

BOARD OF ZONING APPEALS

October 17, 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 August 15, 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. 2240

APPLICANT: Kevin O'Brien

DISTRICT: R-2 Multi-Family

LOCATION: 762 Mentor Avenue,
Westwood Village Townhouses

VARIANCE: Section 1135.01 (a) (1) B

An application has been submitted by Kevin O'Brien, 762 Mentor Avenue, #52, 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.

Mr. O'Brien, 762 Mentor Avenue, #52, was present for the meeting. Mr. O'Brien stated he submitted photos and a site plan of the property. He indicated that a section of 4 ft. fence along Jackson Street is scheduled to be replaced with a 6 ft fence. Mr. Schaedlich asked if the fence goes all the way up the brick wall (of the adjacent property). Mr. O'Brien replied yes, the fence does, however Westwood Village does not own all of the fence or part of that property (adjacent to the brick wall).

Mr. O'Brien stated that there is an apartment building (Silver Apts.) that is adjacent to Westwood Village. Westwood Village has become a cut-through to that property and there is continuous foot traffic to that property. Throughout the years, the fence has become damaged because of the continuous traffic to the apartments. Mr. O'Brien referenced the photos he submitted to the Board, pointing out various views of the adjacent apartment complex. He stated they would like to install a 6 ft. board- on- board fence to obliterate the view of the apartment complex on Silver Drive. He also indicated that there were 16 police reports filed in August 2013 alone at that complex for some petty crimes, car breaks- ins, but some major crime, like bullets hitting things in back yards, etc... He commented that they have a security light on the property but it offers no real security. Westwood Village would like to put up a 6 ft. chain- link fence along Jackson Street. Mr. O'Brien stated they would prefer to install a board- on- board if the City would allow it.

Mr. Bartholomew asked who Mr. O'Brien who he is. Mr. O'Brien replied that he is on the Board of Westwood Village Condominiums and he is before the BZA representing Westwood Village. Mr. Bartholomew stated that he walked the length of the fence previously and stated that there is erosion going on by the brick fence. Mr. O'Brien stated that section of property is not owned by Westwood Village, it falls short of the area that Mr. Bartholomew is speaking of. Mr. O'Brien stated that Westwood Village only plans on installing 110 ft. of fencing this year, due to finances, however, he was advised to ask for the variance on the entire property so he does not have to come back to the Board to ask for another variance request with the next stage of installation.

Discussion ensued regarding what length of fencing would be installed, along with height and type of fence. Mr. Schaedlich stated that board on board is a permitted fence type, but the 20 ft. of fence on the sideline of the property to the roadway would require a variance to install a 6 ft. fence. The code only allows 3 ft. in the setback. Mr. Schaedlich stated that a variance would need to be requested for that section of fence (along the property line) to be installed. More discussion ensued. Mr. O'Brien asked if he could ask for a board on board fence to be installed. Mr. Schaedlich replied that board- on- board is a permitted fence type.

Mr. Behrens indicated that the variance request pertains to the 6 ft height at the street, and 6 ft. along the side property line. Mr. O'Brien agreed yes. Mr. Schaedlich asked if the board- on- board is the preferred fence type. Mr. O'Brien stated that either/or would be fine. Mr. Schaedlich indicated that the Board would specify what type of fence would need to be installed per the granting of the variance request.

Mr. Behrens asked if there were comments from the audience. Mr. Andrew Cimaglio, 477 Owego Street, stated that he is opposed to a 6 ft. tall chain link fence along the main street. It would look like a penitentiary in his opinion. He stated that it should go to the brick wall as well. Mr. Bartholomew

indicated that the Board cannot make Mr. O'Brien install a fence on property that does not belong to Westwood Village. More discussion ensued.

Mr. Horacek asked if a board-on-board is going to be a problem financially for the Condo Association. Mr. O'Brien stated that they could not afford to do it all at once; it was going to be installed in stages. Mr. Horacek asked if the entire length of Jackson Street would be installed within the year. Mr. O'Brien indicated that 110 ft. would be done now and then go on to install what they could afford. Discussion ensued regarding the time-frame for installation.

Mr. Behrens asked the assistant law director if there were any comments. Mr. Lyons stated that you could place stipulations on the granting of the variance; that board-on-board is the approved fence type or leave it up to the applicant. If the Board does not want chain link installed, then it must be stated. Mr. O'Brien asked if they could do either/or board on board or chain link. Mr. Lyons replied that request is at the discretion of the BZA.

Discussion ensued with regard to fence placement and aesthetics. Mr. Lyons stated also the sideline variance request could stipulate that it is board-on-board. Discussion ensued regarding amount of fence installed and costs associated with it. Mr. Lyons asked when installation would start if the variance were granted. Mr. O'Brien replied they would like to start next week. More discussion ensued regarding trees on the property, etc... Marilyn Cavet, 762 Mentor Avenue #14, current president of the Westwood Village Board Association stated that upon discussion with several fence installers, it was determined that the fence would be installed around the trees rather than take them down. Mr. Lewis stated that the tree has heaved the sidewalk and it would be better to take the tree down and repair the sidewalk (which is the responsibility of the adjacent property owner). More discussion ensued.

Mr. Bartholomew moved to approved Refusal 2240 with the stipulation that the fence installed be of the board- on- board type, 6 ft. tall. This fence shall be installed within a 12 month period and should extend to the driveway complex on West Jackson Street. He also asked that care be made regarding maintenance issues of the fence. Ms. Condon seconded the motion. On roll call, Mr. Callender, Mr. Horacek, Ms. Condon, Mr. Bartholomew and Mr. Behrens answered yes. Motion carried, 5-0.

Mr. Horacek moved to approve Refusal 2240 amended request for fencing within the side yard at the location 762 Mentor Avenue with the stipulation that the fence be board- on- board type, 6 ft tall and shall be installed within a 12 - month period. Care also must be made regarding maintenance of the fence. Mr. Callender seconded the motion. On roll call, Mr. Horacek, Ms. 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 8:15 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary