

BOARD OF ZONING APPEALS

February 18, 2010

The Board of Zoning Appeals met in Courtroom No. 1 for their regularly scheduled meeting. Ms. Bacho called the meeting to order at 7:30 p.m. and asked the Secretary to call the roll. Members in attendance were Mr. Horacek, Mr. McElroy and Mr. Behrens.. Also in attendance were the Assistant 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 21, 2010 were approved as submitted.

Ms. Bacho explained the procedures for this meeting and swore in those who planned on speaking for or against the variance requests.

OLD BUSINESS

ADMINISTRATIVE APPEAL

APPLICANT/OWNER: Nancy Pettit

DISTRICT: R-1 Single Family

LOCATION: 67-69 East Prospect Street

In accordance with the Zoning Code of the City of Painesville, Ohio, an appeal has been submitted by Ms. Nancy Pettit regarding the notice dated December 4, 2009. 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 4, 2009: Loss of Non-Conforming Use.

Ms. Pettit was present for the meeting. She submitted several checks for utilities, trash pick-up and one check received from the upstairs tenant. These checks were passed around to the members of the Board. Mr. McElroy stated that at last month's meeting, Ms. Pettit was asked to submit all records prior to 2009. Mr. McElroy questioned why she does not have any records.

Ms. Pettit stated that she lost almost everything in the flood (at 198 Grand River Avenue) and then moved to Perry where she was robbed.

Mr. McElroy asked when the flood occurred. Mr. Lewis indicated that the flood occurred July 28, 2006. Mr. McElroy asked Ms. Pettit if she has any paperwork to clarify that there were 2 renters occupying the property between the dates November 2007 and August 2009. Ms. Pettit replied no, she does not. Mr. McElroy continued that it is difficult to establish that the property was occupied at that time.

Ms. Bacho commented that the Board received a timeline of the dates of water meter reads for the property. She asked Ms. Pettit if she had any comments regarding the timeline. Ms. Pettit replied that she did not get a copy of the timeline from the City.

Mr. Lewis was sworn in by the Chairman. He indicated that if there was water consumption at that property, the usage would be reflected. Mr. Lyons asked Mr. Lewis if the timeline presented to the Board is a true and accurate read of the dates and water consumption (for the property). Mr. Lewis replied yes.

Mr. Behrens said per the time line, the property in question shows that the water was not used at the residence, and, in fact, was turned off at this residence. Mr. Lewis replied yes it was turned off for a period of 20 months.

Mr. McElroy asked the City if they can provide an estimated percentage of nonconforming houses on Prospect Street. Mr. Schaedlich said there are quite a few houses that are nonconforming. He stated his guesstimate is 40%. Mr. Schaedlich was sworn in. Mr. Lyons asked Mr. Schaedlich if the statements he made are true and correct. Mr. Schaedlich replied yes.

Discussion ensued regarding swearing in and sworn testimony.

Mr. McElroy asked what procedures are currently in place in order to identify other structures that are in the same situation as Ms. Pettit. He asked if there is routine screening of the water utilization on properties or a type of tracking system that will flag other properties in the City for investigation. Mr. McElroy commented that in this circumstance, Mrs. Pettit approached the City for services and at that point her property was flagged, however he wondered if this process is quid pro quo or if there is another process in place.

Mr. Schaedlich stated that when the Housing Inspectors are investigating a nonconforming property, the property is flagged in the utilities office and a hold is put onto the account before it can be turned back on. Mr. Schaedlich commented that he was not aware of the circumstance surrounding Mrs. Pettit's property.

Ms. Pettit explained to the Board that she had gone to the utilities department for a read of the property meter for tax purposes. That is when the utilities clerk notified the Housing Inspector. But there was water consumption at the property. People were working at the property and they used toilets and mopped floors. The water was on and was being used.

Mr. Behrens stated that at the meeting last month, Ms Pettit stated that she lived at the property in the month of May 2009. Ms. Pettit replied yes. Discussion ensued with regard to occupancy of the upstairs and downstairs units. Mr. Behrens stated that the time frame is confusing.

Mr. McElroy asked if there is a process of notification given to a landlord when they are in potential danger of losing their non-conforming use. He asked if they are aware that the "clock is ticking" with regard to occupancy requirements. Mr. Schaedlich stated no, not to his knowledge. Mr. McElroy asked if notification was given to Ms. Pettit telling her that she was at risk of losing the non-conforming use of the property. Mr. Schaedlich stated no, not to his knowledge.

Ms. Pettit indicated that when one purchases (a multi-family property), they are not told about non-conforming issues either. She stated that if the property is listed as a duplex, you think you buy a duplex and you pay taxes and insurance on a duplex. You don't realize that you could lose the use.

Ms. Bacho asked if "landlord hold" means the service is off. Mr. Lyons explained that utility service to the property is on, however, it is reading zero because the property is not being occupied by a tenant and, presumably, there would be no consumption.

Mr. McElroy asked Mr. Lewis to clarify City procedure when a property goes into the "landlord hold". Mr. McElroy asked if the property owner is notified. Mr. Lewis replied no. Mr. McElroy asked if there was any communication from the City to Ms. Pettit prior to the letter of December 4, 2009 that she had lost the nonconforming use. Mr. Lewis replied no.

Mr. Lewis went on to explain that is the responsibility of the homeowner to know and understand the Zoning Code. He stated that if an individual is purchasing an investment property, most inquire at the Community Development Department regarding the proper zoning and use of the property. Mr. Lewis indicated that it is the responsibility of the purchaser to ask specific questions. Most municipalities have these types of ordinances. Some have re-occupancy requirements of only 6 months, others have time frames up to 2 years. The City of Painesville has a 12 month unoccupied provision. City Council reviewed the current ordinance and chose not to change the existing language.

Mr. Behrens stated that the City does not notify. Mr. Lyons answered no, the City does not notify, however it is unusual for any City to do that.

Discussion ensued with regard to meter reads. Ms. Pettit commented that the utilities clerk told her that a minimum amount of water must be used before it registers on the meter.

Mr. McElroy moved to grant the appeal as requested. Mr. Behrens seconded the motion. On roll call, Mr. Horacek answered "no". Mr. McElroy, Mr. Behrens and Ms. Bacho answered "yes". Motion carried, 3-1.

Mr. Lyons commented that Ms. Pettit may continue to use the property in a nonconforming manner

Mr. McElroy asked if the Board could provide Ms. Pettit with a notice regarding continued use of the property and additional ramifications. Mr. Lyons answered that if Ms. Pettit reads the letter she received from the Housing Inspector, Noell Sivertsen, it is clear that if she does not use it as a duplex for a period of more than one year, she could get a notice from the City. She would have the right to appeal again, but under the City Code she would lose the nonconforming use.

Ms. Pettit asked the consequences should she be unable to rent the house because of the poor economy. She commented that it is hard to find good tenants. Many seem trustworthy the first few months, but then stop paying rent a few months into the lease and must be evicted. Mr. Schaedlich suggested she take part in the Crime Free Multi-Family Housing Program, where they will give you a lot of good information on how to screen tenants so you know how to identify tenant risks. Mr. Lyons replied that Ms. Pettit should be able to get a tenant within a year. Mr. Lewis said both units must be rented.

Mr. Schaedlich stated that the year starts tomorrow. Mr. McElroy stated that Ms. Pettit is on notice.

NEW BUSINESS

REFUSAL NO. 2177

APPLICANT: Valerie Chiappone

DISTRICT: R-1 Single Family Residential

LOCATION: 485 Owego Street

VARIANCE: Section 1137.03(b)(2)

An application has been submitted by Ms. Valerie Chiappone of 9361 Hidden Glen Drive, Mentor, Ohio, requesting a variance to Section 1137.03(b)(2) of the Painesville Codified Ordinances. Section 1137.03(b)(2) requires that each single family dwelling unit have a minimum of one (1) enclosed garage.

Ms. Chiappone, 9361 Hidden Glen Drive, Mentor, was present for the meeting. She stated that you can see by the photo that the property line goes down the middle of the single driveway that is shared by 2 properties. She stated that she was asked earlier today to find any documentation regarding easements. Mrs. Chiappone stated she was able to find an addendum to the original purchase contract. It indicates that "the buyers request that the common driveway between 485 Owego Street and neighbor to the south be recorded as a legal easement" She indicated it was not signed by both parties, only the buyers. There is a signature line for the property owner to sign. Ms. Chiappone showed the document to the Chairman.

Ms. Bacho asked if anyone would like to speak on behalf of the refusal. Mr. Anthony Cimaglio, 477 Owego Street, said there is a garage on the property at present. He said he doesn't know the condition of the garage but he believes it could be repaired. Additionally he said the house has been vacant for two years. He said if they do not have to replace the garage, it will lower the value of the property. He stated if there are codes, they should be followed. Mr. Cimaglio said he spoke with a few neighbors who feel the garage should stay. Mr. Cimaglio also mentioned that the property has not been cared for over the years and neighbors have consistently mowed the portion of lawn to the left of the driveway.

Ms. Chiappone responded to Mr. Cimaglio's comment saying she disagrees that the house has not been occupied for two years. She indicated that a renter has been living in the house steadily through May or June of 2009.

Mr. Schaedlich said he would like add that this situation was raised through the Housing Inspector inspecting the garage. There is no door on the garage and the base of the garage is rotted and needed to be repaired. That brought up the situation to repair or replace the garage.

Ms. Chiappone said someone broke into the garage which is why to doors were missing. The neighbors decided one night to make a fire and used the garage door as firewood.

Ms. Bacho asked about the tire tracks in the photos provided to the Board. She asked whose vehicle they belong to if the house is not occupied. She asked if they neighbor is using the driveway. Discussion ensued with regard to the current structure on the property being used as a garage. Mr. Behrens mentioned that he sees no evidence that the property used the dwelling as a garage, just a large storage shed. Mr. Schaedlich mentioned that the neighboring property also does not have a garage. Mr. Schaedlich also added that according to Noell Sivertsen, the Property Maintenance Inspector, historically this driveway has always been an issue for the residents of the property because it is difficult to park in the drive without blocking someone else in.

Mr. Lyons asked Ms. Chiappone where people park at 485 Owego Street. Ms. Chiappone said that she and her husband lived there for six years and while they were there, the previous owners and the Chiappone's created more parking next to the driveway so that they had additional parking at the front of the house.

Ms. Bacho asked Ms. Chiappone's intentions for the house. Ms. Chiappone although said she would love to sell the house, it is just difficult at this time. Ms. Bacho asked if Ms. Chiappone or anyone previously has contacted the property owner to the north about perhaps relocating the driveway.

Mr. Lyons asked if an easement has been pursued with the property owner next door. Ms. Chiappone said that she could find no record of a request like that being made. Mr. Lyons asked how long she has owned the property. Ms. Chiappone replied that her husband bought the property in 1989 with his ex-wife. Mr. Lyons asked if an easement agreement was ever made with the property owner. Ms. Chiappone stated no, while they were living there, no children lived on the property and it was just the 2 couples, so they made it work. Mr. Lyons asked if she has ever talked to a lawyer regarding rights to a legal easement to the driveway. Ms. Chiappone indicated she had not. Mr. Lyons asked Ms. Chiappone if she saw a title report to see if there were any easements to the property. Ms. Chiappone said she has all the original paperwork from initial purchase and there was no mention of an easement other than the paperwork she submitted at the beginning of the meeting.

Ms. Bacho asked for a motion. Mr. Behrens moved to grant the variance as requested. Mr. McElroy moved to amend the motion to include the stipulation that a 10 ft. X 20 ft. accessory structure be installed on the property to be utilized for storage.

Ms. Chiappone asked if the shed would need to be that large if the purpose is only for storage. Mr. Horacek asked if the size of the neighbors shed was known. Mr. Schaedlich stated he did not know, but he can refer to the case of 25 Frederic Street, the Board requested that the owner install a 10 ft. x 12 ft. storage shed.

Mr. McElroy asked the City's recommendation for size of the structure. Mr. Schaedlich again suggested something similar to what the Board has already done in the past.

Mr. McElroy said he would like his motion to stand

Ms. Chiappone asked then if a variance is actually being granted since they would have to rebuild to the same size as what is there.

Mr. Schaedlich responded that a variance would still be granted because a storage shed is not built to the same standards as a garage would have to be. There would be no requirement for a foundation or a garage door.

Ms. Bacho asked for a vote. Mr. Lyons stated the Board is to vote first on the amended motion. Mr. McElroy voted yes. Mr. Behrens, Mr. Horacek and Ms. Bacho voted no. Motion denied.

Mr. Lyons stated now the main motion is back before the Board.

Mr. Horacek moved to approve the variance with the stipulation that an accessory structure with a minimum of 120 sq. ft. of interior space be built on the property. Mr. Behrens seconded the motion. On roll call, Mr. Horacek, Mr. McElroy, Mr. Behrens answered "yes". Ms. Bacho answered "no". Motion carried, 3-1.

REFUSAL NO. 2178

APPLICANT: Kenneth Fryman

DISTRICT: R-1 Single Family Residential

LOCATION: 285 Stonehaven Drive

VARIANCE: Section 1135.02(b)(1) & (c)

An application has been submitted by Mr. Kenneth Fryman, on behalf of Grand River Baptist Church, 285 Stonehaven Drive, requesting a variance to Section 1135.02(b)(1) and (c) of the Painesville Codified Ordinances. Section 1135.02(b)(1) requires that signs shall be on the same lot as the business or operation they identify. Section 1135.02(c) limits non-residential and nonconforming signs to a maximum area of 16 sq. ft.. The proposed sign is 98.667 sq. ft..

Mr. Schaedlich clarified to the Board that the maximum area for the sign includes both sides of the sign. Ms. Bacho asked if there are actually two variances that are being requested. Mr. Lyons said there are three variance requests in all and all three must be granted in order for the church to install the sign that they want. Mr. Lyons added that the Board has the right to vote on each one of the requests individually or vote on the project as a whole, but if one part of the variance is denied, it would make the project impractical. He suggested the Board vote on the entire request in one vote.

Ms. Bacho stated that the Board has in front of them the variance application, pictures of the proposed signage, and the sign permit application. Ms. Bacho asked who was present to represent Grand River Baptist Church. Mr. Kenneth Fryman, on behalf of Grand River Baptist Church, 285 Stonehaven Drive, was present for the meeting. Mr. Fryman submitted to the Board a color copy of the sign. He stated that the purpose of the sign code is to promote communication and identification of a home or business through attractive, maintained signage. He explained the proposed church sign is very attractive, and will not detract from the neighborhood. It will also be built from industrial foam so it will weather well and not rust or rot. He said the reason they are applying for the variance request is that a 16 sq. ft. permitted sign cannot effectively communicate or identify with the community. The church is asking that the Board permit the sign to be larger. The recommendation to the Board from the City calls the sign height excessive, however it is only 6 feet 2 inches, not the 7 feet that was noted in the recommendation. He also noted that Calvary Baptist Church's sign is over 9 feet tall and New Hope Baptist Church's sign is over 7 feet tall. Mr. Fryman commented that the sign height is needed in order to effectively communicate to the public from Stonehaven Drive. Mr. Fryman indicated that the Church has received permission from JBH, the owner of the property, to use it for the signage.

Mr. Schaedlich asked how Mr. Fryman plans to install the sign. Mr. Fryman replied that there will be side supports for the sign.

Ms. Bacho asked if the sign placement will be closer to the street than the High Tech sign. Mr. Behrens asked if there will be an easement recorded for the sign in case the property changes hands. Mr. Fryman stated that he would certainly look into doing that.

Mr. Schaedlich indicated that the property is zoned R-1 single family, so the sign must sit 12 feet behind the sidewalk and requires another variance if it is to be placed closer. Mr. Schaedlich commented that if the sign is mounded, it will be higher and the height he measured was at a flat grade.

Mr. Behrens asked why the sign is being proposed at this time, since the Church has been at the location quite a few years. Mr. Fryman stated that the church has been at the location since 1993, but due to internal issues and cash flow under previous leadership, a sign was never installed. Since Mr. Fryman has become pastor this past June, the financial situation has improved and the church finally has money to purchase a sign.

Mr. Cimaglio asked if the sign was to be lighted. Mr. Fryman replied no.

Mr. Lewis asked how far the church was from the State Street. Mr. Fryman said far enough away from the street to not be seen from the street. Mr. Lewis asked then how the sign was to indicate how to get to the church, since there is no address or arrow on the sign. Mr. Fryman said he understands, however, there are several addresses for the property and it would be confusing to put them all on the sign. A directional arrow, however, could be added.

Ms. Bacho asked if there was communication from the neighborhood. Mr. Jack Armes, of Medina, owner of 646 South State Street., wrote to say that the proposed sign is 6 times the required size for the area and

would greatly compromise property values in the neighborhood. He is not in favor of the variance request being granted.

Ms. Bacho asked for the recommendation of the City. Mr. Schaedlich noted that several signs in the City have been approved recently have been approved at a maximum of 80 sq. ft. Mr. Lewis mentioned that the only off-site signage that has been approved is the NAPA sign on Richmond Street, which is in a commercial district.

Mr. Fryman replied that the purpose of the off-site signage for the church is exactly the same as in the case of NAPA. No one could see the sign for NAPA so they moved it off property. No one will be able to see the sign for the church unless it is installed off the property.

Mr. Behrens asked if possible the sign could install a sign at 80 sq. ft. Mr. Fryman stated he could and presented a mock up of the sign with modifications to it, making it about 76 sq. ft.

Mr. Lyons stated perhaps the most logical way to address the variance request is to have the Board vote on the off-premise issue first and then the height of the sign.

Mr. Behrens moved to grant the variance for off-site signage. Mr. Horacek seconded the motion. On roll call, Mr. McElroy, Mr. Behrens, Mr. Horacek and Ms. Bacho answered "yes". Motion carried, 4-0.

Mr. Behrens moved to grant the variance for sign area with the stipulation that the sign area be no greater than 80 square feet. Mr. Horacek seconded the motion. On roll call, Mr. Behrens, Mr. Horacek, Mr. McElroy and Ms. Bacho answered "yes". Motion carried, 4-0.

Discussion ensued with regard to sign height. Mr. Schaedlich stated that the height of the sign should not change the variance request. Mr. Lewis asked if there will be "mounding" under the sign, which could change the grade. Mr. Fryman stated perhaps 2 feet of mounding will be added beneath the sign. The top of the posts will match the top of the sign. Discussion ensued with regard to total height of the sign with the addition of mounding. Mr. Fryman indicated that the church prefers to use the mounding under the sign because it makes the sign look more appealing.

Mr. Horacek moved to amend Mr. Behrens original motion to allow a sign no greater than 80 sq. ft. and stipulated that the maximum sign height shall not exceed 8 ft. 3 inches. Additionally, any mounding established at the base of the sign will not exceed 2 ft. in height and appropriate landscaping should be installed as determined by the City. Mr. Behrens seconded the motion. On roll call, Mr. Horacek, Mr. McElroy, Mr. Behrens and Ms. Bacho answered "yes". Motion carried, 4-0.

There being no further discussion, the meeting was adjourned at 9:15 pm.

Julie Bacho, Chairman

Tina B. Pomfrey, Secretary