

BOARD OF ZONING APPEALS

December 15, 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. DeLeone 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 November 17, 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. 2215

APPLICANT: Debra E. Boss

DISTRICT: R-1 Single Family Residential

LOCATION: 238 Newell Street

VARIANCE: Section 1127.06 (d) (1)

An application has been submitted by Ms. Debra E. Boss of 238 Newell St., requesting a variance to Section 1127.06 (d) (1) of the Painesville Codified Ordinances. Section 1127.06 (d) (1) limits the square footage of a second accessory structure on a property to 300 square feet. The applicant installed a 336 sq. ft. carport. The applicant has an existing garage on her property that is 468 sq. ft. Although the applicant is permitted a total of 2 accessory structures on the property, the carport exceeds the maximum square footage of the second accessory structure by 36 sq. ft. A variance of 36 sq. ft. is being requested.

Ms. Debra Elaine Boss, 238 Newell St., was present for the meeting. Ms. Boss explained that the carport is a gift from her boyfriend because she has COPD. He paid for the carport, had it installed and then turned the documents over to her. Ms. Boss stated that she was not aware that permits were required. She indicated that her neighbors are "fine with it" and she submitted letters from the neighborhood, for the record. She commented that she also has statements from the doctor regarding her COPD. Ms. Boss also stated that in the recommendation to the Board, the administration is calling her shed a garage and it is not a garage, there is no garage door, only a man door.

Mr. Schaedlich commented that yes, the shed has no overhead door, and the Board should note that that the other accessory structure on the property is a shed.

Ms. Boss stated that she is hoping eventually to turn the carport into a garage.

Mr. Behrens asked if the concrete shed was poured before the carport was installed. Ms. Boss replied no, the concrete shed is existing and was poured as a basketball court in 1993 when her children were little.

Mr. Behrens asked if the carport is anchored to the pad. Ms. Boss indicated that it is.

Mr. Behrens asked if anyone planned on speaking on behalf of the variance request. Ms. Boss' daughter-in-law stated that she has taken care of Ms. Boss for the last few years because of her diminished health; she has trouble walking and spends ½ hour to 1 hour coughing when she wakes up each morning.

Mr. Behrens asked if there was any correspondence from the neighborhood. The secretary replied that she received a letter from Joel and Sandra Guthleben, 247 Newell Street, who gave several reasons why they are not in favor of the variance request being granted (Exhibit A).

Mr. Lyons asked Ms. Boss the value of the carport. She replied that it was \$1,700. Mr. Lyons asked if it was properly anchored to the ground. Ms. Boss replied that she thought so but you would have to ask those who installed the carport. Mr. Lyons asked Ms. Boss if she works. She replied yes.

Mr. Lyons stated that this variance request is not a normal request as it relates to an owner and not the property itself. The carport location could be changed to a code conforming location, however, if the Board is inclined to grant the request, they should consider putting the condition on it that when ownership of the property transfers, the structure needs to be removed. The City could file a statement with the County Recorder's office stating such.

Ms. Boss stated that she had a will drawn up and her son will inherit the house.

Mr. Lyons indicated that the next owner could then ask for a variance as well; he asked Ms. Boss if that was a stipulation she could agree to. Ms. Boss replied yes, then her kids can ask for a variance at that time.

Mr. Schaedlich added that the accessory structure meets all setback requirements and although neighbors may object to the looks of the building, the building code allows it.

Mr. Lewis stressed the importance of getting permits in advance of any structure being installed. The City could have then worked with the applicant to arrive at a conclusion that would be mutually agreeable to all without having to come before the BZA.

Mr. Horacek moved to grant the variance with the stipulation that the structure be removed when the property changes ownership. The City will file an Affidavit of Fact with the Lake County Recorder's office, spelling out the stipulations of the granting of the variance. Mr. DeLeone seconded the motion. On roll call, Mr. Horacek, Mr. DeLeone and Mr. Behrens answered yes. Motion carried, 3-0.

REFUSAL NO. 2216

APPLICANT: Sandra Lee Leasure

DISTRICT: R-1 Single Family

LOCATION: 40 Chestnut Street

VARIANCE: 1137.03 (b) (2)

An application has been submitted by Ms. Sandra Lee Leasure, 40 Chestnut Street, requesting a variance to Section 1137.03 (b) (2) of the Painesville Codified Ordinances. Section 1137.03 (b) (2) requires a minimum of one enclosed parking space for every single family dwelling unit. The property at 40 Chestnut Street does not have a garage.

Mrs. Sandra Leasure, 40 Chestnut Street, was present for the meeting. Mrs. Leasure explained that she is on a fixed income and cannot afford to build a garage. She has no vehicle, nor any license to drive. The garage was torn down in the spring during the United Way Day of Caring. Mrs. Leasure explained that her son stays with her over night but does not live at the house full time. She stated that she has no lawn furniture, or lawn care equipment, so there is nothing stored outdoors that should be in a garage. She also claimed she plans on selling the property within 2 years.

Mr. Lyons commented that the reason Mrs. Leasure is coming before the Board is that the City sent a violation notice to her for not having a garage on the property. The City must be consistent in enforcement of the Zoning Code. Unfortunately, the law does not use money issues as a defense for not conforming to the Code. The Board, if considering granting the variance, could put a stipulation on this homeowner much like the request before this, however, others could claim a hardship as well. An option could be that the Board table this and take a closer look at it to determine what options are available. The Board also could deny the request entirely and let the Judge (Ciconetti) rule on this in court.

Mr. Behrens asked if the Board could rule on the request much like they did in the previous request. Mr. Lyons replied yes; to do so however, would invite others who are cited under the same section of code to do the same. The City could place a time frame of two years on the variance request, filing an Affidavit of Fact with the Recorder's Office.

Mr. Schaedlich commented that the property is quite large and can easily accommodate a garage. The next owner then would have to build one.

Mr. Lewis stated as he was instrumental in coordinating the garage demolition during the United Way Day of Caring, he can assure the Board that the garage was in bad shape and needed to be torn down because it was a

safety hazard. Waste Management donated the container for the demolished materials. Mr. Lewis said he believes the options suggested by Mr. Lyons are all valid and that should a variance be granted, a garage should be built in the future.

Mr. DeLeone moved to grant the variance for a period of two years, specific to this owner. The City will file an Affidavit of Fact with the Lake County Recorder's office, spelling out the conditions of the granting of the variance. Mr. Horacek seconded the motion. On roll call, Mr. DeLeone, Mr. Horacek and Mr. Behrens answered yes. Motion carried, 3-0.

REFUSAL NO. 2217

APPLICANT: Dale Day

DISTRICT: R-1 Single Family

LOCATION: 293 Courtland Street

VARIANCE: 1129.01

An application has been submitted by Mr. Dale Day, 293 Courtland Street, requesting a variance to Section 1129.01 of the Painesville Codified Ordinances. Section 1129.01 establishes the minimum rear yard setback in an R-1 Single Family District at 35 feet. The applicant wishes to enclose an existing carport to create a garage, with the intent to then demolish the existing garage. The modified carport has a rear setback of 3 feet. A variance of 32 feet is being requested.

Mr. Dale Day, 293 Courtland Street, was present for the meeting. Mr. Day stated that the garage was built at the time the house was built in 1918, to house a Model A automobile. The garage is in bad shape and impractical to rebuild. Mr. Day stated that he would like to tear down the existing garage and finally be rid of the skunks and ground hogs that dig under the garage. At that time he would like to enclose the carport that is attached to the house.

Mr. DeLeone asked Mr. Day how soon he would like this to get done. Mr. Day replied soon, within a month or two.

Mr. Behrens asked who owns the property next door, south of his house. Mr. Day replied that one of his relatives owns it and although there is no house on the lot currently, it used to have a house. The brick driveway still exists although it is covered with gravel. He stated it is a separate parcel and is buildable.

Mr. Behrens asked if there will be a man door on the carport. Discussion ensued regarding how the carport will be enclosed.

Mr. Lyons asked the identity of Dave Ebbert as he is listed as the owner on the variance application. Mr. Day replied that Mr. Ebbert is a relative and partial owner of the property along with him. Mr. Day stated that he personally lives in the house on the property. Mr. Lyons asked who will be enclosing the car port. Mr. Day replied that he is a mechanical draftsman by trade and will be doing the work.

Mr. Behrens commented that considering the current setback of the carport, he thought that there is a setback encroachment. Mr. Schaedlich replied that there was discussion of that in the office but the permits were issued anyway by the building official.

Mr. DeLeone moved to grant the variance with the stipulation that the detached garage be demolished upon completion of the attached garage. Mr. Horacek seconded the motion. Mr. DeLeone amended his motion to read that the demolition of the garage must occur within three months of the granting of the variance request, or the completion of the garage, whichever comes first. Mr. Horacek seconded the motion. On roll call, Mr. Horacek, Mr. DeLeone and Mr. Behrens answered yes. Motion carried, 3-0.

There being no further business, the meeting was adjourned at 8:30 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary