

BOARD OF ZONING APPEALS

August 15, 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 Ms. Condon, Mr. Bartholomew, 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 20, 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

REFUSAL NO. 2238

APPLICANT: Jean Fankell

DISTRICT: R-1 Single Family Residential

LOCATION: 464 Hickory Lane

VARIANCE: Section 1135.01 (a) (1) B

An application has been submitted by Jean Fankell, 464 Hickory Lane, requesting a variance to Section 1135.01 (a)(1) B of the Painesville Codified Ordinances. 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 feet in height. The applicant wishes to install a fence that is 6 ft. in height in the front setback. A variance of 3 ft. (fence height) is being requested.

Ms. Jean Fankell, 464 Hickory Lane, was present for the meeting. Ms. Fankell stated that she had read the recommendation outline perspective given to the Board by the Zoning Administrator. Ms. Fankell stated her reason for asking for the fence variance. She indicated that she has dogs. One of her dogs is a retired police "drug" dog named Aken. Ms. Fankell explained that Aken is very protective of her and the property. She mentioned that in the past year, Aken has suffered hearing loss and consequently, overcompensates with some behaviors. Ms. Fankell said that German Shepherds, as a breed, tend to take ownership of whatever they see. Aken is no different and monitors her yard and the cul-de-sac where she lives. Because Aken can no longer hear, he responds to physical prompts; hand gestures are used to delineate property lines. Ms. Fankell stated that the request of the higher fence is more for prevention rather than incident; it limits what Aken can see. Ms. Fankell commented that she does believe the fence to be a little high, and it does protrude into the front yard. She indicated that she would be willing to stagger the height of the fence, from 6 ft. to 5 ft. and finally to 4 ft., to make give the fence more curb appeal.

Mr. Schaedlich indicated that the fence in photo one should be considered in the variance request as well.

Ms. Condon asked that if a three foot fence is considered too short, why would the applicant choose a 4 ft. compromise. Ms. Fankell indicated that it was more for a visual barrier because Aken listens better when there is a barrier. Ms. Fankell said that in the past she has installed fencing that is 6 ft. in height. Aken pays better attention to a large barrier.

Mr. Bartholomew asked the age of the privacy fence along the front of the property near the front door. Ms. Fankell replied at least 10 years old. Mr. Bartholomew asked how long she has lived on the property. She replied 28 years. He asked why the fencing is now a problem. Ms. Fankell replied that it is the last year that Aken has suffered hearing loss. Mr. Bartholomew commented that nothing can stop the dog from going around the fence. Ms. Fankell replied that what the fence does is offers a visual barrier to exploring. Mr. Bartholomew asked if a child and a dog entered into the front yard, would your dog be aggressive. Ms. Fankell replied no, he obeys her but she doesn't want to scream in order for the dog to hear her. Ms. Fankell said she wants to put an environment in place that the dogs understand to reinforce the discipline. She said Aken is highly disciplined; he was trained by the FBI. She stated that she does not want to give the impression that he is dangerous, but at 68 years old, she herself is slowing down and can't dash around like she used to. Ms. Fankell commented that her dogs go everywhere with her and they are never unattended. When they are out with her, the dogs wear harnesses and leashes. She said she is very careful regarding her dogs.

Mr. Bartholomew asked who installed the fence on the property. Ms. Fankell replied that it was not a fence contractor company, just a friend who does odd jobs. She added that the fence does not enclose the yard. She admitted that it was stupidity on her part to not check if permits were required.

Mr. Horacek asked about the visual barrier that the front fence might create. Mr. Schaedlich indicated that the bigger concern before the Board is the side fences. Neither he nor the Code Enforcement Officer thought that this 6 ft. section of fence was in the front setback, however upon further checking it was determined that it is in the setback. Mr. Schaedlich asked Ms. Fankell if she could lower the fences in the front, including the one by the front door with the flowers against it. Ms. Fankell replied that the front

fence has been there for about 15 years and she would prefer not to lower it. Mr. Schaedlich commented that the Board then should consider that fence separate from the variance request for the side fences.

Mr. Torre, 158 Sanford Street, commented that he is concerned that the granting of this variance will mean that someone else will want this variance too.

Mr. Schaedlich commented that 6 ft fences in the setbacks have been granted in the past. The church on Stonehaven Drive was granted a variance for a 6 ft. fence but it was a chain link.

Mr. Cimaglio, 477 Owego Street, stated that if he were the neighbors on both sides of the fence, he would be upset because his view will be blocked. Additionally, he said he thinks the dog will be able to figure out how to get to the other side of the fence.

Mr. Lyons asked where the number 2 fence (from the City recommendation) is located. Ms. Fankell replied that it is in the front yard, close to the door. She said her house is a split-level and this fence forms an "L", with 2 sections of fence, 1 facing the road. Behind it is a little patio and planter. It does not attach to the side fences. There was discussion over the fence and the location. Ms. Fankell indicated that the "new" sections of the fence were installed in June. Mr. Lyons asked if Ms. Fankell thought that staggering the fence to 6 ft, 4ft, 4 ft. would work to contain the dogs. Discussion ensued regarding taking down sections of the fence if the house was ever sold. Ms. Fankell said she has no problem with that.

Mr. Bartholomew asked that if a 4 ft fence would work, wouldn't a 3 ft. fence work as well? That is the height that is in compliance with City Code. Ms. Fankell indicated that 4 ft. is her preference, she likes that Aken has a little more height for barrier. She stated that the neighbor's yard to the east runs right into her yard and she is not really friendly with the neighbor. That is why she installed the fence where it is; they are not hostile to each other, they just don't talk.

Mr. Horacek asked if Ms. Fankell has any concern with kids coming upon Aken suddenly while on the City sidewalk? Ms. Fankell said if Aken were unsupervised she would be concerned, but he is not ever unsupervised. Mr. Horacek said with a tall fence (blocking the view) how can you know who is coming up the sidewalk. Mr. Horacek said you cannot always see through the shadowbox fence. Ms. Fankell said she really doesn't know how to answer this. Children that live on the street are familiar to him and do not pose a hazard, however, he is never unsupervised. Mr. Horacek asked if a shorter fence would serve the purpose. Ms. Fankell replied that Aken respects boundaries and she has been training him to respect the fence as a boundary, so a shorter fence would serve a purpose. Since she has already spent the money on this fence, Ms. Fankell stated that she would like to keep the section on the east side, to the right of her house, at 6 ft., the section that is nearest her neighbor's front door.

Discussion ensued regarding the fence height Ms. Fankell could live with. Mr. Lyons explained to the Board that they could certainly grant a modified request without having to take down the fence at a possible sale of the property.

Mr. Horacek moved to grant a modified variance of up to 4 ft. within the front setback. There was no second and the motion died.

Mr. Callender moved to grant a modified variance of 4 ft. within the front setback on the west side of the property. On the east side of the property, Mr. Callender proposed 6 ft. at the garage and the remaining fence at 4 ft. Additionally, the applicant must sign an agreement that the fence would be removed in the event of a future sale of the property. Mr. Horacek seconded the motion. On roll call, Ms. Condon and Mr. Bartholomew answered "no"; Mr. Callender and Mr. Horacek answered "yes"; Mr. Behrens answered "no". Motion denied, 3-2.

Mr. Lyons indicated since the motion was denied, Ms. Fankell should offer an amendment or proposal to this variance request based on what they would like to see on the property. Ms. Fankell stated that she was curious, since the Board has approved 4 feet of fence before, what makes this different; what makes her request of 4 ft unacceptable? Mr. Lyons stated that she could use that in her argument but give a specific request to be placed to the Board.

Ms. Fankell replied that she is modifying her request and would like the first 2 sections of fence at 4 ft. and the last section of 3 ft. on both sides.

Ms. Condon moved to allow the amended variance request. Mr. Horacek seconded the motion. On roll call, Mr. Bartholomew, Mr. Callender, Mr. Horacek, Ms. Condon and Mr. Behrens answered "yes". Motion carried, 5-0.

Mr. Horacek moved to approve the modified request of Refusal 2238, granting a variance for fence height on the first two (2) sections of the newly installed fence addition, on both sides of the property, at 4 feet, and the third section, on both sides of the property that is closest to the street, at 3 ft. Mr. Callender seconded the motion. On roll call, Mr. Callender, Mr. Horacek, Ms. Condon and Mr. Bartholomew answered "yes". Mr. Behrens answered no. Motion carried, 4-1.

Mr. Horacek moved to approve the variance for L shaped section of fence near the front door at a height of 6 ft. Mr. Callender seconded the motion. On roll call, Mr. Horacek, Mr. Condon, Mr. Bartholomew, Mr. Callender and Mr. Behrens answered "yes". Motion carried, 5-0.

Discussion ensued with regard to how high fences can be, in general, within the front setback.

There being no further business, the meeting was adjourned at 8:30 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary