

BOARD OF ZONING APPEALS

August 18, 2011

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. Callender, Mr. DeLeone, Mr. Horacek and Ms. Waytes. Also in attendance were the Law Director, James Lyons; the City Planner, Russ Schaedlich and the Secretary, Tina B. Pomfrey.

MINUTES: The minutes of June 16, 2011 and July 21, 2011 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

REFUSAL NO. 2205

APPLICANT: Jeffrey & Laura Baca

DISTRICT: R-2 Multi Family Residential

LOCATION: 372 Birchwood Lane

VARIANCE: Section 1135.01 (a) (1) B

An application has been submitted by Mr. & Mrs. Jeffrey Baca of 372 Birchwood Lane, requesting a variance to Section 1135.01 (a) (1) B of the Painesville Codified Ordinances. The applicant is proposing to install a fence that is six (6) feet in height on the property located at 372 Birchwood Lane. 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. 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. A variance of three (3) feet (fence height) is being requested.

Mrs. Laura Baca, 372 Birchwood Lane was present for the meeting. Ms. Baca stated that she and her husband would like to install the same fence as the neighbors across the street. Mrs. Baca stated as there is a regular traffic flow through the neighborhood, she would like to install it to insure the safety of her 3 daughters and her dog.

Mr. Behrens and Mr. DeLeone asked where exactly the fence is being placed. Mrs. Baca explained it would be located in the back yard but impose three feet into the side yard setback.

Mr. Behrens asked for comments from the City. Mr. Lyons stated that the letter from the Homeowners Association states that the fence cannot be placed in any easement. If the Board grants the Baca's request for the variance, the plan is to install the fence three feet into the utility easement, per the information that has been submitted to the Board this evening. Even though it is not the Boards' issue, Mr. Lyons suggested that the Baca's speak to the Homeowners Association. Mrs. Baca stated that she had spoken with the Homeowners Association already, but she will speak to them again. Mr. Schaedlich stated they will be installing two feet off the storm drain, as is the policy of the City. The secretary stated that there is a letter in the Board members packets from Richard Lesiecki, the City Engineer that outlines the provisions for installation of the fence within the drainage easement. It is signed by the homeowners.

Mr. Behrens asked Mr. Schaedlich if he had anything to add. Mr. Schaedlich stated that the installation of this fence will mirror the installation of the fence across the street at 373 Birchwood Lane. The City recommends approval with the stipulations that the style of the fence mirror that of the neighbors, that the Ohio Utility Protection Services be contacted prior the fence's installation, and that the homeowner is responsible for the removal and replacement of the fence should work need to be performed within the utility easement. Mr. Schaedlich added that the City Engineer's letter insured that the last stipulation would be met.

Mr. DeLeone moved to approve the variance with the stipulations as stated in the recommendation with the addition of the City Engineer's stipulations of July 21, 2011. Ms. Waytes seconded the motion. On roll call, Ms. Waytes, Mr. Callender, Mr. DeLeone, Mr. Horacek and Mr. Behrens answered yes. Motion carried, 5-0.

OTHER BUSINESS

Mr. DeLeone commented that it seems like these types of variances on corner lots are coming before the Board more frequently. He wondered if something could be done so that the Board does not have to hear this type of case over and over again.

Mr. Behrens stated that if the code is written specifically to address corner lots, why doesn't the City enforce it?

Mr. Schaedlich explained that when the Fence Code was originally created, it was written to address older, tighter parcels, where visibility might be impacted for street traffic and pedestrians, particularly on corner lots. This particular variance request is in a newer development with larger lot sizes. Some of issues regarding visibility just don't apply because of greater land area, yet the code exists and so it must be enforced. This has created a need for variances. Mr. Schaedlich questioned the need to change the code as this situation is unique to the newer developments.

Mr. DeLeone replied that it might be something to explore because most of these variance requests seem like they are automatic approvals and he dislikes charging people. Mr. Schaedlich stated that the issue would have to be addressed first to the Planning Commission where they would determine if it needed to be revised. The Planning Commission then makes the recommendation to City Council. Ms. Waytes stated that this situation typically exists in the newer developments. Ms. Waytes stated that she believes what is good for one property is not necessarily good for another. Discussion ensued. Mr. Lyons commented that he always thought that one of the standards for the granting of a variance request is based on the unique characteristics of the property. Corner lots are more unique than interior lots, particularly with all the easements in the new developments. There are a lot of different factors that play into the granting of variance requests. Mr. DeLeone stated that he would like some research done to see how other communities handle these types of requests. Mr. Schaedlich stated that he would see what he could find.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:00 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary