

BOARD OF ZONING APPEALS

July 17, 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 and 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 June 19, 2014 were approved as submitted.
The minutes of May 15, 2014 would be available for the vote at the next regularly scheduled meeting.

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. 2254

APPLICANT: Robert Blaney, Joe & Bob 2004 LLC

DISTRICT: R-1 Single Family

LOCATION: 52 Frederic Street

VARIANCE: Section 1137.03 (b) (2)

An application has been submitted by Robert Blaney of Joe & Bob 2004 LLC, 7321 Burrigge Avenue, Mentor, Ohio, requesting a variance to Section 1137.03 (b) (2) of the Painesville Codified Ordinances. The Applicant desires to have the requirement for a minimum of one enclosed parking space for a single family dwelling unit waived due to a lack of space on the parcel.

Mr. Robert Blaney and Mr. Joe Lucas were present for the meeting. Mr. Blaney stated that they were the owners of 52 Frederic Street and they were requesting that instead of installing a garage on the property, that they be permitted to install an 8ft. X 8 ft. shed. Mr. Blaney explained that the property dimensions are small and a garage would take up the entire backyard. Additionally, installing a garage will make it nearly impossible to access the back of the property for emergency/safety purposes or the back door for entering and leaving the property. As this is rental property, the lack of yard and the location of the house adjacent to a commercial property has made the property difficult to rent. Mr. Blaney explained that he and Mr. Lucas tried to sell it, but the property is competing with dozens of properties for sale and they have had a difficult time marketing the property. Mr. Blaney stated that they did not want to turn on the utilities.

Mr. Behrens asked why they bought the property. Mr. Blaney replied that it was rental property. Mr. Behrens asked why it is not rented. Mr. Blaney explained that he and Mr. Lucas are trying to sell it. He said they are under a blanket loan with other properties and they are forced to sell. Mr. Behrens asked why it cannot be rented in the meantime. Mr. Lucas replied that it is harder to show a house with a tenant living in the house. Mr. Lucas stated that it is difficult keeping the property "nice"; fresh paint, fresh carpet and clean, when someone is living there, especially since tenants may not value the time and money expended to make the place livable. Since Huntington Bank has "called" the loan, it is easier to keep the property value intact with no tenants. Mr. Lucas said they are tired of remodeling once tenants leave or are evicted from the property. Mr. Lucas stated that Huntington Bank will not renew the line of credit and commercial lending is no longer available, so he and Mr. Blaney have no choice but to sell the properties that are associated with this loan. He stated that they paid \$37,000 for this property and he can barely give this property away. He stated that he had someone interested in the property but after speaking to several people in the Community Development Department and learning of the garage requirement, her interest evaporated. She was the best option to sell the property in two years.

Mr. Lyons commented that Mr. Blaney and Mr. Lucas were asking that the variance request be amended to include installation of an 8' x 8' shed as opposed to a garage. Mr. Bartholomew asked if it was satisfactory to the City. Mr. Lewis commented that in the past, the BZA has approved variance requests for sheds but only in the situations where access to the backyard was impossible. When a variance had been approved, they size was shed was generally larger, about 10 x 12, and had to match the style of the house so that it blended in with the neighborhood. In the recommendation report packet that was supplied to the Board, it is noted that Mr.'s. Blaney and Lucas were told that they would need to construct a garage. Mr. Lewis stated that currently there is room available to build a garage and access the back yard. The City's position, in the past, has been that once the property is sold, a garage must be built. Mr. Horacek asked if a garage was ever on the property. Mr. Lewis replied that he did not know.

Mr. Bartholomew asked if the property owners were aware of the Zoning restrictions. Discussion ensued. Mr. Lewis stated on page 3 of the City recommendation report, it states that the Property Owners were made aware of the need for a garage. Mr. Lyons stated that it isn't clear that it was made known to the Property Owners before the purchase of the property.

Mr. Blaney asked if the utilities were being used, is that a criterion for habitation? Mr. Lewis stated that is only one factor in determining vacancy.

Mr. Lyons asked if Mr. Blaney had priced out the cost of constructing a garage. Mr. Blaney stated that it would be about \$10,000.

Mr. Lucas stated that he disputes that there is enough room in the back of the property to install a garage. He stated that if you allow 5 feet on either side for setbacks, there is only about 10 feet left in the middle. Mr. Lucas asked how one accesses the back yard as it is only a 45 ft. by 70 ft. lot.

Mr. Callender asked if the City had considered a variance to the setback requirements to make construction of the garage work. Mr. Blaney and Mr. Lucas both stated that construction of a garage is not feasible for the size of the yard and price of the house. The house has not been desirable enough for anyone to purchase at a low price; installing a garage would only increase the price of the property and make it more undesirable to the public for purchase. Mr. Blaney stated that the location of the house next to a manufacturing facility and the location of a bar at the corner of the street are already making it difficult to sell the property. Mr. Blaney stated they just want to sell the house and be done with the property. Discussion ensued. Mr. Lyons stated that all the factors dealing with location existed when the house was initially purchased. Mr. Lyons stated that it appears to him that the Owners were okay with the location when it was making money, however, the market fell and that is the factor that changed. Mr. Lyons commented that it appears the Owners do not want to comply with the Code because they will lose money. Discussion ensued. Mr.'s Blaney and Lucas stated that if a variance can be granted at 40 Frederic Street, a property with a double lot, then why would a variance request be denied to them, who have a real need for it? Discussion ensued regarding 40 Frederic Street. Mr. Behrens stated that he did not recall a variance requested for that address and asked the secretary if one had been granted for that property. The Secretary stated that she had no recollection of a variance request being granted to that property; to her recollection, only 25 Frederic Street received a variance of the garage requirement.

Mr. Bartholomew stated he is not certain what the Property Owners knew. He wondered what size shed/garage would fit on the property. He asked if the refusal could be tabled to further research the issue.

Mr. Anthony Torre, 158 Sanford Street, stated he has no objection to the request being granted but wondered if construction of garage would cover a gas or water line. Mr. Lewis replied typically it does not.

Mr. Angelo Cimaglio, 477 Owego Street, wondered if there is an ordinance requiring a wood or cement base to a shed. Mr. Lyons stated he did not think so, however, the Board could make that a stipulation of the granting of the variance.

Mr. Behrens asked if there was correspondence from the neighborhood. The Secretary replied no. The Chairperson then asked for comments from the City. Mr. Lyons asked the Property Owners if they would be willing to install a 10 ft. x 12 ft. shed with a concrete base with architecture to match the house. He said he is not recommending that but wondered if the Owners would be willing to amend their proposal in order to meet the requirement. He suggested it have a permanent base so that when the property sells, the structure remains. Mr. Blaney asked if they could build a 10 ft. x 10 ft. shed to save on costs. Mr. Lewis stated that the City would like a hard surface for the shed to rest on.

Mr. Bartholomew moved to approve, in lieu of a garage, a 10 ft. x 12 ft. shed, similar to the house in style and color, on a cement base. Mr. Callender seconded the motion. On roll call Mr. Bartholomew answered yes, Mr. Callender answered yes, Ms. Condon, Mr. Horacek and Mr. Behrens answered no. Motion failed, 3-2.

Mr. Horacek moved to approve a variance of the side yard setbacks to fit a garage on the property. Ms. Condon seconded the motion. On roll call, Mr. Callender, Ms. Condon, Mr. Horacek, Mr. Bartholomew and Mr. Behrens answered yes. Motion carried, 5-0.

Mr. Lyons explained that if the Applicants wish to appeal the decision of the Board, they have 30 days from today's date to appeal to the Lake County Court of Common Pleas. The Court will review the actions of the Board with exhibits and testimony. Arguments outlining why the City is wrong would be submitted to the Court for review. Arguments illustrating the City's point of view would also be submitted. The Common Pleas Judge then determines if the Board was arbitrary and capricious in their ruling.

Mr. Lucas asked if a pole building is allowable in the City. The Secretary replied that it is.

There being no further business, the meeting was adjourned at 8:15 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary