

## BOARD OF ZONING APPEALS MEETING

August 18, 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 if there were additions or corrections to the minutes. There being none, he asked for a motion. Motion by Mr. Bartholomew, seconded by Mr. Callender, to accept the Board of Zoning Appeals Meeting Minutes of July 21, 2016, as written. Chairman Behrens asked the Secretary to call the roll. On Roll Call, Mr. Bartholomew, Mr. Callender, Ms. Aston and Chairman Behrens answered "yes". Motion carried, 4-0.

Mr. Behrens informed the applicants that one member of the Board is absent and they may ask to table their variance request until the next regularly scheduled meeting if they wish to have all members of the Board present.

The Chairman asked the Secretary to please read the notice:

### NEW BUSINESS

#### REFUSAL NO. 2288

**APPLICANT:** Leonard T. Cook

**DISTRICT:** R- 1 Single Family

**LOCATION:** 554 Newell Street

**VARIANCE:** 1129.01; 1131.03 (b)

An application has been submitted by Leonard T. Cook, 554 Newell Street, requesting a variance to Section(s) 1129.01 and 1131.03(b) of the Painesville Codified Ordinances. The applicant is proposing to install an enclosed porch that is eight (8) feet from the rear property line and four and ½ feet from the side property line. Section 1129.01 establishes the rear yard setback at 35 feet. Section 1131.03 requires a side yard setback of no less than five (5) feet. A rear yard variance of 27 feet and a side yard variance of one half foot is being requested.

Mr. Leonard Cook and Mrs. Sharon Cook were present for the meeting. Mrs. Cook passed out a letter to the Board of Zoning Appeals explaining her situation. She then asked the Board if they had any questions.

Ms. Aston asked is the sunroom, as explained in her letter, is really a sunroom or an all-season room. Mrs. Cook replied that they plan on using it all year-round. It will be heated and fully insulated.

Mr. Bartholomew asked when it was realized that permits were required. Mrs. Cook stated that her husband was not aware that permits were required when he built the deck years ago. When he began enclosing the deck for the addition is when they became aware that permits were needed for the expansion. She stated that they only knew of one person who pulled permits for a car-port installation and were not aware that they needed to acquire permits for work such as this.

Mr. Callender asked if they were issued a violation for beginning this work without permits. Mrs. Cook replied yes, an inspector stopped and told her that permits were required and she was not certain the room could be built on the deck. A few days later, Mrs. Cook explained she came to the Building Department and spoke with the Building Official who indicated that plans were required. He also stated that the deck would have to be insulated. He is the person who called it a three-season room. Drawings were done and dropped off to the department.

Mr. Bartholomew asked if the deck would need to be insulated. Ms. White replied that the Building Official was probably referring to the flooring of the deck. Mr. Cook replied yes, the underside of the deck would need to be insulated. Mr. Bartholomew asked if the deck had been inspected to determine if it could hold the additional weight of an addition. Mrs. Cook replied that it has been inspected, however, there is no certification stating so. Mr. Bartholomew asked if construction has been halted. Both Mr. & Mrs. Cook replied yes. Mr. Bartholomew asked who will be building the addition. Mr. Cook replied that he and his brother will be doing the work. Mrs. Cook stated that her husband worked in HVAC and just retired in June.

Chairman Behrens asked the City if it is permissible to build a room on a deck. Mr. Lyons stated that the issue is if a structure can be built in this location that can meet the Building code. The applicants might have to start construction from scratch but the Board must look at this as a zoning issue. Mr. Cook replied that his brother, who used to do construction, helped him build the deck about 25 years ago. Mrs. Cook stated that her nephew, who has built homes in the area, also checked the deck construction. Mr. Lyons said he wasn't sure if a permit was needed for a deck that was built 25 years ago, however, the Board must look at this currently as a pure zoning issue. Mr. Lyons asserted that it seems as though the applicant should have known that permits are required; construction of any type always requires permits so that it can be inspected for safety, for the owners and any future occupants of the structure. Additionally, it protects the City and the housing stock in the City. He indicated that the deck may need to be taken down

completely as the deck has not been inspected, but the bigger question is the zoning issue; allowing a building to be built with these setbacks.

Mr. Lewis replied that he cannot answer that question, however, the building inspector will look at this in its totality. The Building Official might make the applicant dig out the footers of the deck to make sure they are deep enough; they might have to go to lengths like that so that he is comfortable with the plans that he approves. Mr. Lewis also indicated that the City has a new Building Official.

Mrs. Cook asked if the first step is to have the Building Official come to the property and inspect the deck to see if they can build on it. Chairman Behrens replied no, the first step is getting approval from the Board of Zoning Appeals before it even gets that far.

Mr. Lyons asked if they were trying to use the existing deck to save money. Mr. Cook replied yes.

Mr. Lyons asked if the room needs to be that large, what size of the room would be satisfactory to the family to allow his wife to navigate the room with her medical disabilities (as stated in the letter that she submitted). Discussion ensued regarding how much space is needed. Mr. Lyons asked if the deck can't be issued, would they still want to build the room. Both Mr. & Mrs. Cook replied yes. Mr. Lyons asked if they cannot use the deck, would a 12 x 12 room be sufficient. They both replied yes. Mr. Lyons stated that would eliminate the side yard variance and diminish the rear yard variance. Mr. Lyons asked if the garage was already built. Ms. White replied that a previous owner received a variance to build the garage.

Chairman Behrens indicated they Board is looking at setback issues only.

Chairman Behrens asked if there were any comments from the neighborhood. The secretary replied that she did not receive any comments. Chairman Behrens asked for comments from the City. Mr. Lyons stated the questions he was asking to give the Board information to consider a conditional approval if it was a help to the family to use the deck to grant the side-yard variance, but if they can't use the deck, you can make them build smaller to lessen the variance requirement. The Board could also require them to take the deck down altogether and in order to have a smaller footprint, although it might not make much difference from a 16 ft. variance as opposed to a 20 ft. variance.

Ms. White pointed out that this is a very small lot, with a square footage of 5,440 sq. ft. The existing structure has a 23.8 ft. rear yard setback. The current code requires 35 ft. rear yard setback. With the deck, there is only an 8 ft. setback. The concern is the encroachment on the surrounding properties. She indicated that she has a clear aerial to show the Board so they get an idea of what the property looks like.

Discussion ensued regarding the neighbors in the vicinity. She showed the actual lot, and there is no neighbor directly where the garage is now, there is nothing around it, so no encroachment actually occurs based on the map. There variance is a true hardship based on the size of the lot and how the house was constructed. Newell Street is in a flood zone, so the City Engineer looked at the property to make sure the structure on the rear of the house is acceptable to FEMA. It was determined that the flood zone ends at the front of the driveway for this property.

Chairman Behrens asked about the accuracy of the property lines as shown on the GIS maps. Ms. White replied that the lines are representative only and not survey accurate. Mr. Cook replied that there is a stake at the back of the yard indicating the property line.

Mr. Callender stated that the property behind the Cook's lot appears to be deep. He asked if it is a buildable lot. Ms. White replied no, that property behind them belongs to the owners on Lexington Avenue. It is landlocked and not considered a buildable lot. Ms. White stated that it might be possible for the Cook's to approach the owners on Lexington about purchasing some property from them without creating a non-conforming lot, however at this time, the situation remains as is.

There being no further questions or comments, Chairman Behrens asked for a motion. Motion by Mr. Callender, seconded by Ms. Aston, to grant Refusal 2288 with the following stipulations:

1. If the addition is unable to be built, as shown, on the existing deck, the new maximum dimensions for a rear addition is 12' x 12', changing the side yard setback to 8 ½ ft. and the rear yard setback to 12 ft.
2. All building codes should be followed.

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

**REFUSAL NO. 2290**

**APPLICANT:** Ron Ingraham

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

**LOCATION:** 1906 Thornwood Lane

**VARIANCE:** 1137.12(b) (2)

An application has been submitted by Ron Ingraham, 1906 Thornwood Lane, requesting a variance to Section 1137.12(b) (2) of the Painesville Codified Ordinances. The applicant is proposing to install an addition to an existing concrete driveway. Section 1137.12(b) (2) states that additional parking within the front setback cannot exceed 40% of the front setback. Additionally, a minimum setback of 10 feet from the property line is required.

Ms. White explained that in November 2015 a driveway permit application was implemented because of the zoning setback requirements and to insure that driveways were being installed per the ordinance. Section 1137.12(b) (2) was implemented in 1991. It was originally written for turnouts. Since then, Heisley Park and Liberty Greens were constructed, all three and four bedroom single family homes containing families with children, who do eventually grow up. They all have cars and the driveways are too small to accommodate everyone.

Ms. White displayed some photos. She showed a typical property in the City that is filled with autos. Before December of last year, she said she approached the matter as a zoning issue rather than requiring building permits. The Zoning Code is specific regarding the percentage of open space. She showed examples of the turnouts with no setback and imposing on the sidewalks. She stated that she appreciates the setback requirements but sees the need in the newer subdivisions for something different. She showed instances of other properties with larger driveways within the Heisley Park development. She indicated that these were installed at the time the homes were built. When homes come in for plan review, the driveways are measured to be certain they do not exceed the 40% requirement, however, once the house is built, an expansion of a driveway is considered an extension. The streets are narrow and difficult to back out of the driveway because of cars parked on the street. She showed examples of a decorative extension of the driveway. Pavers are used and the department is not certain how to handle them. Ms. White said she asked the consultant who is working on the Zoning Code rewrite through the Planning Commission to look at other codes in the area to find how other communities deal with these issues. The consultant stated that the 40% in our code is generous, however, Ms. White stated she believes there is a happy medium and is looking into other options. It was not an issue until the zoning permits were required. The applicants are here because they were asked to stop work and come before the Board.

Mr. Behrens asked where the 10 feet is being measured from. Ms. White replied that the 10 feet is measured from inside of the property line, which is the sidewalk. The intent of the code was to keep the cars away from pedestrians on the sidewalk, similar to multi-family parking lots, to keep cars away from individuals so they do not get hit by doors.

Mr. Behrens asked how long the driveways are in these subdivisions. Ms. White replied they are 30 ft. long, 16 ft. wide, not including the space inside the garage.

Mr. Bartholomew asked the zoning of the areas. Ms. White said it is zoned R-2 Multi-Family but the subdivision was constructed as a single-family subdivision. That is why the developer was permitted to build with a greater density units per acre. The required frontage is 60 ft. as opposed to 75 ft. frontage. Ms. White said the driveways are being constructed as two-car, side by side. Mr. Behrens commented that minimum lot size is different as well, 7,500 sq. ft. as opposed to 10,000 sq. ft. He said if the lots were 10,000 sq. ft., there would be more space for more driveway per lot. Ms. White stated it would help them to be built farther back but they all have 30 ft. setback. She indicated that in a home such as hers, the garage is detached and the driveway progresses past the house into the back yard. A driveway pad could be installed in front of the garage as wide as needed because there are no regulations regarding the installation of coverage in the rear yard.

Mr. Behrens stated that if the lots were a standard 10,000 sq. ft. in size, they would be 2,500 sq. ft. larger and be able to accommodate a larger parking area because the houses themselves could be set back further from the front setback. Mr. Behrens asked if it is fair to say the Planning Commission "let us down." Ms. White replied that the zoning of Heisley Park is R-2 Multi-Family and R-2 allows for this size lot. Mr. Lewis interjected that because the land was already zone R-2, and because of the cost of infrastructure that had to be constructed, the developer had certain density requirements. R-2 allows 7,500 square ft. lots vs the 10,000 sq. ft. lots in R-1 and a 60 ft. vs 75 ft. frontage. They are conforming to code, however the developer wanted to get in as many lots as possible as the whole infrastructure needed to be installed. The more density, the more money the developers are making.

Mr. Bartholomew asked what the need is as opposed to a want for this size lot. Mr. Lyons replied that on a 300 ft. stretch of road, you get 25% more lots. The lots would have been more expensive and perhaps that would have been past people's price point. He stated he is not speaking for the developer because certainly they are in it to make money and will try to develop as many lots as possible.

Mr. Lewis also mentioned that the land originally was annexed into the City under the R-2 zoning, and it maintained the zoning. The subdivision meets the requirements for development in and R-2 District. Mr. Lyons stated that additionally, there was a development agreement in place that contains many of the terms regarding size of lot and density. If there was not a development agreement, this whole area of land could have been developed as multi-family and the City certainly did not want that. Additionally, there is a trend to build houses closer together to create a "neighborhood," like it used to be. Mr. Behrens stated that the way it used to be, husbands worked, wives stayed home and kids moved out, hence less cars.

There being no further comments, Mr. Behrens explained what was submitted in the packet regarding Refusal 2290 and asked the applicant if he would like to add anything more to the conversation. Mr. Ron Ingraham, 1906 Thornwood Lane, stated he is at a disadvantage because of the size of the vehicles both he

and his son drive. He said that Ms. White explained the reason for the 10 ft. setback is so one could not block the sidewalk with another car. He said his truck alone is so large it already blocks the sidewalk.

Mr. Ingraham presented a few photos illustrating other properties that have larger driveways that do not adhere to City Code but were approved by the City. He said he was not sure how these driveways could be poured. Mr. Bartholomew asked how Mr. Ingraham knew they were all approved. Mr. Ingraham said the house is new construction on the corner of Spruce Lane. Also showed a new house with a two car garage with extension that is brand new. He said he does not know the difference between an add-on and a parking area. He said there are 78 extensions in the development, 40 as hardscapes and 38 concrete extensions. If permitted only 10 ft., Mr. Ingraham said he could barely park a golf cart there, and with snow, it is impossible. He asked why some are permitted and others not, based on square footage.

Ms. White stated not all were permitted; a lot of people installed them before the City started regulation. Mr. Ingraham said that a lot of them are new pours; they are done on Saturdays.

Mr. Callender asked if the expansion is already done. Mr. Ingraham said it is formed but the concrete has not poured.

Mr. Bartholomew stated he is bothered that the size of these lots, that were desirable to a builder, do not allow the residents to do what they want on their property. It is not unreasonable to expect two vehicles to be able to be parked in a driveway. Mr. Lyons indicated that the trouble is with three vehicles parked in a driveway. Mr. Ingraham stated his children cannot park in the driveway and they are not allowed to park on the street because the mailbox will be blocked. No matter where one parks, you are impacting someone's driveway and run the risk of getting hit. Mr. Ingraham said on the new street, the driveways are being poured the whole width of the garage and that eliminates most problems. They should standardize that model.

Mr. Lyons stated that these smaller lots with quite a lot of house pose a practical difficulty and that is the standard for this development.

There being no further comments, Chairman Behrens called for a motion. Motion by Mr. Callender, seconded by Ms. Aston, to grant Refusal 2290, as requested.

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

Chairman Behrens asked if there was a waiting period for pulling a permit for the concrete. Mr. Lyons stated the waiting period is still five (5) business days. The secretary stated that the permit is ready, it just needs to be paid for.

Mr. Angelo Cimaglio, 477 Owego Street, commented this could be avoided if the areas are zoned R-1 instead of R-2. R-2 is allowed greater density, which is great for the builder, but not good for the City.

Mr. Lyons stated that Mr. Cimaglio is assuming that the builder would have built, and the purchasers could have purchased, at a higher price point. Anytime decisions are made, it can create benefits but cause problems.

**REFUSAL NO. 2291**

**APPLICANT:** Aaron Scott

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

**LOCATION:** 1954 Thornwood Lane

**VARIANCE:** 1137.12(b) (2)

An application has been submitted by Aaron Scott, 1954 Thornwood Lane, requesting a variance to Section 1137.12(b) (2) of the Painesville Codified Ordinances. The applicant is proposing to install an addition to an existing concrete driveway. Section 1137.12(b) (2) states that additional parking within the front setback cannot exceed 40% of the front setback. Additionally, a minimum setback of 10 feet from the property line is required. An aerial photograph is enclosed for your review.

Mr. Aaron Scott, 1954 Thornwood Lane, stated that his driveway expansion is already existing, but his story is very similar to Mr. Ingraham's. He stated however, he actually backed into his mother-in-law's car, not knowing that it was there. Mr. Scott said that he assumed the concrete contractor pulled the proper permits, however, he soon found that was not so when the City placed a violation notice on the door from the Building Department, after the driveway extension was poured. He also had a patio poured at the same time.

Mr. Bartholomew asked if a contract was signed. Mr. Scott replied no, it was a friend of a friend. Four homes in the development all had their patios poured at the same time and Mr. Scott asked for a driveway extension. He said he received HOA approval and he thought the HOA would tell him if he violated a

code. He said it is installed already, he uses it every day, and he loves it. Mr. Scott said he lives five houses down from Mr. Ingraham.

There being no further comments from the neighborhood or the City, Chairman Behrens asked for a motion. Motion by Mr. Bartholomew, seconded by Mr. Callender, to grant Refusal 2291, as requested.

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

#### **OTHER MATTERS**

##### **Driveway Requirements**

Chairman Behrens indicated that he would like to refer this matter to the Planning Commission to determine if there is a legislative solution to the problem.

Motion by Mr. Callender, seconded by Mr. Bartholomew, to request the Planning Commission to review the Zoning Code regarding driveway sizes/requirements in residential districts.

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

#### **OTHER BUSINESS**

There being no further business, the meeting was adjourned at 8:47 p.m.

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Jim Behrens, Chairman

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Tina B. Pomfrey, Secretary