

## BOARD OF ZONING APPEALS

February 18, 2021

**CALL TO ORDER:** The Board of Zoning Appeals met on Thursday, February 18, 2021, at 7:30 PM via video conference for their regular meeting.

Vice-Chairman Briggs called the meeting to order at 7:30 p.m. and asked the Secretary to call the roll. Members in attendance were Mr. Dunay, Mr. Bartholomew, and Vice Chairman Briggs. Ms. Aston and Chairman Behrens were absent. Also in attendance were Assistant Law Director, Jim Lyons; City Manager, Doug Lewis; and City Planner/Secretary Lynn White.

**ACTION ON MINUTES OF PREVIOUS MEETING:** There were no minutes to take action of at the meeting.

### **MEETING PROCEDURE AND SWEARING IN:**

Vice Chairman Briggs explained the procedures for the meeting, and then swore in those who planned on speaking for or against the variance request. Additionally, Vice Chairman Briggs explained that the Board of Zoning Appeals has the right to adjourn the meeting to deliberate, if needed, and then return to resume the meeting. It was also explained that since there are only three members in attendance, the concurring vote of three members of the Board shall be necessary to decide in favor of an application before the Board. In addition, representatives of the City Administration are present; Mr. Lyons, the City's Legal Counsel, Mr. Lewis, the City Manager, and Ms. White the City Planner.

Vice Chairman Briggs explained that the meeting is being recorded via Zoom and informed the applicants that the results of the meeting will stand as an official public hearing. He asked the applicants appearing via Zoom if they agree to the meeting being held in this matter. The applicants in attendance agreed with the meeting procedures.

### **NEW BUSINESS/PUBLIC HEARING ITEMS:**

Vice Chairman Briggs moved to the first item on the agenda. He asked the secretary to read the application for Refusal No. 2360.

**Refusal No:** 2360  
**Applicant/Owner:** M. JOHN & DORIS A. CUTLIP  
**Location/PIN:** 327 Marion Avenue (PIN: 15-C-013-0-00-040-0)  
**District:** R-1; Single Family Residential District  
**Variance:** SECTION 1119.04 (c) DETACHED STRUCTURES. SETBACK REQUIREMENTS.

An application has been submitted by M John & Doris A. Cutlip, owner of 327 Marion Avenue, Painesville, OH requesting a variance to Section 1119.04 (c) of the Painesville Unified Development Code relating to setback requirements. The applicant is requesting a variance to allow the reconstruction of a 14 x 20 (280 s.f.) detached garage on a preexisting foundation currently located four (4) feet from the side yard. Section 1119.04 (c) requires a minimum five (5) foot side yard setback. A variance of one (1) foot is being requested.

Vice Chairman Briggs provided a summary of the information the Board received on this request. He asked the applicant to state their name and address for the record prior to presenting their case.

The applicant, M John and Doris A. Cutlip, 13145 Carter Road, Painesville, OH, stated they had a fire at this address and they would like to build the garage back on the existing foundation. The foundation was not damaged in the fire and they are asking to rebuild what was on the property.

Vice Chairman Briggs asked if the garage was at this location when the property owner moved in. Mr. Cutlip responded yes, the garage was on the property when they purchased the property and he explained they do not live at this address, it is a rental property they have owned for about 10 to 15-years.

Vice Chairman Briggs asked Ms. White if the previous garage would have been a preexisting nonconforming condition had the fire not occurred. Ms. White replied that is correct.

Mr. Dunay inquired if the intent is to build the exact same foundation with the exact same size of the garage that was at this location. Mr. Cutlip responded that is correct.

Vice Chairman Briggs asked if there were any further questions from the Board. There being none, he asked if anyone would like to speak for or against this issue. There being none, Vice Chairman Briggs asked if any correspondence was received on this matter. Ms. White replied she received a phone call from the property owner at 223 Marion Avenue who indicated they were not in opposition of the request.

Vice Chairman Briggs stated that unless there are further comments or questions on this matter, is someone willing to make a motion on this request. A motion was made by Mr. Bartholomew to approve **Refusal 2360**.

Ms. White asked that the Board consider the recommended stipulation that was provided in the Staff Memorandum regarding the appearance of the proposed garage. Mr. and Mrs. Cutlip agreed to the stipulation. The motion was seconded by Mr. Dunay with the stipulation the garage is to be designed in a manner to meet the residential accessory structure design standards of the UDC. On Roll Call for the motion, Mr. Bartholomew, Mr. Dunay, and Vice-Chairman Briggs, answered "yes". **Motion carried, 3-0.**

The applicant was advised that the Code requires a waiting period of five (5) days to acquire a permit.

Vice Chairman Briggs moved to the next item on the Agenda. He asked the Secretary to please read the notice.

The secretary read the following information to the Board for the next item on the Agenda, **Refusal No. 2361:**

*In accordance with Section 1111.12 (b)(7) No application for a variance, which has been denied wholly or in part by the Board, shall be resubmitted within one year of such denial, except with the concurring vote of not less than four-fifths of the members of the Board. **A substantial modification of a request for a variance may be submitted as a new application**, however, without regard to the one-year limitation. Before ruling on the new application, the Board shall first make a determination that the modification is substantial.*

Mr. Svete was asked to conference with Assistant Law Director Lyons to discuss the code language due to the fact only three Board Members are present.

Mr. Lyons explained the four-fifths to the Board. Since there are only three member present, this language would not apply. The applicant can present to the Board with the understanding that all three members must provide a positive vote. The Board must agree that the new application is a substantial modification to move forward. If the applicant is not successful this evening, they could then come back to the next meeting where the four-fifths would apply. Mr. Lyons indicated that after speaking with Mr. Svete about this scenario, the applicant would like to move forward with the application.

Vice Chairman Briggs clarified that the Board needs to make an initial determination that this application is a substantial change prior to moving onto the merits of the request. Mr. Lyons responded that in order to determine there is a substantial change, the Board will have to listen to the presentation by the applicant prior to addressing the merits; and then the Board would vote to agree that this is a substantial change under the circumstances, in order to allow it to go forward.

Vice Chairman Briggs asked the secretary to read the application for Refusal No. 2361.

**Refusal No: 2361**  
Applicant/Owner: Todd Harrison/Hallmark Excavating, Inc.  
Location/PIN: Lexington Village #2 (PIN: 15-C-024-0-00-055-0)  
District: R-1; Single Family Residential District  
Variance: 1117.01 (a) HEIGHT, LOT AREA AND MINIMUM FLOOR AREA REQUIREMENTS.

An application has been submitted by Todd Harrison of Hallmark Excavating, 482 Blackbrook Road, Painesville, OH requesting a variance to Section 1117.01 (a) of the Painesville Unified Development Code for a reduction in the minimum floor area requirement. The applicant is proposing the construction of 19 new single family dwelling units on 6.54 acres of land located off Newell Street. The variance request is for a square footage change to 1,407 sf. for one story dwelling units in lieu of the required 1,600 sf. minimum; and proposing to maintain the 1,600 sf. for two story dwelling units as an option. A variance of 193 sf. is needed to allow construction of a 1,407 sf. dwelling unit at this location.

Mr. Svete began a presentation on the matter indicating the applicant submits that the application is a substantial modification. First of all, they propose to retain the 1,600 square foot for two story dwelling while asking for a variance on the 1,407 square feet for the single story dwelling. Secondly, the developer has agreed to extend the driveways to 35 and 42 feet to permit up to four cars to be parked in the drive. And finally, the developer has agreed to create a homeowners association (HOA) and creating the storm water easement to the HOA for proper maintenance and accountability. Mr. Svete stated he thinks it's quite important to make sure that that is taken care of by a responsible group rather than individual homeowner. Mr. Svete provided evidence on the variance request for the reduction of the square footage for the single story units. He indicated this is a very unique situation justifying the granting of the variance. Hallmark Excavating purchased the property in 2013 which permitted the minimum square footage for the units to be 1,100 square feet per dwelling. However in October 2019 City Council changed the minimum square footage to 1,600 square feet. Mr. Svete explained that the applicant has been working to establish a development

that would comport to the standard in this particular community and has found Ryan Homes agreed to team up with him to build what their marketing people have indicated would be a good fit for this particular neighborhood. Mr. Svete asked that Mark Katcher of Ryan Homes discuss the product for this area in more detail. He concluded that the homes for the prospective buyer at 1,600 square foot single story home would run anywhere from 275 to \$290,000 which would totally and unbelievably make it impossible to finance.

Mr. Mark Katcher, representative of Ryan Homes, explained that Hallmark has offered this property as a potential development to Ryan homes for the past three years. Earlier this year, when we had reconsidered this property we didn't think the market was right at the time, however the market is right now. The primary concern of Ryan homes is finance ability in this community. This is mainly because Community Lane consists of 1200 square foot slab ranches. When Ryan sells a home, the majority of our customers need financing. If a bank cannot justify the sales price, based on the surrounding area, they will not finance it, making it a not successful community and Ryan Homes cannot take the risk on the community unless it's marketed at the price needed. How we've concluded what house type can be offered in order to get a value that a bank will appraise it at.

Mr. Svete commented that the marketing people at Ryan Homes look into various factors and based on those factors determine that the price range around \$225,000 would be the most competitive market area in this area. Mr. Katcher stated based on this product type we expect to be marketing it in the two teams, I would say 215 to \$220 as a base price, but that leaves the customers room for options. We would expect it the sale prices to be in that \$240, which a bank should be able to find comps in the vicinity that will support it. Over that it becomes too risky.

Mr. Svete continued by providing evidence on the existing home values in the neighborhood that would be used by the banks for financing this project. The various benefits of completing the subdivision were also provide to the Board which includes the extension of Community Lane making the area more accessible to police, fire school buses. He indicated the development will enhance and compliment the quality and values of the adjoining properties as the new selling prices of the homes will undoubtedly increase the value pricing of the adjoining properties. He stated the proposed development will be in keeping with the City's 2006 Comprehensive Plan and the reduction in square footage is not signification as it is merely 12%. Mr. Svete stated that he suspects that when Council amended zoning ordinance for the residential districts it was intended for new construction in new subdivision new developments and not necessarily for an established subdivision or an expansion of an existing subdivision, as proposed. In this case, the Board should take that into consideration that there are certain constraints and certain limitations due to the location and within the last 13 to 14 months there was a significant change in the code. This obviously create an undue hardship for the owner of this particular property. Mr. Svete concluded by asking the Board for a favorite consideration and indicated that questions from the Board can be addressed by the applicant or the builder.

Vice Chairman Briggs thanked Mr. Svete, and asked if members of the Board had any questions.

Mr. Bartholomew asked what is to be considered first on this request, the substantial change. Vice Chairman Briggs responded, yes, the Board needs to make that determination first before a vote can be taken on the merits of the request.

Mr. Bartholomew question the statement regarding the application being a substantial change, however, during the presentation it was stated that the reduction in the square footage was not substantial.

Mr. Svete clarified that he was talking about two different things; first is the substantial change in the application from the first request; and second is the difference in the required square footage of 1600 square feet. He explained that only asking for reduction and square footage for the single story home, the extension of driveways 35 to 42 feet, and the creation of an HOA are for consideration of the substantial changes. The second comment was provided on the variance itself, indicating the difference between 1407 and 1600 square feet is a very minor variance change. In other words, first part was for the modification, the second part was on a variance. Mr. Bartholomew understood the explanation.

The change to the front setback was discussed in length based on the previous request discussion. The houses were moved back from 25-feet to 35 to 42-feet from the right-of-way to accommodate large driveway lengths. The larger driveways are proposed to keep vehicles from parking in the street.

Vice Chairman Briggs questions the modification to build two story homes in this development. He asked if there were any plans submitted to show what type of housing is being proposed for this option. The two story house plan was presented to the Board. The Board asked if the developer knew how many two story homes would be constructed in this development. Mr. Svete replied that is hard to tell because this will be an option

slanted more towards homeowner with families versus the empty nester. Vice Chairman Briggs asked if the two story homes will be able to be financed in this area. Mr. Katcher stated this option should get the appraisals that are necessary, but our marketing research does show that the buyers that are waiting to buy something in this area are probably looking for the ranch product. The main reason is this is a street of existing ranch houses. People like the feeling of uniformity when they move in they don't want to be the different guy on the street so, whereas we can make this available, we do expect that that empty nesters are going to be the buyers in this Community, which equates to the ranch home.

Mr. Lyons commented that in terms of whether or not at the administrative level we thought this was a significant change. The administration believe that the three changes enhance the development over and above what was originally proposed. At the last meeting there was a large focus on the driveway with space for two cars; the developer agreed to move the houses back. There was discussion on a two story option at that time; the developer agreed if somebody want to purchase that type of product it will be available to them. And third there was no HOA for the development. The administration thought that these were significant improvements to this proposed development. Ultimately, it is up to the Board to decide whether or not these are substantial changes to the original request.

Mr. Lyons explained to the Board that the developer has filed a notice of appeal with the Lake County Common Pleas Court challenging the decision that was made at the last meeting. Ultimately, if the applicant does not get some sort of approval to move forward, then that challenge will go forward. If the appeals is successful they would then have the right to build the original plan which would not be as favorable to the City in this particular case. Mr. Lyon stated that the City's understanding is that as part of this process the applicant is willing to withdraw that appeal.

Mr. Lewis commented that after the original request was denied he inquired with members of City Council regarding their opinion of the extension of Community Lane with the proposed 1,400 square foot minimum for new single family housing units. The general consensus was the construction of these types of houses was important for the City of Painesville since there are not many options available to empty nesters and/or seniors within our community. He explained that currently that demographic moves out of the city to find areas where adequate housing fits their needs so they can age in place. There is not a lot of turnover on ranch houses within the city. Mr. Lewis continued explaining that the developer has also addressed a number of concerns with creating longer driveways so the street would not become a parking area. He also commented on the price point for the proposed housing and how this will be very beneficial to the other surrounding properties in the neighborhood and the placement of an HOA for the subdivision which will put together a minimum requirement for the property owners to maintain their product.

Vice Chairman Briggs asked if City Council proposed any legislation that would address this so there would be no need for a variance.

Mr. Lewis responded that legislation was not proposed. He explained that these types of situations are to be looked at on an individual basis, similar to what was just done for the garage. In this particular case the developer has come forward with a hardship. After being unsuccessful for a number of years to find a builder that would take on this project, the developer has approached the city asking for a variance to allow someone to build the type of product that was provided to the Board. The builder has done all of the research and has determined what type of housing would work in this area and based on the need of the community.

Mr. Lyons commented that at the last hearing for this request there were comments made when the requested was turned down. One of the reasons was because Council in 2019 adopted new standards for the minimum square footage and the Board did not want to go against Council's decision on this requirement. Mr. Lyons stated that Mr. Lewis did an informal discussion with the members of Council to see what their reaction would be if this was approved by the Board at a lower square footage. This discussion was not for official purposes, it was just to gauge the reaction of Council so that if it was questioned again Mr. Lewis could be in a position to say that Council thinks that the BZA has the authority to waive the requirement if they think it is appropriate in this case. Mr. Lyons explained that when Council passes its legislation it is doing it on a broad brush across the whole city and not all parts of the city can support the minimum requirements. In terms of deciding the first question of whether or not this is a significant or substantial change, it is the Board's decision, not the administration's decision. The administration does think that it is substantial. In this particular situation, there are many benefits over this plan is compared to the first one. Ultimately, the Board would have to have three people vote in favor of the request to move forward.

Vice Chairman Briggs asked if members of the Board had any questions. There being none, he stated that a vote is needed for the first question.

Mr. Svete stated in response to the question, his client would be willing to dismiss the appeal upon a favorable ruling from this Board.

Mr. Lyons explained to the Board that this is important. If the application receives a favorable ruling from the Board and they did not dismiss the appeal, they could still move forward with the appeal and receive a ruling on the first application. This mean the development would have the shorter driveway, there would be no HOA. The applicant has agreed to do the higher and better development for the city, which, from the administration standpoint, is a better design.

Vice Chairman Briggs asked if members of the Board had any questions. There being none, he stated the Board has all of the information regarding making a vote on the first question. He asked for a motion on whether we agree that this is a substantial change to the original variance request such that we can move forward to actually vote on the variance.

Motion by Mr. Bartholomew, seconded by Mr. Dunay that the application for Refusal No. 2361 is a substantial change from the previous variance request made by Todd Harrison/Hallmark Excavating, Inc. for the reduction of the minimum floor area requirements in the R-1; Single Family Residential District. On Roll Call, Mr. Dunay, Mr. Bartholomew, and Vice-Chairman Briggs answered "yes". **Motion carried; 3-0.**

Vice Chairman Briggs stated the Board has determined that this application is a substantial change and the Board will move forward to decide on the variance request as submitted. He stated that the Board has heard everything from the applicant. Vice Chairman Briggs asked the audience if there were comments for or against the variance request. There being none, he asked the Secretary if there was correspondence concerning this matter. The Secretary replied there was none.

Vice Chairman Briggs asked if there was a motion on **Refusal No. 2361**. Motion by Mr. Dunay, seconded by Mr. Bartholomew to approve **Refusal 2361** as proposed with the modified setbacks; the creation of the Homeowners Association; and offering the 1600 square foot house option as depicted. Additionally, the applicant agreed to withdraw the appeal on the Boards Decision from December 2020. On Roll Call for the motion, Mr. Bartholomew, Mr. Dunay, and Vice-Chairman Briggs answered "yes"; **Motion carried, 3-0.**

Vice Chairman Briggs moved to the next item on the Agenda. The Board was informed the applicant was not present for the meeting. The item will be moved to the next regularly scheduled meeting to be heard.

**Refusal No: 2362**  
Applicant/Owner: Ken Baxter Sr.  
Location/PIN: 81 Elevator Avenue (15-B-011-0-00-035-0 and 15-B-011-0-00-036-0)  
District: B-2; General Business District  
Variance: 1121.04 (b) Nonconforming Structures

An application has been submitted by Ken Baxter Sr. requesting a variance to Section 1121.04 of the Painesville Unified Development Code to allow the expansion of the existing building at 81 Elevator Avenue to exceed 110% of the existing footprint. In June of 2020 a variance was granted permitting a 1,800 square foot addition. Mr. Baxter has modified the design of the propose addition to include an additional 218 sq. ft. A variance to allow the construction of the revision to the proposed addition is required.

**BUSINESS OR ANY OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE BOARD OF ZONING APPEALS:**

The Board inquired about obtaining additional information on a particular matter and the proper way to ask for the information from the Administration. Mr. Lyons indicated the Board can request additional information through an email to the Administration about any of the matters before them. Once the matter is opened into the Public Hearing, the information provided can be discussed at the Board Meeting.

**ADJOURNMENT:**

Vice Chairman Briggs asked if there was any further business the Board should address. There being no further business, the meeting was adjourned at 8:46 p.m.

---

Lynn White, Acting Secretary

---

Ryan Briggs, Vice Chairman