

BOARD OF ZONING APPEALS

December 17, 2020

CALL TO ORDER: The Board of Zoning Appeals met on Thursday, December 17, 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. James Bartholomew, Mr. Ryan Briggs, and Chairman James Behrens. Also in attendance were Acting City Manager Douglas Lewis; 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 November 19, 2020. There being no comments, Chairman Behrens asked for a motion. Motion by Mr. Briggs, seconded by Mr. Dunay, to accept the Board of Zoning Appeals Meeting Minutes of November 19, 2020. Chairman Behrens asked the Secretary to call the Roll. On Roll Call, Mr. Dunay, Mr. Briggs, Ms. Aston, and Chairman Behrens answered "yes"; Mr. Bartholomew abstained. **Motion carried, 4-1.**

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. **2357**.

NEW BUSINESS/PUBLIC HEARING ITEM(S):

Refusal No: 2357
Applicant/Owner: Todd Harrison/Hallmark Excavating, Inc.
Location: 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, requesting a variance to Section 1117.01 (a) of the Painesville Unified Development Code. Section 1117.01 (a) includes minimum requirements for R-1 Single Family properties to be developed. The applicant is requesting a variance to allow lots 60-feet in width in lieu of the required 75-feet and a variance of the minimum floor area of the dwelling units to be 1,400 s.f. in lieu of the required 1,600 s.f. within the R-1 district. The existing portion of Community Lane was developed with 60 ft. lots per a variance approved through Refusal 1956.

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 that they would like to add in regards to the request.

Ms. Brooke Harrison, Hallmark Excavating, 482 Blackbrook Road, Painesville OH explained the request that was read to the Board outlines the reasoning for the two variance requests. She would be happy to answer any questions the Board has on the proposal.

Mr. Bartholomew questioned the fact that there are two requests being presented and if the applicant was aware that the square footage requirement for a 60-foot wide lot is the same as a 75-wide lot. Ms. Harrison replied yes, they are aware of the requirement. Mr. Bartholomew asked if the requests were being joined together or if they were being acted on separately. Ms. Harrison replied that acting on each individually would be fine.

Mr. Bartholomew questioned the decision to increase the square footage requirement from 1,100 to 1,600 square feet. Ms. White responded the zoning code was updated in 2019 and included was the increase to the square footage of the single family homes. The code amendment was done through Planning Commission and then forwarded to City Council. The increase in the square footage was due to the majority of the new houses being built in Heisley Park are being constructed at a square footage greater than 1,600 square feet. Those lots have a 60 foot wide frontage and have a smaller total square footage of 7,500.

Mr. Dunay inquired about the existing square footage of the homes that are currently on Community Lane. Ms. White replied the 19-lots that were building originally on Community Lane average anywhere from 1,200 to 1,400 square feet.

Chairman Behrens commented that with City Council passing this legislation recently it would seem that the intent is to make the houses a little bit larger than what the City has and has permitted in the past. The lots that were already constructed in the area were constructed in the early 2000's; since that time the code has changed and no longer allows the smaller houses.

Ms. White presented the background on the subject property to the Board. She explained that the original developer of Lexington Village (Community Lane), Lake County Community Development Corporation (LCCDC), received approval for a similar variance request on the lot size through Refusal 1956 in 2001. In 2013 the Board of Zoning Appeals granted the same variance request to the prior owner of the property (Ms. Kish) for Section 1129.01 of the City's code for 10-lots. Additionally, in 2015 the Board of Zoning Appeals granted the same variance request to the applicant (Hallmark Excavating) for Section 1129.01 of the City's code for the 19-lots.

The Board was presented an aerial view of the submitted subdivision plan of the site. It was explained that Community Lane would be extended directly to Newell Street. The temporary cul-de-sac (or turn around easement) will be extinguished upon extension of the roadway which was the intent when the subdivision was initially developed in 2001. The extension of the roadway and the addition of these lots will complete the development of the remaining 6.704 acre parcel. All of the lots created will have a lot area of more than 10,000 square feet as required under the R-1 regulations. The area directly to the west of this proposed subdivision is Reed Avenue. The majority of the lots on Reed Avenue are 50 feet wide by roughly 150 feet deep (7,500 square feet). To the east of Lexington Village Subdivision on Lexington Avenue are four lots that were developed by LCCDC in 1999 which have a frontage of 52 feet and have been developed with houses that are 1,368 square feet.

Ms. White explained that since 2015 when the Board granted the applicant the variance on the frontage of the lots, the developer has been looking for a home builder to construct homes on the property. Ryan Homes has agreed to build on the proposed 19-lots with the style home that matches the area. The home builder indicated larger square footage homes in this location would not be easily financed by a lender as the housing market in this area will not support such a large home.

Mr. Mark Katcher, 3915 North Shore Drive, Akron, OH introduced himself and stated he is a representative of Ryan Homes. He indicated the biggest concern is they are mimicking what is already there and the major concern for any home builder, not just Ryan homes is how banks appraise properties. The banks use similar properties within a vicinity. When we go to build these homes, it is the existing homes and community that they're going to be compared to. In order to build 1,600 square feet, the banks will max and the existing home sales will not support those prices. A home builder needs to offer a product that is financially feasible. He stated that on a side note, the house that is proposed is 1407 square feet which is the most current version of the first model home offered at Heisley Park. That house style was originally offered 15 years ago was 1200 square feet with a couple of options to extend the house, which made it to this size of 1400 square feet. He explained that over the course of the past 15 years houses are revised, based on what the market is asking for, and this is the most current version of that house.

Mr. Lewis reiterated that the City has been working with the developer for a number of years. We have looked at a variety of housing options for this area in the form of townhouses to condominiums to find a product that we thought would be suitable for this area. This most recent product that is being presented is the product that is similar to what is existing on Community Lane and blends well with the surrounding community.

Discussion continued regarding the various options the developer had presented to the city for this property. Mr. Katcher was asked about the starting prices of the homes proposed in this development. Mr. Katcher replied that the perspective buyer will be able to add options to the base unit of the house, but for the most part the 1,407 square foot unit will be \$210,000 and will go up to \$219,000. The additional 200 square foot that is required adds to that price and the base would be close to \$230,000 or \$240,000. The marketing division indicated the area would not get appraisals that high and the price cap would be at \$217,000.

Chairman Behrens asked if members of the Board had any questions. Mr. Briggs commented about similar sized lots that have requested variances in the past. If the variances are granted for this request, is the Board opening the door for additional variances to be requested in the future? Ms. White responded that variances are requested based on practical difficulties for the particular case. The layout of the houses was discussed and the front setbacks were noted at 35-feet on the north side of the street and 25-feet on the south side. Additionally, even though the frontage is less than 75-feet, the lots are over the required 10,000 square feet, whereas the lots in Heisley Park and Liberty Greens have a minimum square footage of 7,500 square feet. The extra lot area allows future home owners more room for pools and sheds. All of the homes have two car

attached garages so there should be no real need for variances in this area. There were no noted variance requests on file for the existing portion of Community Lane.

Mr. Behrens commented on the front setbacks of the proposed subdivision. Based on the issues that have been seen at Heisley Park and the ability to park three to four cars in the driveway, will this be the case for this area since the houses are closer to the roadway and the majority of the property is behind the house. There was lengthy discussion regarding the available parking in the driveway with a 25-foot setback and how the street might be impacted with overflow parking. Mr. Katcher explained the housing product is geared towards empty nesters and these typically do not have the number of cars that you see in a neighborhood that has driving aged children with multiple cars. This is not the type of house that will have four cars, maybe a third car, but the driveways are long enough to accommodate an extra car. It was explained that at 25-feet, two cars, side by side will be accommodated in the driveway and will not overhang the sidewalk. However, two cars in a row will overhang the sidewalk. It was mentioned that the code was modified to allow for an additional parking space in the front setback which alleviated a majority of the issues with parking in the subdivisions.

Mr. Dunay asked for clarity if parking on the street is an issue for this area. Ms. White replied that she is not aware of any parking issues on Community Lane. There was discussion regarding the rules of on-street parking within the City. Mr. Lewis commented that it depends on the street; some streets allow parking on both sides, other streets only parking on the non-hydrant side is allowed.

Chairman Behrens asked if there were any other questions from members of the Board. Mr. Bartholomew asked if the proposed housing was a rental product or a for sale product. Mr. Katcher commented that he does not have any information on the existing homes, but Ryan Homes intent is to have owner occupied houses.

Chairman Behrens asked if there was anyone wishing to speak for or against the request. There being none, he asked if there was any correspondence regarding this issue. Ms. White replied there was no correspondence on this matter.

Chairman Behrens asked for comments from Assistant Law Director Lyons. Mr. Lyons asked Mr. Katcher to explain the dimensions of the houses proposed for the area. Mr. Katcher commented that the houses are 40-foot wide and with a 60-foot wide lot that leaves room for the 10-foot side yards as required by the code. Mr. Lyons asked if 10-feet was enough room to move the garage to the rear of the property. Mr. Katcher replied yes. Mr. Lyons inquired if both variances are denied, will this product be economically feasible to build in this area with the 1,600 square foot minimum. Mr. Katcher noted that as was explained earlier, the market does not support building homes larger than what is in the area. Mr. Lyons commented on the parking permitted in the street being controlled by City Council and the fact there are curbs and storm sewers located on the proposed roadway in this development. It was noted the proposed roadway is not a thoroughfare like Elizabeth Boulevard in Heisley Park.

Chairman Behrens asked for comments from Mr. Lewis. Mr. Lewis responded that he had no further comments. Chairman Behrens asked if Ms. White had anything additional to add. Ms. White commented that as stated in the Staff Memorandum on this request; the proposed variances do not go against any of the City's adopted plans. This development was originally intended for the additional 19-lots to complete the subdivision to provide single family homes to help address the homeownership issue within the City.

There being no further discussion, Chairman Behrens asked for a motion on the first request for the reduction in the frontage of the proposed lots from the required 75-feet.

Motion by Mr. Briggs, seconded by Mr. Dunay to approve **Refusal 2357** to reduce the frontage of the lots to 60-feet from 75-feet. On Roll Call for the motion, Mr. Bartholomew, Mr. Briggs, Ms. Aston, and Mr. Dunay, answered "yes"; Chairman Behrens answered "no". **Motion carried, 4-1.**

Chairman Behrens stated a motion is needed on the second request for the reduction of the minimum square footage of the dwelling units from the required 1,600 square feet.

Motion by Mr. Briggs, seconded by Mr. Dunay to approve **Refusal 2357** setting the minimum square footage of the proposed dwelling units to 1,400 square feet. On Roll Call for the motion, Mr. Briggs and Mr. Dunay, answered "yes"; Ms. Aston, Mr. Bartholomew, and Chairman Behrens answered "no". **Motion failed, 2-3.**

Chairman Behrens asked Mr. Lyons to explain the options available to the applicant regarding the denial of the request. Mr. Lyons explained the Final Decision of the Board will be provided to the applicant; the applicant has 30-days to appeal the Decision to Common Pleas Court to challenge the decision; the Common Pleas Court has the right to overturn the decision if there are not sufficient facts to support the decision and/or the decision was arbitrary and/or unreasonable.

Chairman Behrens moved onto the next item on the Agenda. He asked the secretary to read the application for Refusal No. **2358**.

Refusal No: 2358
 Applicant/Owner: Norma Aranda
 Location: 317 East Erie Street (PIN: 15-A-004-0-00-012-0)
 District: B-2; General Business District / Historic Downtown Design Review District
 Variance: 1119.04 (c) DETACHED STRUCTURES.

An application has been submitted by Norma Aranda of 317 East Erie Street, requesting a variance to Section 1119.04 (c) of the Painesville Unified Development Code. Section 1119.04 (c) states: *Any accessory buildings or structures greater than 12 square feet shall comply with the following specific standards and conditions: (c) On a lot where any single-family or duplex dwelling unit is located, accessory buildings or structures shall be located five feet from any side yard and three feet from any rear yard.* The applicant wishes to locate a 19 x 22 detached garage in the rear yard with a 1-foot setback from the east side property line and a 1-foot 7-inch setback from the west side property line. A variance of four-feet for the east side and a variance of three-foot 5-inches for the west side setbacks is being requested.

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.

Ms. Norma Aranda, 317 East Erie Street, Painesville, stated that she had nothing additional to add to her request.

Chairman Behrens asked if members of the Board had any questions. There being none, he asked if there had been any correspondence on this matter. Ms. White indicated that she received a phone call from the neighboring property owner who was not in favor of the request with no other comments. The Board reviewed the site plan and the aerial photos of the area to understand the issue more clearly. Ms. Aranda indicated that there is a shared driveway, however, the garage will not cause an access issue for the adjacent neighbor.

There being no further discussion, Chairman Behrens asked for a motion on this matter. Motion by Mr. Briggs, seconded by Mr. Bartholomew to approve **Refusal 2358**. On Roll Call for the motion, Mr. Dunay, Mr. Bartholomew, Mr. Briggs, Ms. Aston, and Chairman Behrens answered "yes"; **Motion carried, 5-0**.

Chairman Behrens moved onto the final item on the Agenda. He asked the secretary to read the application for Refusal No. **2359**.

Refusal No: 2359
 Applicant/Owner: Rosa E. Pacheco
 Location: 477 Chardon Street (PIN: 15-D-016-A-00-018-0)
 District: R-1; Single Family Residential District
 Variance: 1119.05 (b)(1) B. FENCES.

An application has been submitted by Rosa Pacheco of 477 Chardon Street, requesting a variance to Section 1119.05 (b)(1) B of the Painesville Unified Development Code. Section 1119.05 (b)(1) B states; *The installation of any fences shall comply with the following specific standards and conditions: (b) District Requirements. (1) Residential. B. 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 6-foot high, solid wood fence around two sides of the property. Section 1119.05 (b)(1) B. limits the height of fences within 20 feet of the right of way to a maximum height of 3 feet. Both the front and rear property lines are adjacent to a public right-of-way. A variance of 3-feet (fence height) is being requested.

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.

Ms. Rosa Pacheco, 477 Chardon Street, Painesville, stated that she had nothing further to add. Chairman Behrens noted that the fence is already in place. Ms. White explained that as the work was being completed the contractor was approached and issued a violation notice for not pulling a permit prior to placement of the fence. The understanding is that the surrounding areas have fences at this height and it was unknown that a permit was required to put in the same type of fence.

The Board had discussion regarding the penalty for contractors that begin construction without getting the necessary permits. The homeowner is ultimately responsible for making sure their contractor has the necessary approvals before beginning work on their particular project.

Chairman Behrens asked if there were any additional comments regarding the request. The Board viewed the different styles and colors of the fencing in the area. The applicant was asked about the possibility of

painting or staining the wood fence to make it similar to the adjacent fence. Ms. Pacheco agreed that she would be able to do this.

Chairman Behrens asked if there had been any correspondence on this matter. There being none, he asked if there were any additional comments or questions. There being no further comments, he asked for a motion. Motion by Mr. Bartholomew, seconded by Ms. Aston to approve **Refusal 2359** with the condition the fence be stained or painted to match the adjacent fence no later than September 1, 2021. On Roll Call for the motion, Ms. Aston, Mr. Dunay, Mr. Bartholomew, Mr. Briggs, and Chairman Behrens answered "yes"; **Motion carried, 5-0.**

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