

## BOARD OF ZONING APPEALS

October 20, 2011

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 Mr. Callender, Mr. DeLeone and Ms. Waytes. Also in attendance were the Law Director, James Lyons; the Assistant City Manager, Doug Lewis and the Secretary, Tina B. Pomfrey.

**MINUTES:** The minutes of September 15, 2011 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.

### TABLED BUSINESS

#### REFUSAL NO. 2208

**APPLICANT:** Orwell Natural Gas Company

**DISTRICT:** Business/Residential

**LOCATION:** 933 Mentor Avenue

**VARIANCE:** 1127.06 (d) (1)

An application has been submitted by Orwell Natural Gas Company requesting a variance of Section 1127.06 (d) (1) of the Painesville Codified Ordinances. Section 1125.04 #83 defines structure, in part, as anything with a fixed location. Section 1131.02 establishes the front setback at 65 ft., based on the setback maps of the City. Section 1127.06 (d) (1) establishes setbacks for accessory structures as the same as the main structure. The applicant installed a natural gas metering system within the front setback of the property, 6 ft. into the front setback. A variance of 59 ft. is being requested.

The variance request remained on the table.

#### REFUSAL NO. 2209

**APPLICANT:** Orwell Natural Gas Company

**DISTRICT:** Single Family Residential

**LOCATION:** 521 Mentor Avenue

**VARIANCE:** 1127.06 (d) (1)

An application has been submitted by Orwell Natural Gas Company requesting a variance of Section 1127.06 (d) (1) of the Painesville Codified Ordinances. Section 1125.04 #83 defines structure, in part, as anything with a fixed location. Section 1131.02 establishes the front setback at 100 ft., based on the setback maps of the City. Section 1127.06 (d) (1) establishes setbacks for accessory structures as the same as the main structure. The main structure was built with approximately a 62 ft. setback. The applicant installed a natural gas metering system within the front setback of the property, 6 ft. into the front setback. A variance of 56 ft. is being requested.

The variance request remained on the table.

### NEW BUSINESS

#### REFUSAL NO. 2211

**APPLICANT:** Be Next Awnings & Graphics

**DISTRICT:** B-2 General Business

**LOCATION:** 201 Richmond Street

**VARIANCE:** 1341.13 (c)

An application has been submitted by Be Next Awnings & Graphics, 5109 Clark Avenue, Cleveland, requesting a variance to Section 1341.13 (c) of the Painesville Codified Ordinances. Section 1341.13 (c) prohibits roof signs or signs extending above the parapet line. The applicant wishes to install two roof signs at the property located at 201 Richmond Street.

Mr. Aldo Dure, 5109 Clark Avenue, Cleveland was present for the meeting. Mr. Dure stated he is proposing two roof signs on the existing roof, anchored to the roof with a bracket. The signs will be illuminated, and will be proportionate in size to the building. Both are made of very durable aluminum. Mr. Sean Faraj, 2756 Royal Court, Westlake, was also present for the meeting. He indicated that he has owned the property for 9 years and invested about one million dollars into the site. He explained that he has just purchased into the Georgio's Pizza franchise, with 55 locations and \$5 pizzas all the time. Additionally, there is a cellular wireless business located in the gas station that he would like a sign for. Mr. Faraj stated he was not aware of the sign ordinance prohibiting roof signs.

Mr. Behrens asked if there is current advertising for wireless phone service. Mr. Faraj answered that he has the kiosk in the store only and has about 2,000 customers at this time.

Mr. Behrens asked for the comments from the City. Mr. Lewis stated that the application was made because roof signs are not permitted in the City. Additionally, the proposed location for the sign is in the Design Review District. Mr. Lewis explained that the City Planner, Russ Schaedlich, researched this request and stated in his report that he is unaware of any roof signs in the City. If these signs are installed, it would be a first. Mr. Lewis stated that when considering granting a variance request, certain

points, called the Duncan Factors, must be considered and weighed by the Board to determine whether the property owner has proved a practical difficulty. They are as follows:

1. Will the property in question yield a reasonable return without the variance? The business would be able to operate and generate a reasonable return without the variance as a ground sign or wall sign could be installed.
2. Is the variance request substantial? The request substantial. It would set a precedent, being the first of its kind in the City. There is an added concern regarding snow on the roof because of the sign, creating additional weight. Additionally, heavy winds above the roof line could pull the roof sign down.
3. Will the essential character of the neighborhood be substantially altered with the granting of the variance? The essential character of the neighborhood wouldn't change with the installation of the sign but it is substantially different that the rest of the signs on Richmond Street.
4. Would the variance adversely affect the delivery of government services? No government services would be impacted.
5. Did the property owner purchase the property with the knowledge of the zoning restriction? That is unknown.
6. Can the property owner's predicament be obviated through some other method than a variance? The owner can obviate the predicament through the installation of wall signs and a ground sign.
7. Will the spirit and intent of the Zoning Code be served? The administration believes that the intent of the Code would not be served as the applicant hasn't demonstrated practical difficulty.
8. Will the granting of the variance will be contrary to the intent of the Zoning Code? The granting of the variance is contrary to the intent of the Zoning Code as the permitted signage will provide adequate visibility for the businesses within.

The recommendation of the City is disapproval of the variance request.

Mr. Faraj explained that there is a 2,100 square foot addition that was just built. On one side of the building will be the entrance for the gas station and the other end of the building will house the phone store and Georgio's Pizza. There is no visibility on that portion of the building and people heading south cannot see the building at all.

Mr. Lewis asked if there is anything planned for the wall on the left. Mr. Faraj stated no; there is little visibility at that location and the gas station pumps are in the way. Mr. Lewis stated that currently the wireless is not a separate business and part of the existing store so that space is a logical choice for the cellular sign. And there is also the ground sign out front.

Mr. DeLeone asked if there is room between the doorways of the building; he wondered if signage could be placed in those areas. Mr. Faraj explained that the doorways and windows are being reconfigured for the new addition and will not be the same once the work is complete.

Ms. Waytes revealed that she had concerns about safety with regard to snow. Mr. Dure replied that the bracket holding the sign to the roof is 6 inches away from the sign itself so that snow will be able to move through the space between the roof and the sign. Additionally, the sign brackets are bolted to the rafters of the roof, making it extremely stable. Mr. Dure stated that the sign will not go anywhere.

Discussion ensued with regard to the location of the door and building access. Window signs were mentioned as well as reconfiguring the locations of the doorways to accommodate signage. Mr. Lyons wondered if perhaps the Grab-n-Go could utilize the unused peak of the building for signage. Additionally, Mr. Lyons stated that it is his opinion that the variance should be considered separately, as two different sign requests.

Mr. Behrens asked if the City's position would change if the sign variances were considered separately. Ms. Waytes stated that the Board should be concerned with the variance request only and should not be looking for alternate locations for signage to be installed. Mr. DeLeone replied that when discussing the factors leading to the granting of the variance request, one should consider reasonable and practical alternatives for a second sign.

Mr. Lewis stated that the City's position remains the same.

Mr. Behrens asked how the Board could approve one variance request for signage and not the other. Mr. Lyons replied that the Board has the right to approve the Georgio's sign and not the other or visa-versa; it makes no difference. The City could have told Mr. Faraj that he had to make application for two separate sign requests and it is not unreasonable because these are two separate situations, particularly since the wireless company is not a completely separate business. Georgio's is a separate business that Mr. Faraj could eventually sell off to someone else. More discussion ensued.

Mr. Faraj indicated that the reason he applied for separate signage for the wireless service is because the business is growing so much and is hoping to attract more of that business by letting others know that it is there inside the store.

Mr. Lyons offered that signage on the peak of the building may not provide 100 % visibility, but would provide some and would not require a variance. More discussion ensued regarding location of signage.

Mr. Faraj stated that he believes that his store is one of the nicest looking properties on Richmond Street. He stated that he has worked very hard for the past nine years to make his business successful and has improved the property greatly. Mr. Faraj added he wants to keep his business in the City although he has had offers to sell and lease the property. He has put money into the business and is trying to make it better.

Mr. DeLeone moved to approve the variance request for both of the roof signs. Mr. Callender seconded the motion. On roll call Mr. DeLeone and Mr. Callender answered "no". Mr. Behrens answered "no". Motion failed, 3-1.

Mr. Lyons explained to Mr. Faraj and Mr. Dure that the City will be sending them a letter containing the results of tonight's meeting. They have 30 days from the date of the letter to file an appeal with the Lake County Court of Common Pleas. Mr. Lyons indicated that they could instead come back to the City and work to find an alternative that is beneficial to both parties.

Mr. Faraj stated he will have to work on moving the signs around and find out what might work in the location.

#### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:14 p.m.

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Jim Behrens, Chairperson

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Tina B. Pomfrey, Secretary