

BOARD OF ZONING APPEALS
SPECIAL MEETING
May 28, 2015

The Board of Zoning Appeals met in Courtroom No. 1 for a Special Meeting. Chairman Behrens called the meeting to order at 6:30 p.m. and asked the Secretary to call the Roll. Members in attendance were Ms. Miller, Ms. Condon, Mr. Bartholomew, and Mr. Callender. Also in attendance were the Assistant Law Director, James Lyons; the City Planner, Lynn White; the Assistant City Manager, Doug Lewis and the Secretary, Tina B. Pomfrey.

MINUTES: The minutes of May 21, 2015 were not available.

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

The Chairman asked the Secretary to please read the notice:

TABLED 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 variance request remained on the table as the applicant did not appear for the meeting.

The Chairman asked the Secretary to please read the next notice:

ADMINISTRATIVE APPEAL 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.

Mr. Behrens requested that Mr. Lyons review the procedure for considering an Administrative Appeal. Mr. Lyons explained that under Section 1141.04 (d), if a variance is denied, no appeal for the same interpretation shall be considered on its merits from the Board within one year of such adverse decisions except with the concurring vote of not less than 4/5ths of the members of the Board. Mr. and Mrs. Corsi are asking the Board to hear a new variance request, which is essentially the request that was denied last year. Mr. Lyons stated that he assumes the Corsi's want this request heard early so that they can install the swimming pool in the summer, rather than wait until September. If the Board agrees to hear the it, the request needs to be formally filed and published and a full hearing would be heard on the merits of the variance request at the next regularly scheduled meeting.

Ms. Suzanne Corsi, 511 Beechwood Lane, was present for the meeting. She indicated that Mr. Lyons had correctly summarized up the reason why she is asking for the Board to consider her variance request through the Administrative Appeal. She and her husband would like to install the pool before the summer is over. She also mention that they took the pool down after last year's variance request was denied.

Chairman Behrens asked for a motion. Ms. Condon moved, seconded by Mr. Bartholomew, to approve Administrative Appeal No. 01-2015. On Roll Call, Ms. Condon, Mr. Bartholomew, Mr. Callender, Ms. Miller and Chairman Behrens answered "yes". Ms. White stated that Mrs. Corsi should stop into the office tomorrow to make application and submit any plans that she would like to Board to have for the June 18, 2015 meeting.

Mr. Bartholomew asked for a point of clarification from Mr. Lyons. He asked if the variance request needed to be substantially different from the initial variance request to be heard. Mr. Lyons replied no, it

could be the same request exactly; the Zoning Code allows it. He stated that the Board must make a decision based on the merits of the variance request. Mr. Lyons added that the applicant may be prudent to change the variance request since the Board did have some issues with the variance request, however it is not required by the applicant. The Corsi's may have additional facts and may be able to present it more clearly the second time around.

NEW BUSINESS

ADMINISTRATIVE APPEAL 02-2015

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

OWNER: AT&T

DISTRICT: R-1 Single Family

LOCATION: 162 Chestnut Street

In accordance with the Zoning Code of the City of Painesville, Ohio, an appeal has been submitted by Rich Kole of R.M. Kole & Associates Corp., Parma, Ohio, regarding the installation of an AT&T utility cabinet within the front setback. The Board of Zoning Appeals will meet to consider the appeal of Refusal 2266 that was denied on May 21, 2015.

Mr. Lyons explained that AT&T contacted the City to ask what their options were in this situation. Mr. Lyons informed an AT&T representative that the Board could be asked to reconsider the merits of what happened at the last meeting, under the Robert's Rules of Order, if the member on the prevailing side would ask the Board to reconsider it by way of a motion. That would have to be Mr. Callender to allow the reconsideration, however it can only happen on the same day unless it is a multi-day session, so this does not apply under Robert's Rule of Order. However, Section 1141.04 (d) of the Zoning Code can advance this appeal. AT&T has a right to ask for an appeal on the merits of the variance request prior to the one year period. He is assuming they are asking for this reconsideration because of only three members being present for the last meeting and being turned down because it was not a unanimous decision. He is assuming that AT&T would like a full Board in which to present their case.

Chairman Behrens asked if a representative from AT&T was present for the meeting. Mr. Mike Williams, 13630 Lorain Avenue, Cleveland, representing AT & T asked for reconsideration of the variance request for the location on Chestnut Street

Chairman Behrens asked for a motion. Mr. Bartholomew moved, seconded by Ms. Condon, to reconsider Administrative Appeal No. 01-2015. On Roll Call, Mr. Bartholomew answered "yes", Mr. Callender answered "no", Ms. Miller answered "yes", Ms. Condon answered "no". Chairman Behrens answered "yes". Motion failed, 3-2.

Mr. Lyons indicated that since it was not a 4/5 th's vote, the Board denied to hear the appeal. Mr. Lyons stated that under Robert's Rules of Order, Mr. Callender or Ms. Condon may ask, because they were on the prevailing side, for a reconsideration. Mr. Lyons, for the benefit of the Board, reviewed what occurred at the last meeting. He explained that the applicant was requesting an installation of a utility cabinet in an existing easement that already contained two cabinets. Since 1978, when the first easement was recorded, the City ordinance changed, requiring greater setback requirements for utility structures. AT&T has the right to install this cabinet in the right of way, right against the street, but they believe the best placement is in the easement. At the last meeting, the representatives from AT&T were amenable to fencing and screening requirements imposed by the City. Mr. Lyons explained that Mr. Callender still objects to the gas utility structures that were installed in front of the YMCA and near Lake Erie College and thinks that they were wrongly granted by the Board. Mr. Lyons stated that Mr. Callender does not want this vote to act as a precedent for future utilities being granted.

Chairman Behrens called for a motion. Ms. Condon moved, seconded by Ms. Miller, to allow a second vote to reconsider the Administrative Appeal No. 02-15. On Roll Call, Ms. Miller, Mr. Condon, Mr. Bartholomew and Chairman Behrens answered "yes" Motion carried, 5-0.

Mr. Callender stated that he wanted to clarify his comments from the last meeting. He stated that the gas utility structures were installed illegally. This Board was pressured to approve the requests because the City might get sued if the Board didn't approve them. He indicated that he strongly objected to the approval at the time and believes the Board should have stood up to the utility company because the structures were installed after the Board told them they could not. Mr. Lyons stated that is not true; the structure at the YMCA went in with the permission of the City Engineer as the City was not regulating them at that time. Mr. Callender then stated the one closer to Lake Erie College was installed even after regulations were created. Mr. Callender stated that although the current request is not along a main thoroughfare, it is still precedent setting even though they are being regulated. Mr. Lyons said this all can be debated at the next meeting should the Board grant the Administrative Appeal.

Ms. Condon moved, seconded by Ms. Miller, to reconsider Administrative Appeal No. 02-20615. On Roll Call, Ms. Miller, Ms. Condon, Mr. Bartholomew, Ms. Callender and Chairman Behrens answered "yes".

Motion carried, 5-0.

OTHER BUSINESS:

Chairman Behrens asked for a motion to nominate a permanent Vice Chairman to the Board of Zoning Appeals. Mr. Bartholomew, seconded by Ms. Condon moved to nominate Mr. Callender as permanent Vice Chairman. On Roll Call, Ms. Condon, Mr. Bartholomew and Ms. Miller answered "yes". Mr. Callender answered "no". Chairman Behrens answered "yes". Motion carried, 4-1.

There being no further business, the meeting was adjourned.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary