

BOARD OF ZONING APPEALS

September 20, 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, and Mr. Horacek. 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 August 16, 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.

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.

Mr. Lyons asked the chairman to hear both of the refusals together since they are addressing the same issues.

Mr. Jim Bartholomew moved to remove Refusals 2208 and 2209 from the table. Mr. Horacek seconded the motion. On roll call Mr. Callender, Mr. Horacek, Mr. Bartholomew and Mr. Behrens answered yes. Motion carried, 4-0.

Mr. Chris Domonkos, of Russell, Ohio, explained that he has been with Orwell Natural Gas for 11 years. At the YMCA property, 933 Mentor Ave, the metering system was installed with the approval of the City. Mr. Domonkos explained that Orwell Natural Gas Co. tried to place the metering elsewhere on the property, but the current location was the most suitable location for both the property owner and Orwell. The property at 521 Mentor Avenue has the system located in the front yard for easy access for the employees in emergency situations. There is also better visibility in the front than the rear of the property. Mr. Domonkos stated he is the third operations manager on this project, so unfortunately he has been thrown into the middle of this situation.

Mr. Bartholomew was curious if there was anything located on the west side of the YMCA and wondered why Orwell could not have placed the metering system there. Mr. Domonkos explained that the location was by mutual agreement of the YMCA and Orwell Natural Gas.

Mr. Callender asked if there is any technical reason why the metering system could not be moved behind the building line? Mr. Domonkos explained that the placement of the metering system in this case is for easier access by the Orwell employees. Mr. Domonkos further explained that the company likes to keep the high-pressure line as close to the main as possible, and not run a line next to a structure. Mr. Callender asked if there was no consideration given to locating these structures behind the parking lots, at the YMCA and at Lake Erie College. Mr. Domonkos replied that the location at the YMCA was dictated by the YMCA and the location at 521 Mentor Avenue would require an easement in order to get back to the parking lot at the college. Mr. Callender wondered why an easement would be required, since Orwell owns the property. Mr. Domonkos replied that Orwell does not own the property; a stockholder of the company owns it.

Mr. Behrens asked Mr. Lyons if the utility companies need easements to locate on private property, specifically side or rear yards. Mr. Lyons replied yes; Orwell would need easements for the lines themselves and any access road that is installed to service the line.

Mr. Bartholomew asked if the reason for placing the metering system in the front yard is to the advantage of the gas company. Mr. Domonkos replied yes; it is advantageous to Orwell in several ways: safety, theft and vandalism, the latter being the number one problem at this time.

Mr. Bartholomew asked when the City asked the work to stop so that the City could determine the best way to address this issue. Mr. Domonkos replied that he wasn't sure and wasn't aware of the circumstances preceding that request. Mr. Bartholomew stated that it appeared to him, based on the information provided to the Board by the City, that Orwell made the decision to keep working to service their customers despite the City's request. Mr. Domonkos said he didn't know. Mr. Bartholomew wondered why he didn't know, considering the length of his employment with Orwell. Mr. Domonkos stated he was a field worker at that time and not in management.

Mr. Schaedlich commented that, per the timeline provided out to the Board yesterday, this project to supply gas down Mentor Avenue from the western corporate limit, is broken into two projects. The YMCA installation is part of the first phase to install the line from the western corporation line to West Walnut Avenue (by Spear Mulqueeny). The second phase, approved initially by the City Engineer, continues the gas line from West Walnut Avenue down to Wood Street. Mr. Schaedlich only discovered the installation of the regulator at 521 Mentor Avenue after driving by the property on his way to work one morning. It was installed without notification and approval of the City.

Jim Behrens said he does not find any documentation telling Orwell to stop (the installations of the metering systems). Mr. Schaedlich stated that it was a verbal request, and unfortunately the person that he was working with is no longer employed by Orwell.

Mr. Behrens asked for comments from the Board. Mr. Lyons asked Mr. Domonkos the advantages to the public with having the gas metering system in the front setback. Mr. Domonkos replied that it is easy site to find, behind the structure it is not safe, particularly when it comes to vandalism. Mr. Domonkos stated that it makes him uncomfortable to have a high pressure gas meter behind the structure. Mr. Lyons stated that at 521 Mentor Avenue the meter is close to the house. Mr. Domonkos agreed that it is close to the front of the house, however, if the meter were moved to the back of the house, then there is the worry of a high pressure gas line right next to the foundation of the house. Mr. Lyons asked what the cost would be to move the meter to the far back yard, 70-80 feet back. Mr. Domonkos replied \$15,000 to \$20,000. Mr. Lyons stated that at the YMCA, the meter would probably have to move even further back, more than 80 feet. It would be more costly as well.

Mr. Lyons indicated that he would like to call an Executive Session to discuss legal matters regarding this issue. Mr. Horacek moved to enter into Executive Session. Mr. Bartholomew seconded the motion. On roll call, Mr. Horacek, Mr. Bartholomew, Mr. Callender and Mr. Behrens answered yes. Motion carried. Executive Session was entered into at 7:52 pm. At 8:47 pm, Mr. Horacek moved to end the Executive Session and Mr. Callender seconded the motion. On roll call, Mr. Bartholomew, Mr. Callender, Mr. Horacek and Mr. Behrens answered "yes". Motion carried.

Mr. Horacek moved to approve the variance request Refusal 2208 with the following stipulations:

The applicant and the applicant's successors should meet these conditions.

The regulator should be enclosed by approved fencing, 6 ft in height. The fence gate shall be secure and the fence shall be kept in good repair.

The perimeter of the fence around the regulator should be screened by landscaping to soften the appearance of the fence per the City requirements. Additionally, the landscaping shall be kept in good/living condition and all dead plants shall be replaced with living material as the need arises.

A \$2,500 bond shall be posted to insure the maintenance of the fence and the landscaping of the property. This bond shall be posted within 30 days of the plan being approved.

Mr. Bartholomew seconded the motion. On roll call, Mr. Callender answered "no", Mr. Horacek, Mr. Bartholomew and Mr. Behrens answered "yes". Motion carried, 3-1.

Mr. Behrens asked for a motion for Refusal 2209.

Mr. Horacek moved to approve the variance request with the following stipulations:

The applicant and the applicant's successors should meet these conditions.

The regulator shall be enclosed by approved white, vinyl fencing, 6 ft. in height, and or landscaping based on the plan approved by the City Administrator. The plan should be submitted to the City within 30 days of the approval of the variance.

The regulator should be landscaped per the City requirements and kept in good condition.

A \$2,500 bond shall be posted to insure the maintenance of the fence and the landscaping of the property. This bond shall be posted within 30 days of the plan being improved.

The improvements contained within the plan should be constructed within 60 days of the approval by the City.

Mr. Bartholomew seconded the motion. On roll call Mr. Horacek and Mr. Bartholomew answered yes. Mr. Callender answered no. Mr. Behrens answered yes. Motion carried, 3-1.

There being no further business, the meeting was adjourned at 8:55 p.m.

Jim Behrens, Chairperson

Tina B. Pomfrey, Secretary