

BOARD OF ZONING APPEALS

February 20, 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 January 16, 2014 were approved as submitted.

Mr. Behrens explained the procedures for this meeting and swore in those who planned on speaking for or against the variance requests.

NEW BUSINESS

REFUSAL NO. 2248

APPLICANT: Anthony and Angela Panzarella

DISTRICT: R-2 Multi-Family

LOCATION: 1554 Briarwood Lane

VARIANCE: Section 1131.01(c)

An application has been submitted by Anthony and Angela Panzarella, 1554 Briarwood Lane, requesting a variance to the Painesville Codified Ordinances. The applicant wishes to install an above-ground, round, 27' - swimming pool in the rear yard that would be 3 feet from the dwelling and 2.65' from the rear property line. A setback of 10' from any property line is required under section 1131.01(c) of the Zoning Code.

Mr. Anthony Panzarella, 1554 Briarwood Lane, was present for the meeting. Mr. Panzarella stated that he is asking for a variance of the property line requirements for the installation of a swimming pool in his back yard. He explained that the pool will be situated away from both of the neighbor's property lines and will be installed closest to the back property line that is adjacent to the nature preserve (within Heisley Park). Mr. Panzarella indicated that he believes this location will not bother any of the neighbors and will be greatly enjoyed by his two children.

Mr. Behrens asked if there were comments from the Board. There being none, he asked for comments from the audience or the neighborhood. The secretary stated she received a letter from Scott and Mary Snow, who reside at 1558 Briarwood Lane. They have no issue with the installation of the pool.

Mr. Lyons had nothing to add. Mr. Behrens asked for comments from the City. Mr. Schaedlich indicated that there is no record of the deck that has been installed on the property without the benefit of permits. Mr. Schaedlich recommends that the Board approve the pool with the provision that the deck permit be obtained through their contractor, applying for the contractor registration and providing all the necessary paperwork that should have been done at the time the deck was built. This should be done prior to any swimming pool permit being issued.

Mr. Callender moved to approve the variance request with the stipulation as directed by the City, that the homeowner acquire all necessary permits for the deck. Mr. Panzarella asked if he could speak. He said he would like to comply, but the deck was built years ago when the house was built and he just doesn't remember who built it. He responded to a "flyer" in the mail. Mr. Panzarella stated the deck is beautiful and very well built, however, he doesn't have any information on the builder. Mr. Panzarella indicated that he wants to resolve this issue with the City but doesn't know how he can comply.. Mr. Schaedlich indicated that this leaves the City in a predicament as well because no inspections were ever done on the deck, and although the deck may be beautiful and appear very solidly built, there is no way to know that as no inspections were ever done by the City building inspectors. It places the City at risk for law suits. Mr. Panzarella asked if there was a legal document that he could sign absolving the City of any wrong doing. Mr. Lyons replied that Mr. Panzarella can sign off on holding the City responsible, however, a third party could file suit against the City should injury result from the deck. Mr. Lyons asked if another contractor could pull the permit so that it can be inspected by the City. Mr. Schaedlich indicated that he could not speak for the Building Official and would have to defer to him to answer that question. Mr. Lyons indicated that the Board doesn't have to make the granting of the variance contingent on the acquiring the deck permit, but the Board has the right to link it, if they so desire. The City can pursue the deck issue outside of this venue. As it stands, penalties and double fees will be charged.

Mr. Schaedlich asked Mr. Panzarella if he has perhaps a cancelled check to obtain information from regarding the contractor. Mr. Panzarella stated that he paid cash, and probably received a receipt from the contractor, but he doesn't recall where it might be. He stated that he looked for it. Mr. Schaedlich commented that he will speak with the Building Official about the situation.

Mr. Bartholomew asked Mr. Panzarella if he spoke with his homeowner's association about the contractor and asked if the HOA gave permission to the contractor to pass out of the flyers in

the neighborhood. Perhaps the HOA has record of the contractor. Mr. Panzarella replied that he received the flyer through the mail.

Mr. Horacek asked Mr. Panzarella if he received permission from the HOA for the construction of the deck. Mr. Panzarella said he didn't know about needing permission to build it. Mr. Schaedlich then asked how Mr. Panzarella acquired the knowledge regarding installation of the pool. Mr. Panzarella replied that the neighbor told him he needed permits and directed him to the City website for information. Once he called the City inquiring about the pool, they called him back asking about the deck and no permits. Mr. Panzarella stated that he wrongly assumed that the contractor pulled all proper permits for the deck. He commented that he is willing to make it right, have it inspected. Mr. Schaedlich commented that the City would do the inspections (once a permit is issued). Mr. Lyons asked why he couldn't act as his own contractor and draw up plans for the City. He stated that he could talk to the Building Official and submit a design to show what is there. The secretary stated that the language in the City Code is specific regarding contractors; if someone is working as a contractor in the City of Painesville, he needs to be registered and bonded. The secretary stated that often it is difficult to get a contractor to do this "after the fact".

Discussion ensued regarding conditions of the variance request. Since no one seconded the first motion made by Mr. Callender, the motion died. Mr. Horacek moved to approve Refusal 2248 as requested. Ms. Condon seconded the motion. On roll call Ms. Condon and Mr. Bartholomew answered yes. Mr. Callender answered no. Mr. Horacek answered yes. Mr. Behrens answered no. Motion carried, 3-2.

Mr. Schaedlich stated that he would be in contact with Mr. Panzarella regarding the deck.

There being no further business, the meeting was adjourned at 8:21 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary