

BOARD OF ZONING APPEALS

May 21, 2015

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

The Assistant Law Director, Mr. Jim Lyons, explained that the Secretary informed him that the Board has not yet elected a Vice Chairman to preside over the meeting in the Chairman's absence. That being the case, a temporary Chairman must be elected for the purpose of this meeting and until the return of the Chairman. Mr. Lyons asked for a motion of nomination for temporary Chairman. Mr. Bartholomew moved, seconded by Ms. Miller, to elect Mr. Callender as temporary Chairman. On roll call, Ms. Miller, Mr. Callender and Mr. Bartholomew answered "yes". Motion carried, 3-0.

MINUTES: Mr. Bartholomew stated that the minutes of February 19, 2015 show that he was in attendance for the meeting when he was not. The Secretary stated that she would make the correction to the minutes. Ms. Miller moved, seconded by Mr. Bartholomew, to accept the minutes of February 19, 2015 with the changes. Ms. Miller, Mr. Bartholomew and Chairman Callender answered "yes". Motion carried, 3-0.

Chairman Callender explained the procedures for the meeting and swore-in those who planned on speaking for or against the variance requests. He also mentioned that although the Board of Zoning Appeals requires only three members present to have a quorum, the vote must be unanimous for approval. Chairman Callender informed the applicants they could table their requests if they would like their request to be presented before a complete Board.

The Chairman asked the Secretary to please read the notice:

NEW BUSINESS

REFUSAL NO. 2261

APPLICANT: Hallmark Excavating, Inc.
DISTRICT: R-1 Single Family Residential
LOCATION: Community Lane Extension
 15C-024-0-00-055-0
VARIANCE: Section 1129.01

An application has been submitted by Todd Harrison of Hallmark Excavating, 482 Blackbrook Road, Painesville Township, requesting a variance to Section 1129.01 of the Painesville Codified Ordinances. The applicant is requesting a variance to allow lots 60 ft. in width within the R-1 district in lieu of the required 75 ft. The existing portion of Community Lane was developed with 60 ft. lots per a variance approved through Refusal 1956.

The Secretary stated that the applicant, Mr. Todd Harrison, of Hallmark Excavating, Inc., requested that this issue remain on the table until the next regularly scheduled meeting. The matter remained on the table.

REFUSAL NO. 2262

APPLICANT: Theresa Hechler
DISTRICT: R-1 Single Family
LOCATION: 175 Wood Street
VARIANCE: 1137.03 (b) (2)

An application has been submitted by Theresa Hechler, 3381 Tice Creek Way, Sacramento, CA, requesting a variance to Section 1137.03 (b) (2) of the Painesville Codified Ordinances. Section 1137.03 (b) (2) requires a minimum of one enclosed parking space for every single family dwelling unit. The property at 175 Wood Street does not have a garage.

The Secretary indicated that this matter is also on the table. Ms. White stated that the applicant asked for the matter to be withdrawn. She stated that the Board must first remove the matter from the table and then vote to dismiss the matter.

Mr. Lyons indicated that if this variance request is withdrawn, the applicant could refile (for the same variance request) in one year since the merits of this matter would never have been ruled on. The City Planner stated that it is not likely as the property owner has listed the property for sale.

Ms. Miller moved, seconded by Mr. Bartholomew, to remove the matter from the table and accept the withdrawal of the matter. On roll call, Ms. Miller, Mr. Bartholomew, and Chairman Callender answered "yes". Motion carried, 3-0.

REFUSAL NO. 2266

APPLICANT: Rich Kole of R.M. Kole & Associates Corp.

OWNER: AT&T

DISTRICT: R-1 Single Family

LOCATION: 162 Chestnut Street

VARIANCE: 1136.05

An application has been submitted by Rich Kole of R.M. Kole & Associates Corp., Parma, Ohio, requesting a variance to Section 1136.05 of the Painesville Codified Ordinances. Section 1136.05 addresses location and screening of utility structures within the front setback.

Mr. Rich Kole of R.M. Kole & Associates, 5316 Ridge Road, Parma, Ohio, was present for the meeting, representing AT&T. Mr. Kole explained that he was hired by AT&T to design a new pad to house a utility cabinet. He explained that an easement originally was granted by the City in 1978. In 2007, The easement language was changed to accommodate an additional cabinet, and a new easement was granted. The easement language has been changed for a third time to house another cabinet, only this time, a new City ordinance has been enacted prohibiting placement of a utility cabinet within 30 feet of the City right-of-way. Although the location of the third cabinet is planned as far from the right-of-way as possible, the installation requires a variance to be granted.

Chairman Callender asked if anyone in the audience would like to speak on behalf of the variance request. Mr. Michael Williams, 13630 Lorain Avenue, Cleveland, representing AT&T, indicated the variance request is for a U-Verse cabinet. He stated that if there is particular of screening that the City would like installed, AT & T would be more than willing to comply. The second cabinet is also a U-Verse cabinet that is also full so there is need for a third cabinet.

Chairman Callender asked the secretary if there was correspondence from the neighborhood. The Secretary replied no. Mr. Callender asked for comments from the City.

Mr. Lyons asked if the cabinet is going to be placed at the rear of the 15 ft. x 37 ft. easement. Mr. Kole replied no, it will be more toward the front of the easement. In 1978, AT&T started installation from the rear of the easement and moved forward each time. Mr. Lyons asked how far this new cabinet will be located from the road right-of-way. Mr. Kole replied 14 ½ feet and the pad is 12 ½ feet. He added that the second cabinet is approximately. 24 feet and the third is 30 feet (from the right-of-way). Mr. Lyons asked if other communities require screening of these cabinets and the typical screening material used. Mr. Kole answered that Arborvitae is often used; something that stays green year-round. Mr. Williams said he would be willing to screen all three cabinets to satisfy the City. Ms. White stated that she provided the Board with the memorandum from the Leanne Exum, the City Engineer. Ms. White explained that the City Engineer received the original request from AT&T and informed them that a new ordinance was adopted in 2012 that changed the setback requirements. Ms. Exum stated in her memorandum that screening is a great compromise and, through conversation with AT&T, understands that locating the equipment in an underground vault creates problems with water and equipment failure. Ms. White stated her initial recommendation was to locate the new cabinet underground; however, her recommendation now is to add fencing and landscape screening to the north and east side of the cabinet as required by the Codified Ordinance. Ms. White agreed with Mr. Lyons, that screening all three cabinets would be most beneficial to the residents in the area and recommended approval of the variance request with the screening stipulations attached.

Ms. Miller asked about the power pedestal that is attached to the utility cabinets. Mr. Kole replied it is a meter that is required by the electric companies. Mr. Bartholomew asked if this is an isolated event or can the City expect more installments of these cabinets. He wondered if, in the past, the cabinets were located underground. Mr. Kole replied that 98% of AT&T's cabinets are located above-ground. He indicated that there are very few underground vaults that house this technology. Mr. Williams added that as the cabinets fill up, AT&T adds new cabinets. At the time the second cabinet was installed, it was the largest size that was made. Today's technology has evolved to a "double-imprint cabinet" to house more equipment (in less cabinets). Mr. Bartholomew asked Mr. Williams if AT&T will need another cabinet in this location. Mr. Williams replied no; the installation being requested will cover the whole area.

Mr. Callender asked if there is any room in the back part of the property to locate this cabinet. Mr. Kole replied yes, but AT& T would have to agree to pay the owner more money to acquire a new easement, and the owner would have to agree to expand the easement. New documents would then need to be drawn up and paid for, agreeing to a new arrangement. He indicated anything is possible with enough money.

Mr. Lewis added that the location of the easement currently has high shrubs that buffer the house next to the easement. At the back of the property there are large trees that would have to be taken down to accommodate a new easement. The City is of the opinion that the shrubs and also an additional fence with a locking gate might be a good alternative to keep people from damaging the equipment. Mr. Williams indicated that the cabinets themselves have locks.

Discussion ensued regarding fencing. Mr. Bartholomew stated that if a fence is only for screening, landscaping in his opinion, is preferable to fencing.

Mr. Callender stated he was vehemently opposed to the utility cabinets being installed on Mentor Avenue and believes that the continued installation of the cabinets sets precedent. He added that he believes those installed on Mentor Avenue were installed illegally and the Board was coerced into granting the variances. Mr. Callender said in this case, this area is not pristine, so the issue is not quite the same, however, generally, he takes exception to granting this type of variance request.

Mr. Lyons stated, for the record, the City approved the utility structure at the YMCA. The one near Lake Erie College was originally approved by the City. After plans were made for installation, the Administration changed the rules and determined that these utility installations were "structures" under the Zoning Code. While that process was going on and while legislation was being drawn up, the applicant, because of scheduling, installed the structures. The City told the applicant specifically that the City reserves the right to regulate the structures but the Board did not tell them remove the structures. Mr. Lyons stated that the applicant could have challenged it in court and he is of the opinion, since the City gave them permission, that the City would have a hard time in court. Mr. Lyons stated that he does not think there was any coercion involved, but his advice might not have been amenable to the Board. Mr. Lyons stated that previous circumstances in no way control this circumstance and does not set precedent in this situation.

More discussion ensued. Mr. Callender asked if there is a way to grant this request without setting precedent. Mr. Lyons stated the Board could make findings of fact part of the record for approval. They would not be conditions of the variance for approval. If the Board denies the request, specific factual findings would have to be made for denial. More discussion ensued. Mr. Lyons stated the positive about the request is that, if the Board chooses to grant the variance, they could impose conditions on the granting, such as landscape screening and fencing, something that AT&T seem willing to do. Discussion regarding fencing ensued.

Mr. Bartholomew moved, seconded by Ms. Miller, to grant the variance request with the conditions that fencing and landscaping be installed and maintained by AT&T. The landscaping should be installed to obscure 80% of the fence and the style of the fence should be left to the discretion of the Administration. On Roll Call, Mr. Bartholomew, Ms. Miller answered "yes". Mr. Callender answered "no". Motion denied, 2-1.

Mr. Lyons indicated to the applicant that by the City of Painesville's rules, the motion failed and the variance has been denied. The applicant has 30 days from today to file an appeal with the Lake County Court of Common Pleas.

Mr. Lyons stated that if AT&T does file an appeal, the Board will have to come up with reasons why the variance was not granted. He informed the Board that a record will have to be created and agreed on by all the members. The only individuals allowed to vote, however, would be the three members present for this meeting. If the other two members disagree, then the Board will not nothing to send to the Court and then this judgement will be overturned by the Court.

Mr. Callender stated that the City created a resolution for 30 feet and it should be enforced. More discussion ensued. Mr. Bartholomew asked Mr. Lewis if the City ordinances address the installation of the utilities in the right-of-way. Mr. Lewis replied yes, however, problems arise if installation occurs before City approval. Mr. Lewis also mentioned that the Board must understand that the utility companies have the right to install cabinets in the right-of-way and they are choosing not to install them there because of the size of the boxes. The City, through legislation, gained some control of the aesthetics when cabinets are placed in the right-of-way. Mr. Bartholomew stated that maybe the best thing the Board can do is grant variances with stipulations, otherwise they can locate them in the right-of-way. Ms. White stated if they are not in the right-of-way and are located in an easement, our ordinance allows us to screen them to make them less unattractive.

ADMINISTRATIVE APPEAL No. 01-2015

APPLICANT/OWNER: Andrew & Suzanne Corsi

DISTRICT: R-2 Multi-Family

LOCATION: 511 Beechwood Lane

In accordance with the Zoning Code of the City of Painesville, Ohio, an appeal has been submitted by Andrew and Suzanne Corsi regarding the installation of a swimming pool within the rear and side yard setback. The Board of Zoning Appeals will meet to consider the appeal of Refusal 2256 that was denied on September 18, 2014.

Ms. White stated that the applicant asked that the matter be tabled until the Special BZA Meeting that will be held next Thursday, May 28, 2015 at 6:30 pm in Courtroom #1. At that time, this Board will hear this Administrative Appeal and also Refusal 2261, Hallmark Excavating.

Ms. Miller moved, seconded by Mr. Bartholomew, to table the Administrative Appeal No. 01-2015. Ms. Miller, Mr. Bartholomew and Mr. Callender answered "yes".

There being no further business, the meeting was adjourned.

James Callender, Chairman

Tina B. Pomfrey, Secretary