

BOARD OF ZONING APPEALS

September 18, 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. Also in attendance were the Law Director, James Lyons; the City Planner, Russell Schaedlich; and the Secretary, Tina B. Pomfrey.

MINUTES: The minutes of July 17, 2014 were approved as submitted. The minutes of May 15, 2014 were tabled until the next regularly scheduled meeting. Mr. Callender asked that the secretary amend the minutes reflecting his comments regarding the holding of the minutes for the January 28, 2010 Administrative Appeal of the Emergency Demolition Order at 348 Mentor Avenue. Mr. Callender commented that the minutes were not published for over a year after the meeting was held, even after he requested a copy of the minutes, thus withholding the comments he made during the meeting. In Mr. Callender's opinion, the City has been over-accommodating to the property owner.

Mr. Behrens explained the procedures for this meeting and swore-in those who planned on speaking for or against the variance requests. He also mentioned that the Board of Zoning Appeals has a vacancy in membership because Mr. Josh Horacek resigned last month; a job change took him out of the City. He informed the applicants they could table their requests if they would like to wait for a full Board.

NEW BUSINESS

REFUSAL NO. 2255

APPLICANT: Colan Sternberg, Agent, SignArt Inc.

DISTRICT: B-2 General Business

LOCATION: 15A-014-0-00-016 thru 28, NWC Erie & State Streets

VARIANCE: Section 1341.18 (b) & (c)

An application has been submitted by Colan Sternberg of SignArt Inc, on behalf of CVS/Pharmacy requesting a variance to Section 1341.18 (b) & (c) of the Painesville Codified Ordinances. The applicant would like to install signage that includes a total of sixteen (16) signs of various sizes and locations. A variance for twelve (12) signs is being requested.

Mr. Brad Rhodes, representing SignArt, 5757 E. Cork St. Kalamazoo, Michigan, was present for the meeting. Mr. Rhodes stated that the Painesville Sign Code allows 2 monument signs, 2 wall signs. We are asking for two additional identification wall signs. He explained that the location abuts 4 different streets, he feels that extra identification is needed. There is also a drive-thru pharmacy. He is requesting a variance for a directional sign identifying the entrance to the drive-thru and on the side of the pharmacy drive-thru it is being identified as a drive-thru. Additionally, there are 4 different directional signs planned, 3 sq. ft. each, informing people how to maneuver about the property, it is very limited. Near the front door, a sign on the building will show the store hours, the manager's name and phone number, as well as the pharmacy manager's name and phone number. Another directional sign will be a "do not enter" sign for the entrance that comes off the side street, with the same sign on the other side. Lastly, there will be a receiving door plaque. On the awning at the entrance, there is sign that says CVS pharmacy in small 6 inch copy. They are within the code regarding square footage, it is only the number of the signs that is to be considered for a variance.

Mr. Behrens commented that the CVS store on Bowhall Rd in Painesville Township has only 5-6 signs. He asked why this store needs more than double the number of signs. Mr. Rhodes replied that the store is accessible from four different streets, and the number of proposed signs on the building is conservative for the size of the store that is being constructed. He indicated that he can't speak of the signage at the Bowhall Road store., but because it is not within City limits, the sign code may be different (than the City's).

Mr. Schaedlich commented that the proposed signage for the location on Erie Street is very tastefully done. He stated that the CVS store in Mentor advertises much more than this future location. Mr. Schaedlich added that some of these signs are directional and different in nature (than advertising signs), and need to be treated differently.

Mr. Callender asked if any of the signs were to be illuminated. Mr. Rhodes replied yes, a total of eight (8) signs will be illuminated, 2 directional, 2 pharmacy signs, 2 signs on drive-thru and 2 directional. Mr. Schaedlich asked if the channel letters on the wall would be back-lit. Mr. Rhodes stated they would be front lit, and the monument signs will be interior lit.

Mr. Bartholomew asked if the lighting of signs, backlit, is addressed by the sign code. Mr. Schaedlich replied no. Mr. Bartholomew asked if the Planning Commission has anything to do with the sign code. Mr. Schaedlich replied that the Planning Commission only approves the text that is used by the City, so if

someone wishes to make a change to the code, it must be written up as a text amendment. The Planning Commission then reviews and approves the changes. They have to follow the Code as well.

Mr. Bartholomew stated that if there are 8 requests in 7 years regarding signs, perhaps the code isn't focused enough.

Mr. Lyons, the Assistant Law Director, stated that is unusual for a building to have 4 faces, taking up a whole city block. He said it would be difficult to write an ordinance that covers every possible eventuality. He commented that the BZA has been given the power by Council to reasonably determine what is good for the property. You could be more specific in the Sign Code, but it is unusual to find that level of detail in the Code.

Mr. Schaedlich explained that most of the sign faces are actually directional in nature. Mr. Behrens replied they are still signs.

Mr. Bartholomew asked if the City has any interest in reworking the Sign Code to include a more detailed list of sign requirements, including aesthetics; not relying only on the tastes of a specific administration. Discussion ensued. Mr. Schaedlich stated that the Code from 1992 is the current Sign Code. He indicated that the Planning Commission may request that the staff examine the regulations, but, at this point, the sign code is not an issue.

Mr. Callender asked if stipulations on the variance request are recommended. Mr. Schaedlich replied no, there isn't an unreasonable location aspect because the signs were engineered to aid traffic flow.

Mr. Callender asked what is to be at the corner of State and Erie Street that was submitted on the plot plan in the packet. Mr. Schaedlich commented that is not a sign, he isn't sure what is on the plot plan, but it is not a sign. The monument signs will be located on Erie Street in the middle of the frontage and the other one is at the corner of Jackson and North State Street.

The Chairman asked if there were comments from the audience. Mr. Anthony Cimaglio, 477 Owego Street, commented that the City has to hold firm to the Sign Code so that the other retail stores do not revisit their signage and ask for more. Mr. Schaedlich replied that Rite Aid already has 16 signs and Walgreen's is close in number. Rite Aid has gone before the BZA requesting sign variance and has been approved by the BZA. Historically, this request has been approved.

Mr. Lyons commented that the Board must remember this location will have a drive-thru and many of the signs that are being proposed are related to the drive-thru. Mr. Lyons stated that a drive-thru is a function of the business and will cause more directional signs to be installed on the property.

Ms. Condon moved to approve the variance as requested. Mr. Callender seconded the motion. On roll call Ms. Condon, Mr. Bartholomew, Mr. Callender answered yes. Mr. Behrens answered "no". Motion carried, 3-1.

REFUSAL NO. 2256

APPLICANT: Andrew & Suzanne Corsi

DISTRICT: R-2 Multi-Family

LOCATION: 511 Beechwood Lane

VARIANCE: Section 1131.01(c)

An application has been submitted by Andrew and Suzanne Corsi of 511 Beechwood Lane, requesting a variance to the Painesville Codified Ordinances. The applicant installed a swimming pool on their property that is 5 feet from the side and rear property lines. Section 1131.01 (c) of the Zoning Code states that a swimming pool must be located a minimum of 10 feet from any property line. A variance of 5 feet to both the side and rear yard setback requirement is being requested.

Mr. Andrew Corsi, 511 Beechwood Lane, was present for the meeting. Mr. Behrens explained what was contained in the BZA packet to the Board. He explained that he and his wife built the house with the promise (from Ryan Homes) of additional square footage at the back of the property. Unfortunately, two and half years later, Ryan sold the property to someone else and developed it as a new lot. He reached a settlement with Ryan Homes out of court, however, the backyard square footage was so greatly reduced, that unfortunately, the pool was installed in the current location because it could not be placed anywhere else on the lot.

Mr. Bartholomew asked what year the house was built. Mr. Corsi replied in June 2004. He indicated that the property behind him was developed in 2007.

Mr. Schaedlich added that the stamped, concrete patio was not taken into consideration when the Corsi's came in initially for their permit.

Mr. Behrens asked if Mr. Corsi ever held title to the property behind him. Mr. Corsi replied no, it was a 37 ft. common area before it was developed. Mr. Corsi explained that Ryan Homes indicated that the

Corsi's could purchase the property (at a later time) and then went ahead and sold the property to someone else for development.

Discussion ensued regarding development of the properties behind the Corsi's home. Mr. Behren's asked if the properties were developed in the same phase. Mr. Schaedlich stated that the properties were probably developed in different phases.

Mr. Lyons asked what phase the vacant property was developed. Mr. Corsi replied it was probably Phase 2. He stated that he had the verbal commitment of Ryan to sell him the property at some point in time; Mr. Corsi even paid to have it landscaped.

Mr. Bartholomew stated that even if the property remained a common area, it would not have given Mr. Corsi any relief regarding setback requirements. Mr. Corsi replied no, it would not give him any relief.

Ms. Condon asked if Mr. Corsi plans on installing a fence in the future. Mr. Corsi replied no. He said his neighbor next to him plans on installing a fence however.

Mr. Behrens asked if the pool was already installed at the time the permit was issued. Mr. Corsi replied no. Mr. Bartholomew asked why the setback was not met. Mr. Corsi explained that plans of the house and the concrete pad.

Mr. Bartholomew asked when the concrete pad behind the house was poured. Mr. Corsi replied in October 2004. Mr. Behrens stated that the permit for installation of the pool was issued with 10 ft. setbacks. Mr. Corsi replied yes. Mr. Bartholomew asked if they ever came back to the City before the pool was installed to adjust the setbacks. Mr. Corsi stated when they tried to lay out the 10 ft. and could not meet the requirements, they did a layout showing 5 ft. setbacks. Mr. Corsi said he left on a business trip for work. During the time he was away, the pool company arrived and installed the pool at the 5 ft. setback. Mr. Bartholomew asked if they ever returned to the City to ask what their options were regarding the setbacks. Mr. Schaedlich stated that Mrs. Corsi returned to the office after the permit was issued to apply for the variance. Mr. Bartholomew asked if the concrete patio was the reason that the setbacks could not be met. Mr. Corsi stated no, the patio was going to have to be cut, regardless. However, if they had adhered to the 10 ft. setback requirement, the pool would have been right against the house, so the concrete would have to be cut even more. Mr. Schaedlich stated that Mrs. Corsi did not communicate that when she came into the office for the variance request. Discussion ensued regarding the aerial photo and view of the backyard.

Mr. Lyons asked the radius of the pool. Mr. Corsi replied 21 ft.

Ms. Condon asked about the electrical requirements needed for installation of the filter of the pool. Mr. Corsi answered that the pool is not "plugged in" or operational at this time. Mr. Bartholomew asked if Mr. Corsi was aware of the need for an electric permit. Mr. Bartholomew asked if it was ever plugged in. Mr. Corsi replied yes, to make certain that the filter was working properly. Mr. Bartholomew stated he is a bit frustrated because it appears that they disregarded all the requirements of Code to install the pool when and how they wanted. Mr. Corsi replied that is not an accurate statement. He explained that the pool was installed at the end of August. It was rushed because of time constraints to get it installed, and although the location wasn't finalized, the installer put it where he put it. It was not an attempt to circumvent the law. He did not allow the kids to swim in the pool repeatedly without proper electrical installation; they perhaps were in the pool a total of 4 hours before it got too cold to use. He admits to rushing the process, however, it was not purposely done to bypass the law, just to get the pool installed before fall. Mr. Corsi stated that he has contacted an electrician to rectify the electrical issue.

Ms. Condon asked about stipulations that are recommended

Mr. Lyons asked Mr. Corsi if he spoke to any of his neighbors regarding the location of the pool, maybe the neighbor to the east. Mr. Corsi replied no, they did not say anything to him.

Mr. Lyons stated that it appeared by the plot plan that the pool was 33 ft from the morning room. Mr. Corsi replied yes. Mr. Lyons stated that if he was going to honor the 10 ft. rear yard setback, the pool would be 2 ft or so ft. from the window so a variance was going to be required anyway. Mr. Lyons asked if Mr. Corsi was planning on a pool when they built the house. Mr. Corsi stated they would be able to purchase the additional lot off the back once the phase was done being developed. Mr. Lyons asked if the pool could be moved to meet the setback requirements in another part of the yard. Mr. Corsi replied even though it is not "permanent" the pool base has cement and rebar in it.

Mr. Behrens asked why the pool was not placed on the other side of the property as it seems to have more room on the other side of the lot. Mr. Corsi replied that it does not have any more space on that side.

Mr. Callender asked for the regulations regarding fencing. Mr. Schaedlich stated the pool wall itself is 48" tall and can serve as a fence.

Mr. Bartholomew asked if this was the smallest pool they could find. Mr. Corsi stated it was the smallest in the type of solid wall construction and style of the pool that they desired.

Mr. Behrens called for a motion. Mr. Callender moved to approve the variance request with the stipulations set forth by the City; that the applicant obtain an electrical permit for the pool pump; that the applicants erect a section(s) of six-foot (6") fence to screen the pool from the next door neighbor nearest to the pool. On roll call, Mr. Bartholomew, Mr. Callender, Ms. Condon and Mr. Behrens answered no. Motion denied, 4-0.

Mr. Lyons explained to Mr. Corsi that he has 30 days to file an Appeal with the Court of Common Pleas at the County level. He stated that if Mr. Corsi has questions, he can call the office tomorrow and get clarification.

OTHER BUSINESS:

Mr. Bartholomew asked for more guidance from the Planning Commission regarding having a cohesive design aesthetic in the City. Discussion ensued. Mr. Schaedlich commented that the City encourages individual properties to look to the neighborhood to develop a complimentary style, however, it cannot be done for the entire City. Mr. Schaedlich stated that if Mr. Bartholomew wants to put his comments in writing he will take it to the Planning Commission for discussion. Mr. Behrens mentioned that regarding signs, the Code calls for a limit on signs and the City shouldn't vary from it. Mr. Schaedlich stated that the purpose of the Board; to determine when a variance request is relevant and needed. To say that one should never vary from it is unrealistic. Ms. Condon replied that she thinks that there is lack of direction within the Code; that perhaps there should be a big picture, to make things more cohesive. More discussion ensued.

There being no further business, the meeting was adjourned at 8:55 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary