

BOARD OF ZONING APPEALS

October 16, 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 Assistant 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 May 13, 2014 minutes were approved as submitted.
The minutes of September 18, 2014 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. He also mentioned that the Board of Zoning Appeals has a vacancy in membership that has not yet been filled. He informed the applicants they could table their requests if they would like to wait for a full Board.

NEW BUSINESS

REFUSAL NO. 2257

APPLICANT: Lou Belknap, Agent, Agile Sign Inc.

DISTRICT: B-2 General Business

LOCATION: 270 East Main Street

VARIANCE: Section 1341.18 (c)

An application has been submitted by Lou Belknap of Agile Sign, on behalf of Extended Housing, 270 East Main Street, requesting a variance to Section 1341.18 (c) of the Painesville Codified Ordinances. Section 1341.18 (c) limits free standing ground signs to a height of eight (8) feet above grade. The applicant wishes to install a ground sign that is 12 feet above grade. A variance of four (4) feet is being requested.

Mr. Lou Belknap, 7340 Far Hill Drive, Concord, Ohio, representing Agile Sign Inc., was present. Mr. Belknap explained that the current sign contains all the tenants that presently occupy the building and the sign is full. They still have space to rent and no place to list their names on the sign. Extended Housing would like to increase the size of the sign to accommodate all the tenants.

Mr. Bartholomew said that the recommendation states that the proposed sign is requesting 11 spaces on the sign for the tenants. Mr. Belknap stated yes, that is correct however, the building can accommodate fifteen occupants. Extended Housing curtailed the number of spaces on the sign to 11 in total.

Mr. Callender asked if the sign will be digital and what is the intent of the sign? Mr. Belknap commented that he couldn't say for sure, but there are several services and programs running in the building that may offer clinics, programs and services throughout the year. Mr. Schaedlich commented that Extended Housing indicated that they hold such events on a regular basis, and they intend to rent to other agencies.

Mr. Lewis commented that he currently aware of only two separate occupants and asked Mr. Belknap if he knew what other businesses plan to locate there. Mr. Belknap replied that he is not certain; he doesn't know if the rest of the tenants are going to be individual businesses or services located under the umbrella of Extended Housing but he was told there was going to be 11 services that they were providing. Mr. Lewis asked if it would be possible to take out two of the tenant spaces to meet the height requirement. Mr. Belknap replied that the height variance is being requested because of the slope of the site. The current sign is already 9 ½ feet and the intent was to design a sign that fit into the space and would be similar in scale to what is already there. Mr. Lewis stated that at the time the building operated as Hillside Profession Building, the tenant board was full with tenants, but Extended Housing only has two actual tenants. He stated that they will have the electronic message board at the site to make announcements to the community so the need for additional height for additional spaces seems unnecessary.

Mr. Behrens asked for questions or comments from the Board. There being none, Mr. Behrens asked for questions or comments from the City. Mr. Lyons stated he can't really say much because he does legal work for Extended Housing, however, he stated he would like to ask Mr. Belknap a few questions to help the Board arrived at a decision. Mr. Lyons asked if the reason for the variance request was because of the topography of the land; the extreme slope of the hill? He stated that the City memo to the Board revealed that the size of the proposed sign is actually under the square footage requirement of the Sign Code. Mr. Belknap stated that is the main reason for the variance request; a variance would allow the owner to keep the sign in a similar position. Mr. Lyons asked why they would need a variance for signage if the square footage is okay. Mr. Schaedlich indicated that the sign is 9 feet 4 ¼ inches so it is over the height requirement for the City. He stated that because the present sign was existing, Extended Housing assumed it was an approved size but research on the property did not turn up a variance granted for the existing sign. Mr. Schaedlich stated he is not sure how the existing sign originally was approved for installation. Consequently a variance is required to install the new sign. Mr. Lyons stated that the slope

came to be because of the road widening that the State of Ohio did 25 years ago. The State took some of the property and created a dramatic slope.

Ms. Condon moved to approve the variance as requested. Mr. Callender seconded the motion. On roll call Ms. Condon, Mr. Bartholomew, Mr. Callender and Mr. Behrens answered "yes". Motion carried, 4-0.

REFUSAL NO. 2258

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 1341.14 (e)

An application has been submitted by Colan Sternberg of SignArt Inc., on behalf of CVS/Pharmacy, 265 East Erie Street, requesting a variance to Section 1341.14 (e) of the Painesville Codified Ordinances. Section 1341.14 (e) limits temporary sign displays to 30 days. The applicant wishes to display temporary signage until the construction of the new building is nearly complete and permanent signage is installed. An extension of seven (7) months is being requested.

Mr. Brad Rhodes, representing SignArt, 5757 E. Cork St. Kalamazoo, Michigan, was present for the meeting. Mr. Rhodes stated that the signs are identifying that the pharmacy is coming, however, it also identifies the construction site for deliveries and emergency vehicles that may be dispatched to the site. Even though Painesville is a small community and most people who live here know where the site is, those who are not familiar with the area do not know where the site is without some identification.

Mr. Bartholomew asked Mr. Rhodes what CVS would do if the building wasn't ready in 7 months. Mr. Rhodes replied that it will be functioning within 7 months; more likely as early as February or March 2015.

Mr. Lewis asked about the sandbags holding the sign down. Mr. Rhodes stated that the sandbags can hold the sign in 65 mile-an-hour winds; the sign must be mobile to move around the job site. The sandbags are 80 lbs. each.

Mr. Behrens asked for questions or comments from the Board. There being none, he asked for the recommendation of the City. Mr. Schaedlich recommended that the variance be granted with the stipulation that the temporary sign be removed at the time of the permanent sign installation.

Mr. Bartholomew moved to grant the variance request with the stipulation that the temporary sign be removed at the time of the permanent sign installation. Mr. Condon seconded. On roll call, Mr. Bartholomew, Mr. Callender, Ms. Condon and Mr. Behrens answered "yes". Motion carried, 4-0.

Mr. Callender asked to be excused from the Board for the next variance request. Mr. Bartholomew moved to approve, Ms. Condon seconded the motion. All members answered "yes". Motion carried.

REFUSAL NO. 2259

APPLICANT: Steele Mansion Suites, LLC

DISTRICT: R-2 Multi-Family

LOCATION: 348 Mentor Avenue

VARIANCE: Section 1341.14 (a) & (e)

An application has been submitted by Steele Mansion Suites, LLC, requesting a variance to Section 1341.14 (a) & (e) of the Painesville Codified Ordinances. The applicant wishes to install a temporary sign at the property located at 348 Mentor Avenue. Section 1341.14 (a) & (e) of the Sign Code limits the display of a temporary sign to 60 days per calendar year. The applicant was granted a variance to display the sign for a 5 month period and is requesting an extension to display the sign for an additional 90 days to advertise the Inn's opening.

Mr. Art Shamakian, 1664 North Shore Drive, Painesville Township, was present for the meeting. Mr. Shamakian explained that he has received many compliments on his renovations to the Steele Mansion. He said it is tasteful and all the publicity they have been receiving is positive. He stated a lot of people outside the City of Painesville who don't really know where the Mansion is are finding them.

Ms. Condon asked when Mr. Shamakian plans on having the renovations complete. Mr. Shamakian stated around the first of the New Year. Ms. Condon stated 90 days from today would be January 16; would the house be finished by then? Mr. Shamakian stated he thinks so. He added that he would not need a temporary sign by then.

Mr. Bartholomew asked how far ahead Mr. Shamakian is in bookings (for the Inn). Mr. Shamakian explained that they were not accepting any reservations at this time because the date of completion is still unknown.

Ms. Condon asked what the temporary sign looks like; she wasn't at the meeting when the original variance request was granted. She asked if it looks like the sign that was in the BZA packet. Mr.

Schaedlich replied yes, although it was a little different shape. Mr. Schaedlich stated that the original variance was granted and the days have exceeded the 90 day period that it was originally granted. This sign was already installed but was taken down when the variance expired.

Mr. Bartholomew asked if there were concerns by the Police or Fire Departments or anybody regarding the size or placement of the sign? Mr. Schaedlich replied no, the sign is pretty far back into the property.

Mr. Behrens asked for comments from the audience, either for or against the variance request. Mr. Kip Smead, 10029 Knollwood Ridge, Concord, asked if the Steele Mansion has received occupancy at this time. Mr. Schaedlich and Mr. Shamakian replied no. Mr. Smead stated they are advertising functions at the property as early as tomorrow. He asked why an extension for temporary signage would be granted if they are opening tomorrow? Mr. Smead stated that he had a problem with the Board awarding an extension to this request when the Shamakians haven't adhered to the stipulations of the Conditional Use that was granted by the Planning Commission. The only stipulation that was given to the residence, the only thing specifically asked for was no light trespass, yet the property is lit up like a stadium at night. He stated that one of the lights at the back of the property is so intense, up to 500 feet way. Mr. Smead stated that although this is not the forum to complain about the Conditional Use stipulations not being met, which Mr. Shamakian agreed to; to have the property tastefully down-lit, then they should not be granted an extension for the sign by any other Board. Mr. Smead showed a picture of it from two nights ago. He explained the offenses of the particular lights on the property. Mr. Smead said this renovation has been going on forever and has lost a tenant at his rental across the street from the house because of it and it is affecting his financial situation. Mr. Schaedlich commented that he would speak to the Building Official regarding this.

Mr. Behrens asked Mr. Lyons to what degree should the granting of the Conditional Use and the decisions of the Planning Commission impact the BZA decisions? Mr. Lyons said first he would like to ask some questions regarding the comments made by Mr. Smead. Mr. Lyons stated that the Conditional Use Permit stipulation #11 says that if the parking lot is intended to be used during non-daylight hours, the lot shall be lighted. Such lighting (referring to the parking lot) shall be arranged so as to reflect light away from adjoining properties in the public right-of-way. Was all that testimony about the parking lot? Mr. Smead replied it is along the drive-way, and cars do park there. Mr. Lyons asked to see the picture. Discussion ensued regarding the placement of the lights on the property. Mr. Smead added that the Shamakians screened all the lights on the side of the property that faces their rental property so their tenants are not offended, but all the other neighbors are (offended). Mr. Lyons asked if anyone has complained about the lights to the City. Mr. Smead replied yes, a complaint was made to the City Manager's office the Monday after the lights went on, about 2 weeks ago. Mr. Lyons replied that whether or not that is a violation, the City must talk to Mr. Shamakian to comply with the Conditional Use Permit. If this matter has not been brought to his attention by the City that he is in violation, then it is uncertain if it can be held against him this evening in terms of this particular request. What must be determined is if it is proper to do the extension of the original sign variance request for the same reasons that apply to CVS. The Board must consider this variance request with the same standards that were considered for CVS, so if Steele Manson Suites LLC is not in compliance with the Code, it is the duty of the City to make sure that they comply. If an event is being held tomorrow and the building does not have an occupancy permit and an occupancy permit is required, then the City needs to explain the law (to the owners). And if the LLC is in violation then the City would have to do what is necessary to enforce it. Mr. Lyons said he doesn't think anyone would be able to stay overnight at the Inn, because it does not look ready, however, he is not sure they can bring the public into an unfinished location, particularly at a commercial property as commercial properties have occupancy requirements as well. Mr. Lyons stated that he did not have a complete answer for the Board.

Discussion ensued regarding stipulations set by the BZA three months ago when Mr. Shamakian first appeared before the Board. Mr. Behrens stated that they met the stipulations at that time. Mr. Smead stated that he is aware that this is not the venue to complain about things done by the Planning Commission but the point he was trying to make is that the house should be put "in order" before the Shamakians ask for any more favors.

Mr. Behrens asked if anyone else wanted to speak regarding the variance request. Mr. James Callender, 362 Mentor Avenue, stated that he disagreed with Mr. Lyons on a couple of points he made. Mr. Callender said that he believes this not to be the same situation as CVS; this business is being conducted in a residential area. He stated that he joined the Board to maintain the residential character of the City, but the City is not living up to those standards. The City "gave into" Orwell, they "gave in" to not tearing down the mansion. He stated that he does not know who regulates the regulators, but the Building Official posts glorious reports of the Steele Mansion on Facebook, yet it is he who regulates how things should be done. Mr. Callender stated that he is very upset by this. When the Mentor Avenue Historic District was created, the architectural review, according to Mr. Callender, was supposed to be done by the City Planner, yet it appears it is being run by the Building Official. Mr. Callender explained that it is not the size of the sign; that is a minor issue. However, the Board should turn the request down because the sign is not residential in nature and the City needs to maintain the residential integrity of the district. The City has not followed through with the promise to maintain the residential character of the

neighborhood, did not follow through with the demolition order and the neighborhood has suffered for it, especially him, as his property is located next to Steele Mansion, the closest neighbor.

Discussion ensued. Mr. Behrens commented that the Board's duty regarding the demolition of the property was not to confirm the demolition as that duty belongs to the Planning Commission. Mr. Callender mentioned that the BZA minutes for the Special Meeting of January 28, 2010 were hidden for a whole year.

Mr. Bartholomew asked Mr. Callender if the funeral home that is west of his property is in conflict with the definition of the Historic District. Mr. Callender replied no, that property has been there a long time and is "grandfathered". Mr. Bartholomew commented that the Steele Mansion has been there a long time too. Mr. Callender stated yes, but the signs have not. Mr. Bartholomew then stated that the whole row of houses (near the Steele Mansion) have been there a long time and personally, he is glad that those properties are intact and have not been torn down. He commented that it is pleasing to see although it may not be pleasing to live next door to. Mr. Callender replied that he is not arguing that it should have been torn down but his point is that the City has consistently allowed things to occur on the property that should have never happened because they did not want to tear it down and hid the tear-down order for a whole year. He added that he and Russ formed an organization to preserve the residential character of the neighborhood and the things that have happened since then are not residential in nature.

Mr. Bartholomew asked if the Board has been party to this. Mr. Callender replied that there has been a temporary sign there on the property for over a whole year and the City has not done anything about it. More discussion ensued. Ms. Condon stated that she has driven by the property but has never noticed the sign; it did not stand out to her. Mr. Smead stated that it was almost as big as the sign that the Board is being asked to approve. Mr. Callender asked the Board to just not approve the sign.

Mr. Bartholomew said that when Mr. Shamakian last appeared before the Board, he stated that the purpose of the sign was to locate and to disseminate a phone number for reservations. Mr. Shamakian replied that the purpose of the sign was so people, not from the City of Painesville, would be able to locate the Mansion. The second purpose was to advertise a phone number for people to call to get information about the Inn. He stated there have been many inquiries regarding when the rooms would be available, so they have been taking names and telling people they will get back to them when they are closer to opening. Mr. Bartholomew asked the size of the list. Mr. Shamakian replied that it was long, although he wasn't sure exactly how long. More discussion ensued.

Mr. Behrens asked if there were any last comments or correspondence. There being none, he asked for the comments from the City. Mr. Lyons commented that Mr. Shamakian, under the ordinance, had a right to a 60-day temporary sign and the Board granted an additional 30 days to the temporary sign with the right to return to the Board and ask for an extension. Mr. Lyons indicated that Mr. Shamakian told the Board at that meeting that the Inn planned on opening in September. The Shamakians thought they needed the sign and started to do it 90 days in advance. However, that projection was not accurate, and because of the vagaries of construction, an opportunity was missed through no fault of the Board. On January 1st, the Shamakians will have another opportunity to ask for a temporary sign for 60 days without coming before the Board. That time frame will extend into March, which seems like it might be reasonable, but the Board has no way to know because the Shamakians have not committed to an opening date. Mr. Shamakian said he is shooting for the Holiday Season to have an occupancy permit and to host guests there. Mr. Lyons stated then a 90-day temporary sign isn't really needed. He also mentioned that a permanent sign has yet to be installed and asked when that might happen. Mr. Shamakian stated that he really did not know as there were some difficulties designing the sign to the Historic District specifications. Mr. Lyons stated that things seem to be progressing fairly quickly regarding the landscaping and the sign could conceivably be installed at this time. Mr. Shamakian agreed. Mr. Lyons then stated that Mr. Callender disagrees with his legal opinion because this is a residential district, (Mr. Lyons acknowledged that this is a residential district), the standards that one considers for granting a variance for a commercial district are the same factors to consider for a residential district. Mr. Lyons stated that is why he referenced the prior sign approval for CVS; the factors one considers when granting a variance request are indeed the same. Secondly, as the attorney for the Board, Mr. Lyons disagreed with Mr. Callender in saying that the City is hiding anything. According to Mr. Lyons, the City has never hidden anything that he has participated in. Mr. Lyons commented that he believes Mr. Callender's recollections to be incorrect. Mr. Lyons stated that at the last BZA meeting, the Board did not approve the May minutes because Mr. Callender said that he had made statements during that May meeting about the City hiding things and once again they were omitted from the record. The secretary then listened to the entire taped meeting again and spoke to Mr. Lyons on this subject several days ago. Mr. Callender's recollection was incorrect, those comments were not made during the May meeting. The secretary gave Mr. Callender an opportunity to listen to the tape if he wanted to, although Mr. Lyons stated he did not know if he did. The City did not hide anything at the May meeting, for the record. The City, as part of its duty, has a right to issue a condemnation order. The owner of the property at that time was Timothy Herron. The City was concerned that there was going to be damage to Mr. Callender's house because of a chimney on the property that was in immediate danger of falling. The City issued an emergency order to Timothy Herron to take down the chimney and the City also issued a condemnation notice at that time because of the condition of the house. As long as Timothy Herron

owned it, in the City's opinion, there was no chance that the property was ever going to be rehabilitated. The City wanted to protect the neighboring properties, and although Mr. Herron owned the property next door, Mr. Callender owned the one on the other side. Mr. Lyons added that when a condemnation order is issued, the owner of the condemned property has a right to file for an appeal through the BZA. A meeting was then held at 66 Mentor Avenue. A court reporter was there and the City did everything it could to make certain that every legal procedure was taken to give the City the right if needed to have the chimney torn down or the property torn down. Mr. Herron did not appeal, but instead made statements at the hearing that made his intentions hard to pin down. Consequently, the property owner did not come through and the City ended up hiring a contractor to tear down the chimney at its own expense. Mr. Shamakian then bought said property. Although the City had a condemnation order on the property, it was discretionary in nature and, as Mr. Shamakian got involved and had substantial money to invest in the property, the City decided to give the new ownership a chance to make improvements to the property. Mr. Lyons stated that the fact that the minutes were not distributed properly was a mistake, but the minutes only reflected there was a meeting and not that the City was hiding anything.

Mr. Callender responded that he did not want the house torn down, but he stated that he asked Mr. Lewis a half a dozen times for the minutes and Mr. Lewis told him that he was revising the minutes. Mr. Callender asked how one "revises" minutes? Mr. Lyons asked Mr. Callender what purpose the City would have to withhold minutes. Mr. Callender reasoned that the City did not release the minutes because they did not want to spend the money (to demolish the house). He explained that the City said they were looking for a buyer for the property. Mr. Lyons responded that Mr. Callender just confirmed that he, in fact, also did not want the house demolished. Mr. Lyons said the demolition of the structure probably would have cost close to \$50,000, a fee that would have been assumed entirely by the City. Mr. Lyons stated that the City paid for the chimney demolition and then certified it to the taxes not quite a year later, just before Mr. Shamakian bought the property. He indicated that he was not certain ultimately who paid the fee in the end, but it was certified to the taxes to recover the funds back to the City, more than a year after the fact.

Mr. Behrens commented that he could not guarantee the time-frame, but he did see a final copy of the minutes and they were, by far, the most comprehensive, detailed set he had ever seen. Mr. Behrens stated that he asked over the next year when the house was going to come down.

Mr. Callender wanted to say that the City has been way too lenient with this property. Mr. Lyons responded that that is a different issue, however, in two successive meetings, Mr. Callender has accused the City of hiding something and he did not want that point to go unchallenged in terms of the City's response since he knew the facts regarding this issue. Mr. Callender asked Mr. Schaedlich to confirm that he asked repeatedly for copies of the meeting minutes (January 28, 2010) over several months. Mr. Schaedlich confirmed that he absolutely did ask. Mr. Callender asked the Board to please turn down the temporary sign extension request.

Mr. Behrens called for a motion. Ms. Condon moved to approve the extension of the variance request. Mr. Bartholomew seconded the motion. On roll call, Ms. Condon, Mr. Bartholomew, and Mr. Behrens answered "no". Motion denied, 3-0. Mr. Lyons stated that Mr. Shamakian could appeal the decision to the Lake County Court of Common Pleas within 30 days.

Mr. Bartholomew stated that he would just like to see the permanent signage installed on the property, particularly since the plan is to open by the holidays. Ms. Condon confirmed that she felt the same.

There being no further business, the meeting was adjourned at 8:46 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary