

BOARD OF ZONING APPEALS

May 20, 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, Ms. Waytes 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 April 15, 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.

NEW BUSINESS

REFUSAL NO. 2183

APPLICANT: Matthew M. Quinn

DISTRICT: R- 2 Multi Family Residential

LOCATION: 1573 Greenfield Lane

VARIANCE: Section 1135.01

An application has been submitted by Mr. Matthew M. Quinn, 1573 Greenfield Lane, requesting a variance to Section 1135.01 of the Painesville Codified Ordinances. The applicant is proposing to install a fence that is six (6) feet in height at his property on Greenfield Lane. Section 1135.01(a)(1) B states that fences within the front setback line of record or existing main building line, whichever is less, shall not exceed three (3) feet in height. Section 1135.01(a)(1) C states on corner lots all sides adjacent to the right-of-way shall be treated as a front setback line and regulated by Section 1135.01(a)(1)B.

Mr. Matthew Quinn of 1573 Greenfield Lane was present for the meeting. Mr. Quinn explained that he has 3 children, ages 3, 4 and 7. He would like to install a fence on the property to provide a safe area for his kids to play, since it is a corner lot on a busy intersection. Additionally, a fence will provide the property with some privacy. Mr. Quinn explained that the fence is the exact style that the neighbor installed across the street and the addition of the fence will not only enhance property values but will offer some continuity when entering the development. Mrs. Kelly Quinn added that she is a stay-at-home mom and it would be nice to allow the kids to play in the yard without the worry that their balls will roll into the street and having to yell stop.

Mr. Schaedlich commented that the photographs that the Board received in their packet were taken at the end of the fence and the fence would not create problems for vehicular or pedestrian traffic.

Mr. Behrens asked about the Homeowners Association letter with regard to the easement. Mr. Quinn replied that the fence is only extending 3 feet from the house into the side yard and will not impede on the easement.

Mr. Schaedlich mentioned that if the Board is inclined to grant the variance request, they may want to consider placing the stipulation that if the fence needs to be moved it would be the responsibility of the homeowner. Additionally, the Board may want to include language about exact style of fencing as the neighbor.

Mr. McElroy asked if Mr. Quinn is using the same fencing contractor as the neighbor. Mr. Quinn said he is installing the fence himself; however, he is purchasing the exact style fence that the neighbor installed.

Mr. Behrens moved to grant the variance request with the stipulation that the Ohio Utilities Protection Service (OUPS) would be contacted prior to fence installation and if the fence is required to be moved, it is the responsibility of the homeowner. Ms. Waytes seconded the motion. On roll call, Mr. Horacek, Mr. McElroy, Ms. Waytes, Mr. Behrens and Ms. Bacho answered yes. Motion carried, 5-0.

FINAL DECISION OF BOARD OF ZONING APPEALS AND FINDING OF FACT AND CONCLUSIONS OF LAW

Mr. McElroy, Mr. Behrens, Mr. Horacek and Ms. Bacho ratified the final decision of the Board regarding Refusal 2182, that was denied at the April 2010 Board of Zoning Appeals meeting. Ms. Waytes abstained from the vote. Motion carried, 3-0.

REFUSAL NO. 2184

APPLICANT: Karen McLeod for Extended Housing, Inc.

DISTRICT: R- 2 Multi Family Residential

LOCATION: 15A-004-0-00-039

VARIANCE: Section 1129.01

An application has been submitted by Ms. Karen McLeod of Extended Housing, Inc., requesting a variance to Section 1129.01 of the Painesville Codified Ordinances. Extended Housing, Inc. is proposing

to build a 17 unit residential housing facility. Section 1129.01 establishes a minimum square footage requirement for a one bedroom unit in an R-2 district as 750 sq. ft. Three of the proposed units are 750 sq. ft. in area. The remaining 14 units are proposed at 700 sq. ft.. A variance of 50 sq. ft. is being requested for those units.

Ms. Karen McLeod, 10110 Meadow Drive, Chardon, was present, representing Extended Housing, Inc. Ms. McLeod stated that she will address the responses of Extended Housing to the City regarding Extended Housing's current proposal and the City's recommendation to the Board of Zoning Appeals.

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.

Ms. McLeod stated that Extended Housing and the Cleveland Catholic Diocese are addressing human needs. Although increasing the number of units would provide more operating dollars to Extended Housing, the purpose is not to profit but to meet an unmet housing need of people with mental illness. Ms. McLeod mentioned the studies that she presented to the Board at last month's meeting. Extended Housing argues that without the variance, a reasonable return of supportive housing will not be had. Extended Housing will be applying to the Federal Home Loan Bank, a funder of supportive housing, for \$850,000. This is significant financial support. The maximum total development cost per unit is \$175,000. Extended Housing's current budget to develop McKinley Grove has been paired back to meet these guidelines. Although it seems small, an additional 700 square feet will add an additional \$ 89,652 to the total budget and bring the cost per unit to \$180,274 per unit. That places the project over the Federal Home Loan Bank cap by more than \$ 5,000 a unit.

2. Whether the variance is substantial.

Ms. McLeod indicated that this is not a substantial variance request. Ms. McLeod calculated the variance request at 5.5% variance. Ms. McLeod indicated that she met with the City on July 8, 2009. They discussed the McKinley Grove project and Ms. McLeod stated that she was led to believe that Extended Housing could argue a case before the Board for a variance because of the addition of the common area, bringing living space up to 750 square feet, and exceeding it.

6. Whether the property owner's predicament can be obviated through some method other than a variance.

Ms. McLeod stated the number of the units to build was determined by the need. If more units are built, the number of residents is increased and so too does the need for operating subsidies, subsidies that are hard to come by. Extended Housing also wants to be sensitive to the number of people on the property and only meet the need. Decreasing the number of units to 15 increases the operating costs per unit as well. The costs of the land, the elevators, desk clerk, etc... all remain the same. Decreasing the unit number brings the cost to \$190, 450 per unit to develop.

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by the granting of the variance.

Ms. McLeod stated that the City established minimum Code for adequate floor space. Ms. McLeod cited the research documents that she mentioned at the previous BZA meeting. The issues identified as most important to the satisfaction of the residents living with mental illness was adequate storage, the feeling of safety, privacy, personal space and ability to personalize their space. Ms. McLeod stated she understands the concerns of the City and believes the needs of the residents will be met.

8. Whether the granting of the variance will be contrary to the general purpose, intent and objective of the Zoning Code or other adopted plans of the City of Painesville.

Ms. McLeod argued that the space that has been designed is adequate and will still be adequate should this building ever be sold. And again, the intent of Extended Housing is not to sell this property. There are restrictive covenants on all the properties operated by Extended Housing. There is also a fifteen year operating plan that is required. Ms. McLeod stated that her organization does everything that it must do in order to stay operational well into the future.

Ms. McLeod asked for accommodation from the Board to decrease the square footage requirement in some of the units so that Extended Housing may address the needs of those living with mental illness.

Mr. Schaedlich mentioned that the Board does not have the most up to date numbers with regard to proposed common area by Extended Housing. Mr. Schaedlich said the report should read that there is 1,720 sq. ft. of common area planned for the development instead of 1, 050 sq. ft..

Ms. Waytes asked if all the funding sources are secure. Ms. McLeod stated that \$ 850,000 is secured, however, application is still being made for the difference. Ms. McLeod commented that the funding gap is related to the architectural drawings. Extended Housing is not ready to make application for the final amount until the application process is complete and the drawings approved.

The chairman asked if there was anyone present who wanted to speak in favor of the variance request being granted. Mr. Richard Tibbits, of 190 Liberty Street, said he has been a businessman in the community for 35 years, owns many rental properties and sits on the Board for Extended Housing. He stated that this is an issue of money. Mr. Tibbits commented that the state and federal government guide lines for the square footage requirement in one bedroom apartments is 650 square feet. Extended Housing is asking for an accommodation that falls under state and federal acknowledged guidelines. Mr. Tibbits stated that he believes that this is not a zoning issue but a square footage issue and it is the responsibility of the City to make accommodations. He stated that accommodating this variance will not fundamentally alter the nature of the Zoning Code. The variance should be granted under the HUD guidelines for fair housing. Mr. Tibbits asked if the Board has become so narrow so that instead of being gatekeepers of reasonable accommodation they simply are the guards.

Ms. Waytes responded to Mr. Tibbits comments by stating that the Board does not lack in social conscience, however, the task of maintaining the code is the job of the Board of Zoning Appeals. She indicated that her fear is that without funding guidelines, someone other than Extended Housing may develop the property with a variance still intact.

Mr. Tibbits replied that Painesville is the only city that has a square footage requirement of 750 sq. ft. He understands that placing that requirement on developers does not make it cost effect to build in the City and the developers look elsewhere for property. He commented that the State of Ohio has a guideline for one bedroom apartments of 650 sq. ft. and HUD's code is 450 sq. ft. Mr. Tibbits said he personally owns units that are under 750 sq. ft. and many tenants love it.

Mr. Schaedlich distributed to the Board an informational sheet containing the square footage requirements for development from other communities here in Lake County. He indicated that the City of Painesville's square footage requirement falls in the middle of the list.

Ms. Waytes countered Mr. Tibbits comments stating that although Extended Housing may have to develop properties within HUD guidelines, it does not mean that the City of Painesville cannot establish their guidelines and Zoning Code based on that. In addition, the government has given individual cities the right to establish their codes and that is why the Board of Zoning Appeal was organized.

Ms. Bacho asked Mr. Tibbits if he would purchase this property should Extended Housing, for any reason, have to vacate the property, even if extensive remodeling needed to be done in order to bring it up to current Code standards. Mr. Tibbits replied he would buy the property. He commented that the units would be perfect for older individuals.

Mr. Dominick Durante, the architect of the project, reviewed the new layout of McKinley Grove with the Board.

Mr. McElroy wanted to know how the floor area is calculated to determine habitable space, per the Code. Mr. Schaedlich stated that Section 1125.04 of the Zoning Code determines that floor area is figured from outside wall to outside wall.

Mr. McElroy asked if the Board could go into Executive Session. Mr. Gurley stated that Executive Sessions rules are for limited purposes, such as personnel, contract negotiations, etc... .

Patricia Kidd, Fair Housing Resource Center, spoke on behalf of Extended Housing, Inc. Ms. Kidd stated that what Extended Housing is proposing is the first of its kind in Lake County. She commented that they are proposing to cater to members of a protected class and under Fair Housing and ADA requirements, they are asking for reasonable accommodation. Ms. Kidd stated that the project is specifically designed with therapeutic common areas to meet the need of a special class and promote the well being of the clients. Ms. Kidd also added that funding is contingent on what is built and she was not aware that 100% of the funding for the project must be in place to ask for a variance from this Board. Ms. Kidd said they are asking for an exception of the Zoning Code. Just as one makes accommodations for someone with service animals, so they are requesting the same consideration.

Mr. Neil Conway, 10930 Bradley Court, Concord Township, stated that we do have an obligation to make reasonable accommodation and the Board would not be changing the Code, just making an accommodation.

Mr. Angelo Cimaglio, 477 Owego Street, stated that the City has the right to ask for the square footage requirement however, he does not believe this is about the size of the units. He commented that he was against this from the beginning, however, he has changed his mind. Additionally, he asked if the City

licenses this type of unit. Mr. Gurley replied no, the City does not have that power in the Zoning Code, and as long as they meet the Zoning Code provisions, they are free to move forward with development.

Ms. McLeod indicated that she was under the impression that if someone purchased this property, should Extended Housing ever vacate it, they would not have to reconstruct the units to Code, and that the variance would stand for next owner of the property.

Mr. Gurley said that is correct under the current "grandfather" provisions. Mr. Tibbits commented that he could reconfigure the units in order to satisfy the Zoning Code.

Conversation ensued with regard to square footage requirements. Mr. Durante commented that it is impossible to write zoning code to cover every situation. Mr. Durante stated that sometimes situations arise that occur maybe once every 20 to 30 years, that are appealable to the Board of Zoning Appeals. Why would a Board exist if not to consider valid variance requests?

Ms. Waytes said she has visited units in Wesley Village, a complex that received variances of square footage requirements, and is of the opinion that the kitchen is really lacking in storage space, cabinets and countertops. Mr. Schaedlich indicated that Wesley Village received a variance to construct units that are 570 sq. ft.. Mr. Tibbits replied that the problem that Ms. Waytes is referring to is a matter of poor layout and design. He had problems of that nature in some of the rental units that he purchased and has since remedied them with additions of cabinets and countertops in a redesigned kitchen.

Mr. John Conrad, 5312 Richards Drive, Mentor, and a Board member of Extended Housing, spoke in favor of the variance request being granted. He commented that the variance request is to accommodate the clients for the treatment of those with illness to better integrate them into society.

The Chairman asked if anyone was present to speak against the variance request. Mr. Brent Roebuck, 333 Fanwood Drive, Painesville Township, was present and representing his wife and sister-in-law, the owners of 382 Railroad Street. Mr. Roebuck commented that this address contains 3 units, all over 750 sq. ft.. Additionally, Mr. Roebuck stated that this variance request was denied on April 15, 2010, yet Extended Housing has come before the Board again, claiming a significant change in the variance request. Mr. Roebuck said he fails to see the significant changes and feels this is semantics. He said he believes zoning was created for a reason and does not understand why Extended Housing cannot secure funding for this project to meet the Zoning Code requirements in the first place.

Ms. Kelly Leoni, 8126 D Independence Drive, Mentor, commented that although she has no issue with the use of the property, the Zoning Code should be upheld and the units should be built to conform to the zoning code.

Mr. Gurley commented that it sounds as if the Board is concerned about the use of the site if Extended Housing should vacate it in the future; would it be used by the general public for smaller rental units. The Board could make a condition of the variance that the continued use is for this for this purpose or a similar purpose and recorded at the County Recorder's Office. Mr. Gurley stated that the City of Painesville has always provided facilitative housing for the members of the community and no other community (in Lake County) has done quite as good a job as the City of Painesville has in recent years. We should be proud of that and consider this proposal as a means to accommodate this particular facility.

Discussion ensued with regard to how the property contingencies should be recorded. Ms. Leoni asked if the property cannot be taken over honoring the contingencies of the variance request, does the property then sit vacant? Mr. Gurley replied that as potential buyer could come before the Board at that time and ask for modification of the parameters that were set forth in the variance.

Mr. McElroy moved to grant the variance as requested contingent upon any future use of the facility as the same or similar use as proposed by the applicant. Ms. Waytes seconded the motion. On roll call, Mr. Horacek, Mr. McElroy and Ms. Waytes answered yes. Mr. Behrens answered no. Ms. Bacho answered yes. Motion carried, 4-1.

OTHER BUSINESS

A Zoning Code training session was scheduled for the BZA members on Wednesday, May 26, 2010 at 7:00 pm in Courtroom 1 of Painesville Municipal Court.

There being no further discussion, the meeting was adjourned at 9:16 pm.