

BOARD OF ZONING APPEALS

February 17, 2011

The Board of Zoning Appeals met in Courtroom No. 1 for their regularly scheduled meeting. Mr. Behrens, the Vice 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, Mr. Horacek, and Ms. Waytes. Also in attendance were the Law Director, James Lyons; the Assistant City Manager, Doug Lewis; the City Planner, Russ Schaedlich and the Secretary, Tina B. Pomfrey.

MINUTES: The minutes of January 29, 2010 were approved as submitted.
The minutes of November 18, 2010 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

ADMINISTRATIVE APPEAL

APPLICANT/OWNER: Thomas S. Vendley

DISTRICT: B-2 General Business

LOCATION: 146 North State Street; 257 Rockwood Drive; 263 Rockwood Drive

In accordance with the Zoning Code of the City of Painesville, Ohio, an appeal has been submitted by Mr. Thomas S. Vendley the notice dated December 12, 2010. The notice states the applicant is in violation of the Sections 1139.04 (e) & (f) of the Codified Ordinances of the City of Painesville, Ohio. The Board of Appeals will meet to consider the appeal of the notice dated December 21, 2010: Loss of Non-Conforming Use.

Mr. Vendley was present for the meeting. Also in attendance was Mr. Benjamin Aveni, his attorney, who spoke on Mr. Vendley's behalf. Mr. Aveni stated that Mr. Vendley was born and raised in Painesville. He attended elementary and middle school in Painesville and is a graduate of Harvey High School. He additionally attended Lakeland Community College classes when they were held at the Key Bank Building. He has a vested interest in the Painesville Community. Mr. Vendley has owned these three properties for approximately 35 years. Prior to that, his father owned the properties. Mr. Vendley, when he first was married, he lived at 263 Rockwood Drive, a house he built himself.

Mr. Vendley was sent a letter by Noell Sivertsen, the Property Maintenance Inspector for the City of Painesville. The letter stated that the properties at 146 North State Street and 257 and 263 Rockwood Drive have lost their non-conforming use. Mr. Aveni stated that Section 713 of the Ohio Revised Code speaks of termination of nonconforming uses as a voluntary discontinuance of the property. Mr. Aveni stated that non-use does not constitute abandonment. The properties have always been maintained and Mr. Vendley has always intended to use these properties as residences. Mr. Aveni commented that Mr. Vendley has been a great friend and supporter of many city departments and programs and has donated his time and services to them. Additionally, he has offered the use of his property to the Painesville Police Department for surveillance of the surrounding neighborhood. During this time in question, Mr. Vendley has continually improved the properties with the intention of renting them. He has had occupants in these properties and consistently displayed "for rent" signs. Because Mr. Vendley is particular of the quality of people he rents to, he has not had great success with long-term tenants. Mr. Vendley is a current participant in the new Crime Free Housing Program established by the City. Mr. Aveni added that in fact at times, Mr. Vendley has occupied all three of these residences himself while performing maintenance. Mr. Aveni indicated that evidence demonstrates and contradicts the City's assertions that there has been no use of the properties. Additionally, the City's position that there has been no utility consumption is incorrect. Mr. Aveni stated that he has copies of utility bills for the properties that do indeed show water consumption. Mr. Vendley calculated that 1 unit of water translates to 748 gallons of water. The City's contention that there has been no water use is not correct; Mr. Vendley has paid for 748 gallons so, in fact, there has been utility usage.

Mr. Vendley, 10530 Clearlake Drive, stated that he has been employed for 17 years as a machinist for Compton Powder Plant in Euclid. Mr. Vendley reiterated that he has owned the properties for almost 36 years; his father owned them prior to that. He lived there when he first was married and raised a child there until 1973, when he divorced. Rite Aid approached him regarding the purchase of his properties when they developed the lot next to his properties; however, they backed out of the deal. Mr. Vendley said that he is retiring in 6 months and these properties are part of his retirement, so he has taken care to maintain the properties. Mr. Vendley indicated that he has stayed at the properties on and off while doing work there, many times going straight from work to the houses. He showers at work before he gets to the properties, which may explain the limited water consumption on the utility bills.

Mr. DeLeone asked if the three properties were ever vacant for a 12 month consecutive period or were the utilities ever disconnected. Mr. Vendley replied no, he stated he had friends stay because he became tired of guarding the place. He also commented when Rite Aid was doing their construction, it chased a lot of people away (from renting the properties). Those that wanted to rent the properties were offering much less money to rent the space, but he wasn't willing to give the property away. He indicated that the

whole time he had “for rent” signs in the window, but because of the economy, he could not rent the properties for enough money to make it worth it.

Mr. Behrens asked if there were comments from the City Law Director. Mr. Lyons stated that he had a chance to review what Mr. Aveni presented to the Board in his memorandum. He responded that state law regarding nonconforming use speaks of voluntary abandonment however, the City Code which is what the Board is relying on, indicates that if any nonconforming use ceases for any reason for a period of more than 12 months then any subsequent use has to comply with the current zoning. That is the reason that the letter from the Property Maintenance Inspector was sent to the applicant. The inspector believed this to be a discontinuance of use. Mr. Lyons said there is clearly a difference between state law and the City’s Code. Most of what Mr. Aveni cited in his memorandum refers to state law. However, Mr. Lyons commented that he read the City Planner’s memo to the Board and listened to the testimony of Mr. Vendley. He concurred with the City Planner’s recommendation to the Board.

Mr. Lewis commented that this issue will more than likely come before the Board again so he believes the Board should review every request. Mr. Lewis said he has a few questions. Mr. Lyons said he thought that the City was in the process of identifying structures that are nonconforming and notifying those property owners that may be in danger of losing the nonconformity if they don’t rent them in the allotted time frame. My Lyons stated that the City recommended approval of the administrative appeal and he assumed it was because there is no record of notification to the property owner and not because of anything else.

Mr. Lewis asked if 263 Rockwood was built in 1984. Mr. Vendley responded yes; the home was built in compliance with the Code. Mr. Lewis asked what the zoning classification was at the time. Mr. Vendley responded that it was B-2, General Business. Mr. Aveni added that at the time, pyramid zoning was in place and you could build a residential home in a B-2 zoning district. Mr. Lewis asked Mr. Schaedlich if the property owner was notified at the time of the zoning change. Mr. Schaedlich replied that he was not employed by the City in 1984; however, it is customary for a legal notice to be published in the paper if there is a citywide change in zoning. Mr. Lyons agreed that probably notification was published. He explained that state laws do not require personal notification when there are a number of properties involved. Mr. Aveni indicated that Mr. Vendley never received a personal notification and was not aware that he was subject to lose the nonconforming status of his properties.

Mr. Lewis asked what the intention is for 263 Rockwood Drive at this time. Mr. Vendley said now he plans to rent the home. Mr. Behrens asked how long it has been since he had a rent-paying tenant in the property. Mr. Vendley replied a couple of years. Mr. Behrens commented that does not make financial sense since Mr. Vendley is losing out on collecting rent and earning money on the property. Mr. Aveni replied that it is Mr. Vendley’s prerogative to be selective in his tenants. He is in a different economic position; he does not “need” to rent the property. Mr. Lewis stated that City records indicate this property has not been occupied in 4 ½ years. Mr. Vendley stated that is not correct; there has been water consumption on the property. Mr. Lewis asked if the property ever had a lease. Mr. Vendley stated he has friends that have stayed there. Mr. Lewis asked if there is any affidavit from the person(s) living there. Mr. Aveni replied no, just testimony. Mr. Lewis asked if the utilities have been on for the structures the whole time. Mr. Vendley replied yes; Mr. Aveni stated that fact furthered Mr. Vendley’s claim that he always intended to rent the property if he could find a suitable tenant. Mr. Vendley said it may seem rather strange that he wouldn’t rent it out; however, he was willing to work overtime (to pay for it) instead of renting it out to someone for \$250 a month. Mr. Aveni said since he owns rental property himself, he will work with Mr. Vendley to manage these properties if the Board approves the Administrative Appeal. Mr. Lewis stated the City would like to see these homes rented because vacant properties attract the wrong kind of people and it is in the City’s best interests to have the homes occupied. Mr. Aveni replied that if you rent to the wrong person, they will destroy your property. More discussion ensued regarding the units.

Ms. Waytes asked if the yards are maintained and not an eyesore. Mr. Vendley replied yes. Ms. Waytes asked what brought these properties to the attention of the City. Mr. Schaedlich explained that the Property Maintenance Inspectors, as part of their job, identify these vacant, non-conforming properties. Ms. Waytes asked Mr. Schaedlich to clarify what vacant non-conforming means. Mr. Schaedlich indicated that it does not mean the properties are abandoned, just not used. If the properties are not used, or if the use discontinues for a period of 12 months, they lose their non-conforming status and must revert to the use that the Zoning Code currently allows.

Mr. DeLeone moved to grant the administrative appeal in accordance with the city’s recommendation that from this date forward, the properties must be occupied. Mr. Horacek seconded the motion. On roll call Mr. DeLeone, Mr. Horacek, Ms. Waytes and Mr. Behrens answered yes. Motion carried, 4-0.

OTHER BUSINESS

Mr. Lewis mentioned that the City is in the process of incorporating a Vacant Property Ordinance where all vacant properties have to be registered, assuming that City Council passes the ordinance.

Mr. Behrens and Mr. Horacek were voted Chair and Vice Chair of the 2011 Board of Zoning Appeals.

Mr. Lyons said that he thought the idea of notification by the City was a good idea because it does two things. It puts rental property owners on notice regarding what they need to do in order to get their properties into compliance with current zoning classification and use and it also helps the City so that if, in the future, property owners try to make an argument that their properties have been consistently occupied, there is a way to prove or disprove it.

Discussion ensued regarding the definition of use.

On another subject, Mr. Behrens asked with regard to Steele Mansion, the minutes (of January 29, 2010) were voted 4-0 to affirm the City's position, but the Mansion is still standing. Mr. Behrens wondered why the condemnation order was not acted on.

Mr. Lyons explained that there were actually two orders on the property. The first order was to take down the chimneys. Because it was an emergency order, it was acted on quickly and the City paid for the chimney demolition. However, the demolition order for the house was not an emergency order. It did not have to be executed quickly and the cost of the demolition of the house is in the six figures. The City does not have the budget to pay for the demolition.

Mr. Lewis stated that the new owner was given the condemnation order upon purchase of the property. The purchaser spoke to the City and explained that he was serious about renovating the property. The purchaser has a structural engineer working on the renovation plans and his entire family is involved with the project. An Amish crew is removing debris from the site and a temporary roof is being designed to protect the property while the renovation plans are being drawn up.

Mr. Behrens asked if there is a timeframe for repair that is considered too long. Mr. DeLeone replied that six months is well within what his former clients would need to draw up plans for a property.

Mr. Lyons stated that the previous owner, Timothy Herron, did not have financial means, but the new owner does, so the City is giving the new property owners time to plan for the repairs.

Mr. Schaedlich stated that the new owner is speaking to Lake Erie College, to possibly rent the rehabilitated space to the College.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:50 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary