

BOARD OF ZONING APPEALS

July 21, 2016

The Board of Zoning Appeals convened in Courtroom No. 1 for their regularly scheduled meeting. Chairman Behrens called the meeting to order at 7:30 p.m. and asked the Secretary to call the roll. Members in attendance were Ms. Aston, Mr. Bartholomew, Mr. Callender and Chairman Behrens. Ms. Condon was absent. 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: Chairman Behrens asked for additions or corrections to the minutes of the Board of Zoning Appeals Meeting of June 16, 2016. There being none, he asked for a motion. Motion by Mr. Bartholomew, seconded by Ms. Aston, to accept the Board of Zoning Appeals Meeting Minutes of June 16, 2016, as written. Chairman Behrens asked the Secretary to call the roll. On Roll Call, Mr. Bartholomew, Ms. Aston and Chairman Behrens answered "yes". Mr. Callender abstained from the vote. Motion carried, 3-0.

Mr. Behrens explained the procedures for this meeting and swore in those who planned on speaking for or against the variance requests. Mr. Behrens also clarified that there is one member absent from the Board of Zoning Appeals, so if any of the applicants would like their request heard by a full Board they may request so as it will take three affirmative votes for a variance to be granted.

The Chairman asked the Secretary to please read the notice:

NEW BUSINESS

REFUSAL NO. 2282

APPLICANT: Jack H. Clause Jr.

DISTRICT: R-1 Single Family Residential

LOCATION: 1005 N. State Street

VARIANCE: 1127.06 (d) (1)

An application has been submitted by Jack H. Clause Jr. of 1005 N. State Street, requesting a variance to Section 1127.06(d)(1) of the Painesville Zoning Code. Section 1127.06(d) (1) limits the size of a second accessory structure to 300 sq. ft. The applicant has installed an accessory structure for parking and storage that is 720 sq. ft. A variance of 420 sq. ft. is being requested.

Mr. Jack Clause Jr., 1005 N. State Street, was present for the meeting. Mr. Behrens explained to him what the Board of Zoning Appeals had in their packets. Mr. Clause stated that he was ignorant of the zoning laws of the City when he installed the structure and apologized for his mistake.

Mr. Bartholomew asked if he was told he did not need a permit. Mr. Clause replied yes, he was told that by the person who sold him the carport that it was not a permanent structure and did not have a foundation, therefore, building permits were not required. Mr. Clause said the Zoning Administrator told him that information was incorrect.

Mr. Bartholomew asked how long it took to install a structure. Mr. Clause replied one day.

Chairman Behrens said he understands that a boat is stored in the structure and wondered if boat storage is permitted outside an accessory structure. Mr. Lewis replied yes, as long as it is on a hard surface and behind the front setback.

Mr. Callender asked the applicant his options if the variance request is not granted. Mr. Clause stated he doesn't have any solutions, he will just do what he must do.

Discussion ensued regarding the lack of permits. Mr. Clause stated that the owner of the company told him he did not need a permit. Mr. Clause stated he paid for engineered plans and did not even get them from the owner at the time the structure was installed. He said he only had a small drawing. Mr. Bartholomew asked where this company is located. Mr. Clause replied around the Akron area.

Mr. Bartholomew asked Mr. Lyons if he believes the applicant has any recourse against the company. Mr. Lyons replied that Mr. Clause's paperwork from the company probably states that the buyer should check with local officials regarding permit procedures. He also said he assumes the company will not take the carport back. Mr. Lyons asked the applicant the price of the structure. Mr. Clause replied \$5,200.

Mr. Bartholomew asked if the total square footage for the two structures exceeds the permitted amount. Ms. White replied yes; the 720 sq. ft. carport was installed directly in front of a 528 sq. ft. garage. The new structure installed is under the maximum of 768 sq. ft. however, the original garage, still on the property, is 528 sq. ft. The Zoning Code allows a second structure with a maximum sq. footage up to 300 sq. ft.. The total of the two structures on the property is 1, 296 sq. ft. which is 19 % over the permitted 1, 068 sq. ft. for two accessory structures on the lot. Ms. White thought this

information might be helpful when considering when other variance requests were approved with stipulations.

Mr. Bartholomew asked what conditions the City would place on this request. Ms. White stated that the Board could impose a filing of an Affidavit of Fact like they did for the variance request at 238 Newell Street, stating that when the home was sold, the carport would have to be removed.

Ms. White asked Mr. Clause if he could still use the garage with the carport installed. Mr. Clause stated that the garage is really narrow and it has a screened house off the side so it can house only one car. He could, however, move the boat to one side to get into the garage.

Discussion ensued regarding how the carport is anchored to the ground. Mr. Clause stated that anchor pins are bolted through the asphalt and a few are in concrete. It was determined that although difficult, the structure could be disassembled and sold sometime in the future.

Mr. Bartholomew asked the applicant how long he has lived in the house. Mr. Clause replied it was two (2) years in February. Before that, he lived in Painesville Township. Mr. Lewis stated that the house was vacant before it was purchased it and was in need of property maintenance, which Mr. Clause remedied.

Mr. Bartholomew asked if the structure has been inspected for safety. Ms. White replied, no, not at this time, however, that is the reason the department asked for the engineered drawings of the structure. The department was waiting to see if the variance request would be granted. She stated the plans, along with detail of the foundation plan, will be reviewed if the Board grants the variance. Mr. Clause would have to comply with all building codes.

Chairman Behrens asked if there were comments from the neighborhood. The secretary replied no. He asked if there were any other comments from the City. Mr. Lewis stated if Mr. Clause had approached the City for a building permit, it would have been explained what is permissible.

There being no further comments, Chairman Behrens called for a motion. Mr. Callender moved to grant Refusal 2282 as requested. Mr. Bartholomew suggested that an Affidavit of Fact should be placed on the property for removal of the structure when Mr. Clause leaves the property. Mr. Callender withdrew his motion. Mr. Bartholomew moved, seconded by Ms. Aston, to grant Refusal 2282 with the stipulation that the accessory structure be removed should the property ever sell and that an Affidavit of Fact be filed by the City supporting this stipulation.

On Roll Call, Mr. Callender answered "no", Ms. Aston, Mr. Bartholomew and Chairman Behrens answered "yes". Motion carried, 3-1.

REFUSAL NO. 2283

APPLICANT: Cletus Turner

DISTRICT: R-1 Single Family Residential

LOCATION: 655 N. St. Clair Street

VARIANCE: 1129.01

An application has been submitted by Cletus Turner, 4060 Riverdale, Rock Creek, requesting a variance to Section 1129.01 of the Painesville Zoning Code. The applicant is proposing to construct a car port with living space above it with a 7 ft. setback. Section 1131.03 (a) allows a 7 ft. setback from a side lot line for a porte-cochere or canopy. However, Section 1129.01 establishes a side yard setback at 10 ft. A variance of 3 ft. is being requested.

Mr. Cletus Turner, 1127 Dock Road, Madison, Ohio was present for the meeting. He stated that the address stated on the legal notice is that of his father, Cletus Sr., who just was released from the hospital. Mr. Turner gave a rendering of the completed project to Chairman Behrens.

Mr. Behrens stated he was puzzled about the variance request and asked Ms. White to explain it in detail. Ms. White explained that if the proposed car port did not have living space above it, it would be permitted and no variance would be needed. However, the addition of a second story it becomes part of the main structure and requires a 10 ft. side yard setback that is not met (per the site plan).

Mr. Callender asked if the 30 foot lot that is directly next door to this property is a buildable lot. Ms. White replied no, it is an access drive to a home that is behind the other lots on St. Clair Street.

Mr. Bartholomew asked Mr. Turner if he is the builder. He stated yes. Mr. Lewis asked if the owner of the house plans to live there. Mr. Turner replied yes. Chairman Behrens asked how deep the lot is. Ms. White said that it is somewhere around 160 feet deep with 60 ft. frontage, close to the square footage requirement of 10,000 sq. ft.

Mr. Lyons asked if, at one time, this house looked like the brick house that is next door to it. Mr. Turner stated yes, but the brick was removed during renovation because it was difficult to match. The house was extended into the front setback as well.

Mr. Bartholomew asked the purpose of the living space above the carport. Mr. Turner replied that is just a closet extension. Mr. Bartholomew questioned if the extension could be placed on the back of

the house without violating any codes. Ms. White replied that a 7 ft. setback could be continued on the other side of the home as long as a 35 ft. setback was met off the rear property line. Discussion ensued regarding placement possibilities. Ms. White indicated that because the house is currently in compliance with the 10 ft. setback on the side of the property where he would like to place the car port, he currently cannot build any closer than 10 ft. (with living space on the second floor) without creating a non-conforming side yard.

Mr. Lewis asked if the extension on the second floor will be extending the bedroom. Mr. Turner stated it is just extra space; the owner is trying to utilize as much space as he can. There is no plumbing in the space. The owner is going to put a door through the closet and have an extra storage room. Mr. Turner showed the Board photo renderings of what the space would look like.

Discussion ensued regarding the design of the property. Mr. Bartholomew stated the Board must consider if this will be a hardship for the property owner. He said he does not understand, what is the hardship is when there are other ways to do this.

Mr. Turner replied that the point of the project is primarily for the carport and that is dictating the location of the storage/closet. The owner decided he would like additional space provided by a second story. The closet presently is located at the front corner of the house. The second story can be built, however, not at the dimensions the owner would like, and so he is asking for an additional 3 ft.

Mr. Bartholomew asked the City the significance of 3 ft. Ms. White replied that it does not meet the setback requirements of the Zoning Code. She suggested to the builder that they find an alternate location for the addition, however, the owner would like the carport in the proposed location and it makes sense to locate the second floor above it. Ms. White stated that according to Mr. Turner, the second floor addition will be built at the permitted setback even if the variance is not granted.

Mr. Turner stated that the additional space, at 8 feet in width, will not be as wide, and not as functional, as an 11 ft. wide space.

Discussion ensued regarding the design of the carport and addition.

Chairman Behrens asked for comments from the Board. Mr. Lyons pointed out that sometimes the standard for granting a variance is not necessarily a hardship but practical difficulty. He said his understanding of the setback requirements is for distance between neighboring properties. This lot is unusual as it abuts an access drive to a property. The crowding factor doesn't necessarily exist and this point should be considered. Mr. Lewis stated that the setback does not have as much impact as it could have because no house will be built next door.

There being no further comments, Chairman Behrens asked for a motion. Ms. Aston moved, seconded by Mr. Callender, to grant Refusal 2283 as requested. On Roll Call, Ms. Aston, Mr. Bartholomew, and Mr. Callender answered "yes". Chairman Behrens answered "no". Motion carried, 3-1.

REFUSAL NO. 2284

APPLICANT: James McGee Jr. for West Side Church of Christ

DISTRICT: R- 1 Single Family

LOCATION: 167 Morse Avenue

VARIANCE: 1135.01(a) (1) B and C

An application has been submitted by James McGee Jr., Deacon at the West Side Church of Christ, 167 Morse Avenue, requesting a variance to Section 1135.01 (a) (1) B of the Painesville Codified Ordinances. The applicant is proposing to install a fence that is four (4) feet in height on the property located at 167 Morse Avenue. Section 1135.01(a) (1) C states on corner lots all sides adjacent to the right-of-way shall be treated as a front setback line and regulated by Section 1135.01(a) (1) B. Section 1135.01(a) (1) B states that fences within the front setback line of record or existing main building line, whichever is less, shall not exceed three (3) feet in height. A variance of one (1) foot (fence height) is being requested.

Mr. James McGee, Jr., 299 Mentor Avenue, was present for the meeting. Mr. Behrens reviewed the information the Board has regarding the variance request. Mr. McGee added that the entire fence is not being replaced, only replacing certain sections that are bad, and also installing a gate to the property. He presented photos to the Board. Discussion regarding location ensued.

Mr. Behrens commented that probably cost plays a factor, however, the fence on the south side of the property is in need of repair as well. He asked if there is a long term plan to replace the rest of the fence as money is available.

Mr. McGee replied yes, that is the plan, however, since money is a factor, they are planning to repair it for now and install the gate in order to keep people from driving and parking in the parking lot and to make it look better.

Mr. Darren James, 86 Chester Street, said in the summer of 2012, when he opened the church one Sunday morning, he discovered that the fence had been knocked down, hit and run, with all gates and all posts loose. He said he tried to pull back as much as he could. A scraper hauled away the old

fence, but the insurance did not cover replacement. Since the church membership was down, they could not replace the fence at that time.

Mr. Bartholomew asked what the height is of the existing fence. Mr. McGee replied four ft. Mr. Behrens asked about the weeds in the parking lot. Mr. McGee replied that the lot was sprayed with RoundUp but it is not working. Eventually, the parking lot will be paved, however, at this time, they will be trimming the weeds again next Saturday.

Mr. Behrens asked the administration if the church must return to the Board for permission to replace other sections of the fence as the money becomes available. Mr. Lyons stated if everything is being taken down, they probably will have to come back to the Board, however, small repairs would not require it. Ms. White stated if the fence permit is issued within 65 days of the variance being granted, the applicant has a year for installation. The administration suggested that the applicant get a permit to fence the entire property and work on the property in segments to save time and money.

Discussion ensued regarding the locations of the fence replacement. Mr. McGee stated that they would start with the worst sections first, and replace as the money comes available.

Chairman Behrens asked for comments from the audience. Ms. Betty Washington, 507 Chardon Street, asked if the variance request was for a 4 ft. fence. The Board replied yes. Mr. Thomas Robinson, 603 Williams Street, thanked the Board for considering the request.

Ms. White recommended that the Ohio Utility Protection Service should be contacted before installation of fence poles. Ms. White also mentioned that clean-up of the property should be addressed when new fencing is installed.

There being no further discussion, Chairman Behrens asked for a motion. Mr. Bartholomew moved, seconded by Mr. Callender, to grant Refusal 2284 with the stipulation that should the replacement sections of fence require the installation of post holes, the Ohio Utility Protection Service (OUPS) shall be contacted prior to the fence's installation; and the weeds and high grass on the property shall be removed upon installation of the new fencing sections.

On Roll Call, Mr. Callender, Ms. Aston, Mr. Bartholomew and Chairman Behrens answered "yes". Motion carried, 4-0.

OTHER BUSINESS

Review of Board of Zoning Appeals By-Laws

Ms. Aston moved, seconded by Mr. Callender, to approve the Board of Zoning Appeals By-Laws as presented. On Roll Call, Mr. Callender, Mr. Bartholomew, Ms. Aston and Chairman Behrens answered "yes". Motion carried, 4-0.

Mr. Bartholomew asked that the City provide an easel or some type of presentation board at the monthly meeting so that the applicants have a place to display exhibits for the benefit of the Board. Additionally, Mr. Bartholomew asked the Board to be more responsible and communicate when they will be absent from meetings.

Ms. White stated that she would work on providing an easel for the future.

There being no further business, the meeting was adjourned at 8:43 p.m.

Jim Behrens, Chairman

Tina B. Pomfrey, Secretary