Pomfrey.

MINUTES: The minutes of November 21, 2013 were approved as submitted.

ORGANIZATION OF OFFICERS:

Mr. Horacek moved to nominate Mr. Behrens as Chairman of the Board of Zoning Appeals. Ms. Condon seconded the motion. There being no further nominations, Chairman Pro Tem asked for a vote. Ms. Condon, Mr. Bartholomew, Mr. Callender, Mr. Horacek and Mr. Behrens "yes". Motion carried, 5-0. Mr. Bartholomew moved to nominate Mr. Horacek as Vice-Chairman of the Board of Zoning Appeals. Ms. Condon seconded the motion. There were no further nominations. On roll call, Mr. Bartholomew, Mr. Callender, Mr. Horacek, Ms. Condon and Mr. Behrens answered "yes". Motion carried 5-0.

NEW BUSINESS

REFUSAL NO. 2246

APPLICANT: Jim Di Franco of American Decal & Sign on behalf of Spots Carpet Cleaning & Automotive Detailing

DISTRICT: B-2 General Business District

LOCATION: 460 Richmond Street

VARIANCE: Section 1341.18(d)

An application has been submitted by Jim Di Franco on behalf of Spots, 460 Richmond Street, requesting a variance to Section 1341.18 (d) of the Painesville Codified Ordinances. The applicant wishes to install a wall mounted EMC (Electric Message Center). Section 1341.18 (d) of the Sign Code limits the use of EMC signs to ground signs. A variance to allow an EMC as a wall sign is being requested.

Mr. DiFranco, American Decal and Sign, was present, representing Mr. Ed Winter, the owner of Spots Carpet Cleaning. Mr. Winter planned on attending the meeting tonight, however, he could not be present due to illness. Mr. DiFranco commented that Mr. Winter was hoping that the variance request would be granted as placement of a sign in the grassy section at the front of the building, which is close to the intersection, may create more of distraction than on the building. The business is growing, but the owner is trying to get more exposure to stay at the location and get his message out.

Mr. Behrens asked for comments from the City. Mr. Schaedlich said upon reviewing this request, there is concern that a sign on the building will divert driver's eyes even further off of the roadway. Mr. Schaedlich indicated that the original intent of the EMC sign ordinance is to have the signs off the right-of-way on the property in a ground sign format, something that is more even to eye level and the roadway so that drivers will not have to raise their eyes to the front of a building. There is a portion of the property on the South end toward the Richmond Street side that could accommodate a sign.

Mr. Behrens explained the legislation regarding EMC signs.

Ms. Condon asked that if they installed an EMC sign on the ground where the grass is located, would a variance be required. Mr. Schaedlich stated that it could be placed up to the right-of-way sight lines. It could be just off the sidewalk. It is a small section but it could work.

The Chairman asked for a motion. Mr. Horacek moved to approve the variance as requested. Mr. Callender seconded the motion. On roll call Mr. Horacek, Ms. Condon, Mr. Bartholomew, Mr. Callender and Mr. Behrens answered "no". Motion failed, 5-0.

Discussion ensued regarding other placement options for signage. Mr. Lewis indicated that the City is willing to work with Mr. DiFranco regarding alternative locations for signage. He suggested that he schedule a time with the Zoning Administrator to discuss those options.

REFUSAL NO. 2247

APPLICANT: Jodi Froelicher

DISTRICT: R-1, Single Family Residential

LOCATION: 205 Grand River Avenue

VARIANCE: Section 1127.06 (a) (1) & (2)

An application has been submitted by Jodi Froelicher requesting a variance to Section 1127.06 (a) (1) & (2) of the Painesville Codified Ordinances. The applicant is requesting the Board allow her to keep an existing 20' X 20' accessory building on the property at 205 Grand River Avenue after the fire-damaged

main structure and use is removed. Section 1127.06 (a) (1) & (2) permits accessory uses and structures customarily incidental to a permitted use in the R-1 District. A variance to allow the existing accessory structure to remain is being requested.

Mrs. Jodi Froelicher, 1845 West Jackson Street, was present for the meeting. Mrs. Froelicher stated that this house on Grand River Avenue was her parent's home and it was not damaged in the flood of 2006. The house however, was set on fire in June 2013 and when her contractor tried to acquire permits to repair the house, FEMA became involved and then the house sat vacant, becoming an issue. The garage that is on the property has a lawn mower in it. Mrs. Froelicher indicated that her husband is disabled and therefore she must maintain the yard herself. She received a notice from the City that the grass was too high and was subsequently charged a \$50 fee by the City to have the lawn mowed. Since she has a mower, she does not believe that it is practical to hire someone out to mow when she can do the job herself. Additionally, it costs money each time to have someone do it, money that she does not have. She commented that she has not had problems with anyone, particularly the homeless, breaking into the garage for shelter. She stated that if someone really wanted to find shelter, there are many other options on the street for them to choose from. Also, the neighbors on the street are very observant and they watch the house for her when she is not present. Mrs. Froelicher stated that is her parent's land, where she grew up, and it holds a lot of memories for her.

Mr. Behrens asked her long term plan for the property. Mrs. Froelicher replied that she does not know now; initially she wanted to fix the house but her contractor could not as FEMA would not allow it to move forward.

Mr. Schaedlich explained that after the 2006 flood, flood levels changed and FEMA upgraded their regulations, requiring floors to be raised and basements to be filled in so that people could obtain relief from future flooding. Mr. Lewis stated that a property that sustains damage up to 50% of the property value can be rebuilt. Anything that exceeds 50% damage must meet FEMA regulations.

Mrs. Froelicher explained that the house was built in 1917 and predates all building codes. When repairs were started, it was discovered that nothing was built to code and consequently, all work had to start from scratch, not to mention that they would lose the entire basement. It was determined to be more cost effective to demolish the house and is currently planned to be demolished. Mrs. Froelicher stated that her contractor wants to know if the garage will stay or if he must take it down. She said she does not really have a long term plan for the property, but it does hold sentimental value as it was her parents. She stated that eventually she will probably sell it, but for now she needs some help maintaining it.

Mr. Behrens asked if there were not kids on the street that could possibly mow it for her. She replied that there really aren't any kids on the street as most are long time residents that have been there since she was a child growing up on the street. She indicated that no one wants to insure the property and the homeowner's policy was dropped by the insurance company in November.

Discussion ensued regarding the state of the other houses on the street.

The Chairman asked if there was correspondence from the neighborhood. The secretary stated that she received a call from Darrel Anderson 217 Grand River Avenue who is in favor of the variance request being granted. She stated she had also received a call from Scott Pugh, 186 Steele Avenue, who is not in favor of the variance request being granted.

Mr. Lyons stated that if there was an intention to rebuild the house on the property, a variance would not be required because the City would work with the applicant (to achieve Code compliance). However, that is not the case and, additionally, there are two other issues. Mr. Lyons stated that there is the question of whether the Board believes that the applicant has demonstrated practical difficulties to receive a variance. Another issue is legal as, in Mr. Lyons opinion, the Board, in granting this variance request, would essentially be granting a use variance, which is not permitted under the Zoning Code. If a new applicant came to the City and wanted to build an accessory structure on a residential lot, they would not be permitted to do so. They would be turned down by the Zoning Administrator and would have the right to an appeal before to the Board of Zoning Appeals. Ultimately the Board decides the legality of this, but in his opinion, this would be a use variance. Mr. Lyons asked Mr. Schaedlich if a small, movable structure, perhaps made of plastic, would be a feasible alternative. Mr. Schaedlich replied that under the Code, a small structure is still considered accessory to the main use and would not be permitted under the Zoning Code.

Mr. Lewis stated the City's concern is that there are no long term plans for the property. Mr. Schaedlich mentioned that there were security issues with break-ins in the neighborhood.

The Chairman asked for a motion. Ms. Condon moved to approve the variance as requested. Mr. Callender seconded the motion. On roll call, Ms. Condon, Mr. Bartholomew and Mr. Callender answered "no". Mr. Horacek answered "yes" and Mr. Behrens answered "no". Motion failed, 4-1.

Mr. Behrens indicated to Mrs. Froelicher that she has the right to appeal through the Lake County Court of Common Pleas.

There being no further business, the meeting was adjourned at 8:11 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary