BOARD OF ZONING APPEALS
December 20, 2012

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. 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 September 20, 2012 were approved with changes.

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. 2233
APPLICANT: John Stewart
DISTRICT: R-1 Single Family
LOCATION: 240 West High Street
VARIANCE: Section 1349.09

An application has been submitted by Mr. John Stewart, 98 Levan Drive, requesting a variance to Section 1349.09 of the Property Maintenance Code. Section 1349.09 requires all dwellings to have gutters and downspouts. The applicant is seeking an exemption to the gutter and downspout requirement for the property located at 240 West High Street.

Mr. Stewart, 98 Levan Drive, was present for the meeting. Mr. Stewart gave a PowerPoint presentation with photos showing the referenced property. Mr. Stewart presented several photos of the east side of the property at 240 West High Street. He explained that the photos were taken in late October right after a particularly rainy spell. He indicated no presence of ponding or water run-off from the property. He then showed a photo of the basement at the property and claimed that it is and always has been bone-dry. Mr. Stewart's contention is, based on the soil type, the topography of the property and the low water table, there is no necessity for gutters and downspouts.

Mr. Horacek asked Mr. Stewart when he bought the property. Mr. Stewart replied in 1997 and there were no gutters on the house at the time of purchase. Mr. Horacek asked when the property was built. Mr. Stewart stated he did not know.

Mr. Bartholomew asked whether there was a concern about whether snow or ice build-up might slide off the roof onto something or someone. Gutters may help channel some of that away.

Mr. Stewart said he has never had anything beyond the normal icicles on the roof of the property.

Mr. Horacek asked if this particular property is a rental. Mr. Stewart replied yes, they used to live in it and it is currently empty but he plans on renting it again.

Mr. Behrens stated that the City made mention in their findings the soil type and slope of the property. He asked why this issue has any impact on the zoning of the property. Mr. Schaedlich replied that it is not a zoning issue but the Board of Zoning Appeals presides over the Housing and Property Maintenance appeals. Mr. Schaedlich commented that also, in addition to the soil being a Tyner B, a rapidly percolating soil, if there were to be any runoff, it would sheet to the northeast towards the bike path that has a ditch right next to it. Any run-off would be directed to the ditch. This house is at the very end of the street and has no effect on any of the surrounding properties.

Mr. Bartholomew asked Mr. Stewart if he had any estimates done for the installation of the gutters. Mr. Stewart replied yes, that it would cost "a couple thousand dollars". He stated that the roof is high and requires two runs. He also stated that he would have to install the gutters himself.

Mr. Horacek stated that the area of Tyner B soil is pretty large. He asked Mr. Schaedlich if he was saying that none of these houses needed gutters. Mr. Schaedlich replied that he knows someone a couple of streets over who has a problem keeping his grass green because in the summer it always burns out. Tyner B soil is generally sand, Mr. Schaedlich stated. He indicated that he is not a soil expert but is relying on the information provided by the Soil Survey of Lake County, Ohio.

Mr. Horacek asked if there have been other requests like this. Mr. Schaedlich stated that there was another request over on West High Street quite a few years ago before he worked for the City. The delineation is close but it was in the middle of the block. He said the Board denied the request.

Mr. Callender asked what kind of precedent would be set if the Board approved the variance request. Mr. Schaedlich indicated that each request is reviewed on a case-by-case basis. Depending upon the information that is supplied to the Board and if the factors to grant the variance support the position of

the applicant, the Board has ability to review each case and come to a conclusion based on its own merit. Mr. Behrens stated if so much in the area is Tyner B soil, what is to prevent the whole neighborhood from requesting a variance? Mr. Schaedlich stated that he has taken into consideration more than just soil type. Location of the house played a role in his recommendation because this one is uniquely situated. If this house were in the middle of the neighborhood, it would be a different case.

Mr. Horacek asked Mr. Stewart if there is any physical impediment to putting up the gutters, or any other reason to not install them, other than lack of necessity and expense. Mr. Stewart replied no, he doesn't feel the house needs them.

Mr. Bartholomew asked the City if there is a liability (to the City) if the variance is granted. Mr. Lyons stated that there is no liability; the purpose of the ordinance is to keep up the housing stock by properly directing water away from the foundation. If this property were to suffer a foundation problem from the lack of gutters and downspouts, that is not on the City but the homeowner.

Mr. Callender commented that although one side of the property might not have water run- off issues, it appears the other side runs to the neighboring property. Mr. Stewart replied that there has never been any ponding or water on the property.

Mr. Bartholomew stated that pictures of the basement show discoloration on the walls. Mr. Stewart replied that is discoloration possibly from an old shower that used to be in the basement, or maybe dirt. He reiterated that he has never seen water in the house, even after the most recent heavy rains. He stated that his basement on Levan Drive has had water, but this house hasn't.

Discussion ensued. Mr. Behrens asked for a motion. Mr. Horacek moved to approve Refusal 2233 as requested. Mr. Callender seconded the motion. On roll call, Mr. Bartholomew and Mr. Callender answered "yes". Mr. Horacek and Mr. Behrens answered "no". Motion denied, 2-2.

Mr. Lyons informed Mr. Stewart that he may appeal the decision through the Clerk at the Court of Common Pleas. He has 30 days to file the appeal.

Mr. Stewart asked if he has a time-frame for installation of the gutters and downspouts. Mr. Schaedlich replied that the Community Development Department will work with Mr. Stewart and give him time to install the gutters and downspouts since winter is setting in.

REFUSAL NO. 2234
APPLICANT: Lou Belknap, Agile Sign & Lighting
DISTRICT: B-1 Business/Residential
LOCATION: 933 Mentor Avenue
VARIANCE: Section 1341.17 (a), 1341.118 (d), 1341.22 (c)

An application has been submitted by Mr. Lou Belknap of Agile Sign & Lighting, requesting a variance to Section 1341.17 (a), 1341.18 (d) and 1341.22 (c) of the Painesville Sign Code. The applicant wishes to install an Electronic Message Center (EMC) on the YMCA property located at 933 Mentor Avenue. Section 1341.18 (d) permits EMC signs only on property zoned B-2, General Business. The applicant would also like to install an internally lit sign on the property. Section 1341.22 (c) of the Sign Code does not allow signs visible from adjoining properties zoned for residential use to be illuminated except with indirect white light. Additionally, the applicant would like to install a second wall sign on the west entrance off of the parking lot. Section 1341.17 (a) permits only one wall sign on a property unless it is a corner lot. A variance for the second wall sign is being requested.

The applicant requested that the refusal be tabled until the next regularly scheduled meeting so that the issue could be heard by a complete Board. Mr. Horacek moved to approve the request to table. Mr. Callender seconded the motion. On roll call, Mr. Callender, Mr. Horacek, Mr. Bartholomew and Mr. Behrens answered "yes". Motion carried, 4-0.

There being no further business, the meeting was adjourned at 8:04 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary