

## BOARD OF ZONING APPEALS

June 20, 2013

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 Mr. Bartholomew, Mr. Horacek and Mr. Callender and Ms. Condon. Also in attendance were the Law Director, James Lyons; the City Planner, Russell Schaedlich; the City Engineer, Richard Lesiecki; the Assistant City Manager, Doug Lewis and the Secretary, Tina B. Pomfrey.

**MINUTES:** The minutes of April 18, 2013 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

#### ADMINISTRATIVE APPEAL

**APPLICANT/OWNER:** Brian & Melissa Haller

**DISTRICT:** R-2 Multi-Family Residential

**LOCATION:** 1837 Spruce Lane

In accordance with the Zoning Code of the City of Painesville, Ohio, an appeal has been submitted by Mr. & Mrs. Brian Haller appealing the decision of the City Engineer regarding conditions of installation of an accessory structure within a storm water easement. The Board of Appeals will meet to consider the appeal of the notice dated June 6, 2013.

Mr. Brian Haller, 1837 Spruce Lane, was present for the meeting. Mr. Haller explained that he came to present evidence to convince the Board to reverse the decision of the City Engineer to not allow him to use the space within the storm sewer easement for placement of a 64 sq. ft. shed on his property. He stated the shed was built by a friend, an instructor at Auburn Career Center, and his students, as part of a school project. His friend said that no permits were required for accessory structures under 200 sq. ft. After gravel was laid and the trusses (of the roof) were installed, the City Planner, Russ Schaedlich, visited the property and informed him that, although a Building Permit wasn't need, a Zoning Permit was required. The City Engineer and Mr. Schaedlich met him at the property and reviewed the plot plan. It was discovered that the placement of the shed was within the 20 ft. storm sewer easement, a fact that he was not aware of until then. He commented that he tried to place the shed in the most level area of the yard. Mr. Haller stated that Mr. Lesiecki and Mr. Schaedlich said that it was a customary practice for the developer to split a 20 ft. storm easement between two neighboring properties. In this case, however, Mr. Haller's property contains the entire sewer easement and limits where he can place the shed in his yard. Mr. Haller explained photos of the location, A thorough E, that he presented to the Board. Mr. Haller stated that where he would like to place the shed puts it 20 feet off of his fence, almost in the center of his yard. He also indicated that he obtained a permit for his fence that was installed last year. Mr. Haller commented that the fence was installed within the storm sewer easement on both sides of his property. He stated that the fence is more permanent, in his opinion, than the shed because the posts are cemented into the ground. Mr. Haller explained the photos he presented to the Board. He also showed that there is a swale on the left side of the yard, and said the placement of the shed against the swale will affect the drainage. Mr. Haller also stated that on the City website, a Zoning Permit is not mentioned as required for installation of a shed. Mr. Haller claims that it will cost \$1,500 to move the shed. He believes the enforcement of this policy to be arbitrary and selective and stated that he should not be held accountable to this policy. Mr. Haller stated he asked for a copy of the policy from the City Engineer and was told it is not written.

Mr. Bartholomew asked if the neighbors have 20 ft. easements. Mr. Haller stated that the neighbors to the east do not; the rest, he doesn't know. Discussion ensued with regard to moving the shed and costs and time associated with it. Mr. Haller stated that he obtained an estimate to move the shed. Since it is not a permanent structure, it was determined it could be moved in 45 minutes, using PVC pipe to move it.

Mr. Lyons asked Mr. Haller why it would cost \$1,500 to relocate the shed. Mr. Haller replied that he would have to turn the shed and move a ton and ½ of gravel. Mr. Lyons asked how Mr. Haller arrived at that number. Mr. Haller replied that is what it will cost to take down the trusses, wall and floor. Mr. Lyons reminded Mr. Haller that he just stated it could be moved easily, so why is it necessary to take it down completely; couldn't it instead be moved sideways across the yard to a different location? Mr. Lyons stated that he questions the price of the move and if the shed actually has to be taken down to move it.

Discussion ensued regarding the location of the storm sewer and selective enforcement of the City Ordinances. Mr. Lyons said if this is a zoning matter then this matter can be appealed to the Court of Common Pleas. What is being done here this evening is creating a record of what the facts are on this particular case. The Court of Common Pleas then can make a decision based on the facts that are presented at this time.

Mr. Horacek asked Mr. Haller if he was aware of the easement at the time of shed installation. Mr. Haller answered no. Mr. Horacek asked if he had a copy of the site plan. Mr. Haller replied that he received the

site plan when the City Engineer came to the property. Mr. Horacek asked if he received a copy of it with his closing packet when he purchased the property. Mr. Haller replied that he probably did.

Mr. Behrens asked for comments from audience or Board. Mr. Lyons stated that he wanted to make something clear. The reason Mr. Haller is here before the BZA is because the Painesville Code indicates that the Board has the power to hear and decide appeals when it is alleged by the appellant that there is "an error in any order, requirement, decision, grant or refusal made by the Administrator or other administrative official in the interpretation or provisions of the Zoning Code". If the Board thinks Mr. Schaedlich or Mr. Lesiecki has made an error in their decision, then the Board has the power to correct it in accordance with our Code. Mr. Lyons stated that he believes that this issue is the City's right to protect its easement, whether it is written or not. The City has consistently put forth this decision and the City Engineer will speak to this issue tonight, however, Mr. Haller has a right also to appeal this decision to the Court of Common Pleas. The Board can only decide if the City has made an error in protecting its easement.

Mr. Richard Lesiecki, of Rocky River, Ohio, Painesville City Engineer, stated that it is the City policy not to allow accessory structures within the storm sewer easements. There is also a policy for fences as well, however, the fence is of no consequence in this case. As indicated, a lot of these easements in the City are split, 10 ft on either side of the property line, with the storm sewer running down the length between the two properties. In this case, Mr. Haller's property contains the whole easement but the storm sewer runs 10 ft off the property line. Consequently, Mr. Haller was able to install his fence right to the property line without worrying about disturbing the storm sewer. Additionally, homeowners with this situation, including Mr. Haller, sign a letter from the City Engineer's office stating that the fence will be removed by the property owner should the City need to gain access to the sewer on the property. Accessory structures are not allowed within the easements at all. In this case, it was discovered that construction of a shed was started within the easement and Mr. Lesiecki and Mr. Schaedlich met with Mr. Haller on his property on May 14, 2013. At that time, Mr. Haller was shown where he could place the shed. Mr. Lesiecki stated he found no hardship in his backyard that would prevent placing a shed outside the easement. At that time the shed was only partially constructed and could have been very easily moved. Mr. Haller came into the Community Development Department the next day to submit his Zoning Permit with the intention of keeping the shed within the easement and his permit request was denied, based on the policy. Mr. Lesiecki added that the reason these structures are kept out of the easement is to allow access to the storm sewer. In the case of maintenance and/or an emergency situation, the City has to address situations quickly. Fences can come down fairly easily, however, 45 minutes to remove a shed, in the case of an emergency, is way too long.

Mr. Behrens asked why the easement policy is not written. Mr. Lesiecki stated that he has no good answer for that; this policy was not a formalized written policy when he became City Engineer and it is a policy that is addressed when the need arises. Mr. Behrens asked how the City can enforce an unwritten rule. Mr. Lesiecki stated that is enforced when a permit is requested. Mr. Haller built his shed without the benefit of a permit. Mr. Lesiecki stated if a permit is not applied for, the unwritten policy cannot be applied.

Mr. Bartholomew asked what would cause someone to come in for a Zoning Permit. Mr. Lesiecki stated many people come in for Zoning Permits. Mr. Schaedlich answered that on the City website, it states that a *Building Permit* is not required for an accessory structure under 200 sq. ft. Mr. Behrens asked how one would know anything else is needed if it says specifically a building permit isn't needed. Mr. Schaedlich replied that there is a lot of information in the Zoning Code and not everyone can find everything without guidance from the Community Development Department. Discussion ensued with regard to location of information on the website.

Mr. Lyons stated that he does not think anyone is accusing Mr. Haller of intentionally doing anything wrong; he made a mistake, he looked at the website and did not see the Zoning Permit requirements. Mr. Lyons commented that many people do not appreciate the difference between a Building Permit and a Zoning Permit, however, a Zoning Permit it is a requirement in more communities than just Painesville. Occasionally things will get missed, but the website is not comprehensive like the Code. Unless one really understands Zoning and Building Code, it is very possible to overlook information. Mr. Lyons asked Mr. Haller if he consulted with his Homeowners Association before he started to install the shed. Mr. Haller stated that he checked with the association paperwork but he said he was told that approval of the association was not a requirement.

More discussion ensued regarding the moving of Mr. Haller's shed. Mr. Anthony Cimaglio, 477 Owego Street., asked if the drain in Mr. Haller's backyard is a French Drain. The City Engineer replied no, the drain is attached to the storm sewer that runs across Mr. Haller's backyard. Mr. Cimaglio asked if a shed is placed in the easement, could it redirect water to flood the neighborhood. He also asked if the City would be held responsible if that was the case. Lesiecki answered that indeed the scenario is possible. He indicated that the easements were built in order to move water to the drains and any structure will affect water. Discussion ensued with regard to size of the easement and the placement of the shed being limited on the property. Mr. Lesiecki stated that the yard size allows for movement of the shed on the property and Mr. Haller does not lose the ability to have a shed, just not where he wants it. Mr. Lesiecki stated that there is no real hardship here. Mr. Behrens suggested the policy should be written so that it is not arbitrarily enforced. Mr. Lesiecki replied that the policy is never arbitrary; it is enforced equally for all properties.

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

Mr. Lyons instructed Mr. Haller that he may appeal this request to the Lake County Court of Common Pleas within 30 days or he may also ask for a Declaratory Judgment. Mr. Lyons suggested that he talk to legal council to make sure that his rights are protected.

#### **TABLED BUSINESS**

##### **REFUSAL NO. 2237**

**APPLICANT:** Candia A. Kish

**DISTRICT:** R-1 Single Family Residential

**LOCATION:** Newell Street

15C-024-0-00-055-0

**VARIANCE:** Section 1113.05, 1129.01

An application has been submitted by Candia A. Kish, 711 Newell St, requesting a variance to Section 1113.05 of the Painesville Codified Ordinances. Section 1113.05, Table 1, sets forth street design standards. The applicant wishes to extend the existing cul-de-sac street of Community Lane onto her property located on Newell Street. Per Table 1 Level, Low Density, the maximum permitted length of a cul-de-sac is 700 ft. The applicant is requesting an additional 122 ft. The applicant also requests a variance to Section 1129.01 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.

Ms. Candia Kish, 711 Newell Street, was present for the meeting. She was sworn in by Mr. Behrens because she arrived later in the meeting. Additionally, Mr. Todd Harrison of Hallmark Excavating, representing Mrs. Kish, was present for the meeting. Mr. Harrison stated he would like to strike the variance request for the 60 ft. frontage for the lots on Newell Street. He plans on developing those lots with the required 75 ft. frontage. He asked if he would have to come before the Board again to develop the lots. Mr. Schaedlich replied no, they will then be conforming lots and meet all requirements in the R-1, Single Family District.

Mr. Callender asked what the plans are for the wetlands that are on the parcel. Mr. Harrison answered that there are no plans to disturb the wetlands; they will be sold as part of the properties that will be developed. Mr. Schaedlich wondered if the purchasers will be informed that the wetlands are there prior to purchase. He added that he has seen other communities post signage indicated that the property is a wetland so that no attempt is made to fill them, thinking that is just poorly drained soil.

Mr. Callender asked if there is any requirement that goes with the deed stating that the land needs to be maintained as wetland. Mr. Lyons stated that he is not aware of any deed requirement; he would think that a disclosure would be made to the buyer of the property. Mr. Lyons said he has never seen a "wetland requirement" on a subdivision plat. If there is a HOA, perhaps the association could enforce it, but people are supposed to know the law. If a developer is allowed to build a subdivision that includes wetlands, the developer is going to have to comply with all of the subdivision requirements, even if there are additional state or federal requirements. Mr. Lyons added that he does not believe that the Board, as part of this variance process, should be concerned with the wetland requirements. More discussion ensued with regard to ownership and use of the wetlands. Mr. Lyons mentioned that if the current owner wanted to do a lot split of this parcel, she could do so without coming before the Board and the process would not be any different in terms of the wetlands. Mr. Schaedlich indicated that Lake County Soil and Water will review the preliminary and final plats for the subdivision. A review of the wetlands is part of their process.

Mr. Bartholomew asked if the standard lot is 75 ft., why do these lots need to be 60 ft? Mr. Harrison replied that all the lots on Community Lane were developed with 60 ft. frontage and he plans to be consistent with the frontage of the existing lots. Mr. Behrens asked if this is R-1 zoning and questioned the spot zoning (of this parcel). Mr. Lyons stated that spot zoning does not have strict legal meaning and in this case, it does not apply. Mr. Behrens asked if these properties then are nonconforming. Mr. Lyons answered no, once a property goes through plat approval then it can be used into posterity as it was approved. A new combination of land in a subdivision, however, would require conformance to the Code. The use and zoning classification does not change, nor does the nonconformity.

Mr. Christopher Stack, 680 Newell Street, complained of nothing but water, found drains near his property and doesn't know owns them. He wondered what the development would mean for his property (as far as water goes). Mr. Behrens commented that the Community Development Department would look into this. Candia Kish, 711 Newell Street, stated that Mr. Stack is speaking of the storm sewers on the street. She said she lives across the street from him and she gets flooded from those storm drains as well. Discussion ensued regarding storm water drainage.

Mr. Cimaglio asked if all the new development would be zoned R-1, Single Family? Mr. Schaedlich indicated it will be. Mr. Cimaglio asked why Heisley Park is zoned R-2. Mr. Schaedlich replied that the City annexed the property as R-2, which was the zoning of land in the City that the annexed land was attached to. The property was developed as single family, a permitted use in an R-2 Multi-Family district. The lots are just slightly smaller. Mr. Cimaglio asked if Heisley Park could become multi-family.

Mr. Schaedlich replied no, as there are other criteria that need to be met, such as lot area. Mr. Cimaglio stated that he did not understand why the lot area and frontage requirement would be greater for a single family district than for a multi-family district. Discussion ensued. Mr. Lewis stated that he could speak to Mr. Cimaglio outside this meeting if he has further questions on the subject.

Mr. Behrens asked for comments from the neighborhood. The secretary read a letter submitted by Jennifer and Tom Chipps, 402 Community Lane. She and her husband were not in favor of the variance request being granted. One of their concerns was the loss of the cul-de-sac and restoration of sidewalks.

Mr. Schaedlich stated that by the way Community Lane is laid out, the street was always intended to be extended sometime in the future, evident by the temporary cul-de-sac on that street. The right of way on Community Lane goes right up to the property line of the Kish property. There are portions of the cul-de-sac that are actually on private property. With a permanent cul-de-sac, the right of way is expanded to accommodate the cul-de-sac and lot surrounding the perimeter of the cul-de-sac and the road cannot be extended.

Mr. Lyons asked who is responsible for putting in sidewalks. Mr. Schaedlich replied the developer who extends the right-of-way will also install the sidewalks. If the developer wants those additional lots then they must remove the temporary cul-de-sac, install sidewalks and restore those sections of the lot that will be disturbed by the removal of the temporary cul-de-sac.

Mr. Horacek moved to approve the variance as requested. Mr. Bartholomew seconded the motion. On roll call, Mr. Horacek, Mr. Bartholomew, Mr. Callender and Ms. Condon answered yes. Mr. Behrens answered no. Motion carried, 4-1.

Mr. Lewis stated the Board of Zoning Appeals By-Laws that are in the packet will be reviewed at the next regularly scheduled BZA meeting.

There being no further business, the meeting was adjourned at 9:00 p.m.

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Jim Behrens, Chairperson

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Tina B. Pomfrey, Secretary