

BOARD OF ZONING APPEALS

June 21, 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, Mr. Horacek and Ms. Waytes. 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 April 19, 2012 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. 2228

APPLICANT: Grand River Baptist Church

DISTRICT: R- 1 Single Family Residential

LOCATION: 285 Stonehaven Drive

VARIANCE: Section 1135.01(a) 1 (B)

An application has been submitted by Grand River Baptist Church, 285 Stonehaven Drive, requesting a variance to Section 1135.01 (a) 1 (B) of the Painesville Codified Ordinances. Section 1135.01 (a) (1) B states fences within the front setback line of record or existing main building line, whichever is less, shall not exceed three feet in height. The applicant is proposing to install a fence that is 6 feet in height within the front setback line. A variance of 3 feet (fence height) is being requested.

Rev. Kenneth Fryman, pastor of Grand River Baptist Church, stated the church is asking for a 3 ft. variance of fence height to keep the children of the congregation on the property and to keep vandals out. Over the past 3 years, the congregation has made many improvements to the building, including a new sign, landscaping, new fiberglass doors, siding and new roofing. The church would like to protect their investment. Three police reports have been filed this past year regarding trespassing on the property. The church is an A-framed building and the roof sits about 6 inches off the ground. There have been issues with kids running up the angled roof and skateboarding on the flat roof above the area where the church nursery and children's department is located. They have done this while church services were being conducted. Rev. Fryman stated that the fence will act as a barrier from accessing the back of the property.

Mr. Behrens stated that it looks from the plan submitted, that the back of the property is actually the front of the property. Rev. Fryman replied yes, that is the case, however, the double doors of the property, where the congregation accesses the building, are at the back of the property that is adjacent to the parking lot and faces High Tech. That acts as the front of the building, even though technically, the front of the building faces Stonehaven Drive.

Rev. Fryman stated that a police report was filed against vandals who broke out the windows at the area that they are proposing to fence, and last week another report was filed regarding stolen lawn equipment from the church's shed. Mr. Fryman stated that they have consistently had problems with vandalism on the property and believe that a 6-foot fence is completely appropriate, under the circumstances. He indicated that the proposed fence is a chain link vinyl coated fence in the back, and the front will be wrought iron, similar to the fence that High Tech has along their road.

Discussion ensued with regard to the location of the fence. Mr. Behrens questioned the measurements of the property according to the plan submitted. Mr. Behrens asked for the comments of the audience. Mr. Anthony Torre, 158 Sanford Street, asked if there will be barb wire at the top of the fence. Mr. Schaedlich replied no, barb wire is not permitted in residential districts. Mr. Anthony Cimaglio, 477 Owego Street, stated that if you make an exception, it will set a precedent and allow everyone else to ask for a variance. It may "open a can of worms". Mr. Fryman stated that he understands that line of thought, but since the church property is located between High Tech and a City park, it acts as a cut-through and sustains more than average foot traffic. It is more susceptible to vandalism because of the location.

Mr. Behrens stated that a 3-foot fence will stop foot traffic through the property. Rev. Fryman indicated it might stop a lot of the foot traffic, however, those that are inclined to vandalism will not be deterred by a three foot fence. A 6-foot fence, however, would prevent unauthorized persons from entering the property. Mr. Behrens indicated that it is the location that is really the problem because what Mr. Fryman refers to as the rear of the property is actually the front of the property on Stonehaven Drive.

Mr. Lyons asked where the 44 feet ornamental aluminum fence will be located on the back part of the building, on the High Tech side. Mr. Lyons commented that if they put it at the 50 ft setback from Stonehaven drive, they wouldn't need a variance, correct. Mr. Schaedlich replied yes. Mr. Lyons asked Rev. Fryman if they thought about it. Rev. Fryman stated that they want to use as much of the property as possible and not have to worry about moving fences in the future, as the congregation grows.

Discussion ensued regarding the use of the property. Rev. Fryman indicated that the fellowship uses the "back" of the property at Stonehaven in the summer for services.

Mr. Schaedlich commented that under his recommendation, if the Board thought that 6 ft was too high, 4 ft is always a possibility. Chain link fence is permitted and the good side must face out.

Mr. Horacek asked Mr. Lyons that if this property were to cease to be used as a church, could the BZA place a provision on the variance request that if this property were to cease to be used as a church, that the fence should come down at that time. Mr. Lyons answered yes. Mr. Schaedlich asked if the property owner would be responsible for taking the fence down. Mr. Horacek said yes. Mr. Lyons asked if Grand River Church owns the property. Rev. Fryman stated yes.

Mr. Horacek moved to approve the variance request with the caveat that if, in the future, the use of this property as a church is discontinued, than the variance will be rescinded and the fence removed at that time. Ms. Waytes seconded the motion. On roll call, Mr. Bartholomew, Mr. Callender, Mr. Horacek and Ms. Waytes answered yes. Mr. Behrens answered no. Motion carried, 4-1.

REFUSAL NO. 2229

APPLICANT: Karen Stormer

DISTRICT: R-1 Single Family Residential

LOCATION: 1088 Skinner Avenue

VARIANCE: Section 1127.06 (a) 4

An application has been submitted by Ms. Karen Stormer, 1088 Skinner Avenue, requesting a variance to Section 1127.06 (a) 4 of the Painesville Codified Ordinances. Section 1127.06 (a) 4 states above-ground swimming pools cannot exceed 512 sq. ft. and in-ground swimming pools cannot exceed 800 sq. ft. The applicant is proposing to install an above-ground pool that is 573 sq. ft. A variance of 61 sq. ft. (pool size) is being requested.

Ms. Karen Stormer, 1088 Skinner Avenue, was present for the meeting. Mrs. Stormer stated that she would like to install a pool on her double lot. She was given a "verbal approval" over the phone but when she came in to get the building permit for installation, the pool was determined to be too large. Ms. Stormer said rather than returning the pool, which was a year-old pool that she bought for a good price, she decided to ask for a variance of the Code.

The Chairman asked if there were any comments. There being none, he asked the secretary if she received letters or calls from the neighborhood. The secretary stated she received an e-mail in support of Ms. Stormer from Cheryl Kelly, who lives on Skinner Avenue. Additionally, a letter from Fern Peters of Skinner Avenue, was also received in the Community Development Department, in support of Mrs. Stormer.

The Chairman asked for the recommendation of the City. Mr. Schaedlich stated that the City recommends approval of the variance request as long as the pool is 48 inches in height or greater and that the ladder is removable or of the locking variety when the pool is not in use.

Mr. Behrens asked the City Planner why 512 sq. ft. was chosen as the maximum square footage for pools. Mr. Schaedlich replied that although he also thinks 512 sq. ft. is a rather random size, the reason behind it is to prevent smaller lots from essentially using up the whole yard through the installation of a huge pool.

Mr. Callender moved to approve the variance as requested. Ms. Waytes seconded the motion. On roll call, Mr. Callender, Mr. Horacek, Ms. Waytes, Mr. Bartholomew and Mr. Behrens answered yes. Motion carried, 5-0.

OTHER BUSINESS

Discussion ensued regarding the variance requests by Orwell Natural Gas Company. The City indicated that ordinances have just been passed regarding the regulation of the placement of utilities. The City stated that the location of utilities are based on zoning principle. Mr. Thomas Brothers, 36 Nebraska Street, asked if the utilities that have already been installed will be able to remain, since the requests have been tabled for so long. Mr. Lyons commented that he is not comfortable discussing it at this time, not before Orwell has had its time before the Board. Since this is a new ordinance and has never been dealt with before, there are arguments to be made but they are new cases.

There being no further business, the meeting was adjourned at 8:20 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary