

BOARD OF ZONING APPEALS

November 20, 2020

CALL TO ORDER: The Board of Zoning Appeals met on Thursday, November 20, 2020, at 7:30 PM via video conference for their regular meeting.

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

ACTION ON MINUTES OF PREVIOUS MEETING:

Chairman Behrens asked for additions or corrections to the minutes of the Board of Zoning Appeals Meeting of August 20, 2020. There being no comments, Chairman Behrens asked for a motion. Motion by Ms. Aston, seconded by Mr. Briggs, to accept the Board of Zoning Appeals Meeting Minutes of August 20, 2020. Chairman Behrens asked the Secretary to call the Roll. On Roll Call, Mr. Dunay, Mr. Briggs, Ms. Aston, and Chairman Behrens answered "yes". **Motion carried, 4-0.**

MEETING PROCEDURE AND SWEARING IN:

Chairman Behrens explained the procedures for the meeting, and then swore in those who planned to speak for or against the variance request. Additionally, Chairman Behrens 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.

Chairman Behrens 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.

Chairman Behrens moved to the first item on the agenda. He asked the secretary to read the application for Refusal No.2355.

NEW BUSINESS/PUBLIC HEARING ITEM(S):

Refusal No: 2355
Applicant/Owner: Kristy Wegloski
Location: 189 North Settlers Lane
District: R-1; Single Family Residential District
Variance: 1119.14 (b) Private Swimming Pools

An application was submitted by Kristy Wegloski of 189 North Settlers Lane requesting a variance to Section 1119.14 (b) of the Painesville Unified Development Code. Section 1119.14 (b) states the following; *The pool and/or any structure accessory thereto shall be located a minimum of ten feet from a property line in a single-family district.* The applicant wishes to locate a 15 x 24 above ground pool in the rear yard with a five-foot setback from the side and rear property lines. A variance of five-feet for both setbacks is being requested.

Chairman Behrens reviewed the various documents that were sent to the Board on this request to the applicant. He asked Ms. Wegloski if there was anything additional she would like to speak about on her request.

Ms. Wegloski, 189 North Settlers Lane, Painesville, OH explain the reasoning behind the variance request. The placement of the pool in the requested location is to keep the existing deck in its current location. She explained the good news is the Homeowners Association finally approved the request for the pool. The deck was constructed nine years ago. It would have been beneficial to have the pool placed first prior to the installation of the deck.

Chairman Behrens asked how large is the deck. Ms. Wegloski replied it is roughly 32-feet across the back of the house and 18-feet on one side and 12-feet on the other side.

Mr. Dunay asked if other locations for the pool were explored. Ms. Wegloski explained that due to the deck location, the stairs for the deck, along with the electrical components for the deck, the ideal location for the pool is what she is requesting. If the variance were not granted the deck would have to be redesigned and a smaller pool would need to be installed. Mr. Dunay questioned if moving the pool farther into the rear yard would create other issues. Ms. Wegloski explained in detail the distances between the neighbor's property and the pool in that location. Ms. White presented the Board with the two scenarios for the location of the pool that were submitted by the applicant for the request.

Chairman Behrens asked if there were any other questions from members of the Board. There being none, it was noted there was one attendee for the public hearing on this matter.

Ms. Leslie Carter, 204 South Settlers Lane, Painesville, OH explained that she is present to support her neighbor on this request.

Ms. Aston stated that since the HOA approved the placement of the pool, she wondered if the neighbors were okay with the pool in the backyard since it is so close to the property lines. Ms. Wegloski stated that she did not speak with every neighbor about the pool, however she did speak to the two side yard neighbors about the installation of the pool who indicated they were fine with the request.

Chairman Behrens asked the City Planner about the zoning classification of Liberty Greens. Ms. White explained that Liberty Greens is zoned R-1; Single Family Residential and was developed as a Planned Unit Development and the size of the lots were part of the overall development plan for the area. Chairman Behrens commented that the approval of this subdivision by the Planning Commission and City Council for the smaller lots in the R-1; Single Family zoning district created the issue for the resident to have to seek a variance for the placement of the pool. If the lots would have been developed at a lesser density the need for a variance might not exist.

Chairman Behrens asked if there had been any correspondence on this request. Ms. White indicated she received an email from the Painesville City Local School District indicating they had no objection to the variance request.

Chairman Behrens asked if there were additional comments or questions. There being none, he asked the Law Director if he had anything to add. Mr. Lyons responded no. Chairman Behrens asked the City Planner for additional comments. Ms. White indicated she did not have any additional comments. There being no further discussion, Chairman Behrens asked for a motion.

Ms. White stated that due to the pandemic, some of applicants that have appeared earlier this year for variance requests have indicated issues with proceeding with their projects. The pandemic has created a supply chain issue as well as the inability to find contractors to do the work. Ms. White asked if the Board would be agreeable in granting a time extension to the requests to allow the applicants additional time to submit an application.

Chairman Behrens commented that the Board consider adding the extension for the request in the motion. Motion by Mr. Briggs, seconded by Ms. Aston to approve Refusal 2355 and also authorizing a three-month extension for submittal of the application associated with the approval of the project due to the COVID-19 pandemic. On Roll Call for the motion, Mr. Briggs, Ms. Aston, Mr. Dunay, and Chairman Behrens answered "yes"; **Motion carried, 4-0.**

Chairman Behrens moved onto the next issue under the **Administrative Appeal**. He asked the secretary to read the matter before the Board.

ADMINISTRATIVE APPEAL

Applicant/Owner: Stephen Vasvary
 Location: 24 Elevator Avenue
 District: B-2 General Business District

In accordance with Section 1111.12 of the Unified Development Code of the City of Painesville, Ohio, an appeal was submitted by Mr. Stephen Vasvary regarding the denial of an application for Business Occupancy at 24 Elevator Avenue. The proposed use for a Music/Recording Studio was denied as it is not a permitted use in the B-2 General Business District. The Board of Appeals met on November 19, 2020 to hear the appeal.

Chairman Behrens reviewed the various documents that were sent to the Board on this request to the applicant. He asked Mr. Vasvary to present his case to the Board.

Mr. Stephen Vasvary, 24 Elevator Avenue, Painesville, OH, began by stating his application for Business Occupancy at 24 Elevator Avenue was denied by Ms. White. He indicated this was based on the fact that it is not an approved business. When he received the list of approved businesses for the district he noted that a TV and radio studio is permitted. Mr. Vasvary indicated that he feels that a radio studio in the music production studio quintessentially they're the exact same thing. There is no difference as far as construction is concerned, or equipment's concerned with differences broadcasting. He stated he has no intention of broadcasting anything. He stated he can answer any questions or concerns about the proposal.

Chairman Behrens asked the City Planner if the application was denied strictly on the basis that this is not listed as one of the permitted uses in the B-2; General Business District. Ms. White replied, yes, music recording studios are not listed as a permitted use. Mr. Behrens responded that it isn't really a problem with the particular type of business as much as the code does not address this sort of business for the commercial areas of the City.

Ms. White explained the reasoning for the denial. The application was denied due to the fact music/recording studio is not a permitted use in the district. The applicant asked for documentation regarding the decision.

He was provided the Permitted Use Table from the City's Unified Development Code. Mr. Vasvary reviewed the table indicating the recording studio that he applied for is similar to the radio station use listed under the Public quasi-public and institutional uses. Ms. White explained that what is being proposed is not a public recording studio as defined in the City's Code.

Chairman Behrens asked if members of the Board had any questions. Mr. Dunay questioned, for clarity, the City does not specifically have recording studio defined anywhere, correct. Ms. White replied, yes.

Mr. Briggs stated, along the same lines for his understanding, there is no district that this use would best fit in that no matter what; this use would be denied because it is not permitted in any district so it will be a non-permissible business everywhere. Ms. White responded, yes, that would be correct.

Mr. Dunay asked the applicant to explain the client that would be serviced by his business. Mr. Vasvary explained that he wants to service every client, whether it is to record voice, podcasting, and/or music. Mr. Dunay stated potentially you could be servicing somebody that could be defined more in a public or institutional use like Lake Erie College or Painesville City. Mr. Vasvary replied that once established he would like to be able to use the property in order to outreach and help out the community and such.

Ms. Aston commented that with the technology and the way things are moving today she is on the fence about this. So many people now are doing podcast and they are joining their music and up and coming and even through the school systems. She stated they are doing a lot more with radio and she finds it hard that there is no zoning to support this type of use.

Chairman Behrens questioned the reason this request is before the Board as an Administrative Appeal, rather than going to the Planning Commission as a conditional use permit. Ms. White explained the Board is being asked to determine if the proposed use of a music/recording studio meets the meaning and intent of the permitted use of radio and television studios, as defined in the unified development code.

Mr. Lyons added that the memorandum to the to the Board on this matter It indicates under The Board of Appeals powers and duties include interpreting the unified development code when an application is file to determine the meaning and the intent of any wording or provision of the code. This is not a variance and it is not a similar use. The Board has to determine whether or not this operation is a radio and TV studio, as it is defined in our code. This is defined in our code is facilities used to produce operate or develop radio or TV programs for distribution through various telephone communication formats, but they do not include and site towers or satellites.

Discussion ensued about the type of business the applicant has been operating out of this location and the various issues that have been noted at this location over the years. Mr. Vasvary provided a history of the use of the building as it has been owned by his family for many years.

Mr. Lyons stated that City Council has the authority to amend the zoning code and maybe it should be considered by Council to make this use a conditional use so that guidelines or conditions can be put in place to regulate the noise and other issues that may arise from this type of use.

The Board asked what options the applicant has to be able to make his business work in the City. Mr. Lyons responded one option is to request City Council for a zoning amendment to allow this as a permitted or conditional use in the B-2 District. If the Board interpretation is that the use is not a radio and TV studio the applicant could appeal that decision to court and ask the court to do their own evaluation and interpretation of what a radio and TV studio is against the backdrop of the testimony that's been given at this meeting.

Chairman Behrens asked if the Board were to approve this appeal, is the next step that the applicant request a conditional use from the Planning Commission. Mr. Lyons explained that if the Board approves the request then the music/recording studio would be permitted in any building located in the B-2 District. There would be no standards against the use except general noise standards. This is for all locations whether or not that would be appropriate in that particular area.

Chairman Behrens asked if Members of the Board understand what is being asked of them. All members replied, yes. He asked if there are any other questions from Members of the board. There being no other questions, he asked the secretary if there had been any correspondence concerning this matter.

Ms. White replied there were none.

Chairman Behrens asked if Mr. Lyons had any additional comments. Mr. Lyons replied he believes this matter should be done as a code amendment that would be controlled by City Council.

Chairman Behrens asked for a motion on the Administrative Appeal for 24 Elevator Avenue. Motion by Mr. Briggs, seconded by Mr. Dunay to reverse the denial of the application for the Business Occupancy. On Roll Call for the motion, Ms. Aston, Mr. Dunay, and Chairman Behrens answered "no"; Mr. Briggs answered "yes"; **Motion failed, 3-1.**

The Board of Zoning Appeals sustained the Administrator's interpretation of the Unified Development Code that a Music/Recording Studio is not a permitted use in the B-2 General Business District; and that a Music/Recording Studio as proposed is not a radio and/or television studio.

Mr. Lyons explained how the applicant can proceed with filing an appeal to Common Pleas Court or apply to the Planning Commission for a code amendment.

Chairman Behrens moved onto the final item on the Agenda. He asked the secretary to read the application for Refusal No. 2356.

Refusal No: 2356

Applicant/Owner: Mark and Rose Ann Kundtz
 Location: 350 Liberty Street
 District: R-1; Single Family Residential District
 Variance: 1119.04 (e) (1) Detached Structures

An application was submitted by Mark and Rose Ann Kundtz requesting a variance to Section 1119.04 (e) (1) of the Painesville Unified Development Code for a Detached Accessory Building. The applicant is proposing to construct a detach garage with an overall height of nineteen (19) feet. Section 1119.04 (e) (1) states: *The maximum height shall be: (1) Sixteen (16) feet or the height of the main structure, whichever is less in residential districts.* A variance of three (3) feet is required for the proposed construction of the detached structure.

Chairman Behrens reviewed the various documents that were sent to the Board on this request to the applicant. He asked the applicant if there was anything additional they would like to speak about on their request.

Mr. Mark Kundtz, 350 Liberty Street, Painesville, OH stated his request is basically to allow an additional three-feet in height than is permitted for a garage. He indicated that it is important architecturally to keep the roof angles for the peaks of the house and the garage to be similar, which is going to a wider garage than what is currently there. If the garage were only 16-feet tall the angle of the roof would be a little different than the angles of the home. Mr. Kundtz stated that he is over 6-feet tall and he would like to have a higher ceiling and have some storage above the cars in the garage. Mr. Kundtz indicated that he has talked to the neighbors and none of them verbally have any issues there. They're all thrilled with the renovations we've done with the house and how much we've improved the property in the last year, we've worked our tails off. We have received a lot of compliments from everybody around us and just walking by and this is the last big project for us to really finish this this piece of property off the way it should be done.

Chairman Behrens asked if the new garage will be the same size as what is there currently or if it will be larger. Mr. Kundtz replied yes; the garage is 24-feet wide and 30-feet deep. Chairman Behrens asked how tall the existing garage is. Mr. Kundtz replied, 16-feet.

Chairman Behrens asked if the garage meets all the other code regulations with regard to size and setbacks. Ms. White indicated the plans were reviewed and the proposed location meets the requirements of the code. The applicant added that the location of the existing garage is closer to the neighbor. The proposed garage is moved over to meet the five-foot side yard setback.

Chairman Behrens asked if members of the Board had any questions. Mr. Dunay inquired about the angles of the garage roof. Mr. Kundtz stated that he did not know the exact angle; he went up on a ladder and measured; it is approximately 26 feet. The roof line would definitely be different if it was kept at the 16 foot height; it would have a flatter peak versus the taller peak on the house. Mr. Kundtz stated it would look more like a modern garage, instead of a period garage; the home was built in 1880.

Chairman Behrens asked for other questions from members of the Board. Ms. Aston questioned the driveway access to the property as she did not see how it would be accessed from Liberty Street. It was explained there is no driveway on Liberty, the driveway is located off King Street.

Chairman Behrens asked if there had been any correspondence on this matter. Ms. White indicated that she received a phone call from the neighbor at 26 King Street who indicated they did not have an issue with the request and that they were glad the location of the garage is farther away from the property line.

There being no further discussion, Chairman Behrens asked for a motion on this matter. Motion by Ms. Aston, seconded by Mr. Briggs to approve Refusal 2356 and also authorizing a three-month extension for submittal of the application associated with the approval of the project due to the COVID-19 pandemic. On Roll Call for the motion, Mr. Dunay, Mr. Briggs, Ms. Aston, and Chairman Behrens answered "yes"; **Motion carried, 4-0.**

ADJOURNMENT:

Chairman Behrens asked if there was any further business the Board should address. There being no further business, Chairman Behrens asked for a motion. Motion by Mr. Dunay and seconded by Ms. Aston to adjourn the meeting. All members present responded "aye"; Motion carried. The meeting was adjourned at **9:22 p.m.**

Lynn M. White, Secretary

Jim Behrens, Chairman