

BOARD OF ZONING APPEALS

May 19, 2011

The Board of Zoning Appeals met in Courtroom No. 1 for their regularly scheduled meeting. Mr. Horacek, the Vice 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 and Ms. Waytes. Also in attendance were the Law Director, James Lyons; the Assistant City Manager, Doug Lewis; the City Planner, Russ Schaedlich and the Secretary, Tina B. Pomfrey.

MINUTES: The minutes of April 21, 2011 were approved as submitted.

Mr. Horacek explained the procedures for this meeting and swore in those who planned on speaking for or against the variance requests.

NEW BUSINESS

REFUSAL NO. 2199

APPLICANT: Orwell Natural Gas Company

DISTRICT: Business/Residential

LOCATION: 933 Mentor Avenue

VARIANCE: 1135.01(a) (3) C

An application has been submitted by Orwell Natural Gas Company requesting a variance of Section 1135.01(a) (3) C of the Painesville Codified Ordinances. The applicant installed a fence that is six (6) feet in height within 20 feet of the public right-of-way. Section 1135.01(a) (3) C states fences within 20 feet of a right-of-way or public street shall not exceed three (3) feet in height. A variance of three (3) feet (fence height) is being requested.

Mr. Schaedlich, City Planner, wanted to clarify that the zoning of the property is B-1, and not R-1, as it appears in the legal notice.

Mr. Paul Lehtonen, Operations Manager for Orwell Natural Gas, 8500 Station Street, Mentor, was present for the meeting. Mr. Lehtonen stated that Orwell Gas is running service to customers along Route 20 (Mentor Avenue, from the YMCA to Wood Street). Mr. Lehtonen explained that when running natural gas to the community, Orwell is taking gas from high pressure steel lines to plastic. A metering station must be installed to monitor the transition from steel to plastic line. Orwell makes arrangements with the property owner to record an easement to the station and then a fence is installed to keep the public away from the unit for safety reasons. Landscaping is generally installed and the request of the property owners to keep the unit and fence out of sight. In this case, the three foot maximum fence height within the front setback is just not sufficient for safety reasons.

Mr. Horacek asked Mr. Lehtonen if he was aware of the fencing requirements per the City. Mr. Lehtonen replied no. He added that Shannon Fence installed the fence, however, he had numerous meetings with the City prior to installing the metering unit and the need for permits for the fencing was not mentioned at any time. Mr. Lehtonen said he would have complied with permit requirements had he known about them.

Mr. Lyons, the Assistant Law Director for the City, asked if other cities have similar units installed in their right-of-ways. Mr. Lehtonen replied that there are only a few installed in cities; they are mostly installed in townships. At this time the cities they are present in are Willoughby and of course Painesville. Mr. Lyons asked where his operation is from. Mr. Lehtonen replied that it originated in Orwell, (Ohio) however, he works out of the base office that has since relocated to Mentor. Mr. Lyons asked if the company has laid any pipe in Mentor. Mr. Lehtonen replied, yes, he believes they have and he believes they have a meter station as well. Mr. Lyons asked if the meter station was above ground. Mr. Lehtonen replied yes, metering stations are no longer permitted below ground by the PUCO (Public Utilities Commission of Ohio) because of the danger of gas leaks in underground vaults and the possibility of explosion. Mr. Lyons asked Mr. Lehtonen if he knew of a specific regulation or administrative code that requires all new metering stations to be above ground. Mr. Lehtonen replied that he has been informed by his superiors that the regulation does exist. He offered to procure a copy of the code if requested. Mr. Lyons indicated that he would like to see it.

Mr. Lyons asked why a zoning permit was not issued to Orwell by the City to install the metering station. Mr. Lehtonen said he was not aware that as a utility he needed to get a zoning permit. Mr. Lyons stated that he noticed that both structures (at the YMCA and the one closer to Lake Erie College) are on private property. He asked Mr. Lehtonen if there is any reason why these structures cannot be placed further into the property, perhaps, like about 50 feet, in order to achieve the connection from steel to plastic (other than cost). Mr. Lehtonen answered that Orwell tries to keep them as far from the buildings as they can so that there is no danger of gases getting to the building. Additionally, Orwell doesn't like to locate them in backyards. They are not accessible for emergency access from fire and police, so if there is any accident back at the meter, it might not be immediately known about. Up front, it can be seen and heard.

Discussion ensued regarding locations of other metering units. Mr. Callender asked if they are located in only residential areas. Mr. Lehtonen indicated that Orwell mostly services residential clients so they are located mainly in residential areas. Mr. Lyons asked what area is serviced by the metering station at the

YMCA. Mr. Lehtonen said it services the YMCA to West Walnut Street and the Lake Erie College metering station goes from Walnut Street down to Wood Street. More discussion ensued regarding steel to plastic connections. Mr. Lyons asked who designed the piping system for Orwell. Mr. Lehtonen replied that Hess Engineering did the plans, determining where the pipe and metering stations are located. Mr. Lyons asked if the PUCO has to approve any plans before the applications are installed or is Orwell free to design to their own specifications. Mr. Lehtonen stated that the PUCO has inspectors that inspect the lines, however, Orwell places the metering stations based on who will allow them to be placed on their property.

Mr. Horacek asked if there are plans to add more metering stations in the City. Mr. Lehtonen stated at this time, no additional meters are planned but that may change depending on who wants Orwell's gas service.

Discussion ensued regarding the location of the metering station near Lake Erie College campus. Mr. Lyons explained that he spoke with Mr. Schaedlich earlier because he had never seen these metering stations before. He commented that it seems like these are structures and should be subject to approval under the Zoning Code. Mr. Lyons stated that he recommends that this issue be tabled to give Orwell Gas Co. a chance to produce some kind of case law showing that the City doesn't have a right to regulate this on a zoning basis or that these metering facilities must be located where there are.

Mr. Lehtonen said he reviewed the plans with the City Engineer who said he did not see a problem running the lines but rather with the fence. Mr. Lyons answered that the above ground structure itself may be subject to regulation under the Zoning Code but the City would be willing to listen to what Orwell has to say and to give Orwell a chance to produce some type of regulation regarding the installation of the metering stations. Mr. Lyons also added that even though Orwell has these metering stations in townships, townships are specifically exempt from regulating utilities, however, cities are different and have a bit more power locating "structures". Mr. Lehtonen said he would get something with regard to the ruling.

Mr. Horacek asked the secretary if there was correspondence from the neighborhood. The secretary stated that although she received several calls from concerned residents in the neighborhood, those residents left no comments with her and are not in attendance this evening. Mr. Horacek asked if anyone in the audience has comments. Ms. Jan Merrick, 37 Levan Drive, said that the pipe is already installed in the front of the property. She said she can see the Lake Erie College metering station right out her window. Ms. Merrick said if it relocated to the back of the property, the access to the metering station will be easier (than from the front) because it will be adjacent to the Lake Erie College parking lot. Additionally, it will be further away from the house at the back of the property than at the front of the property. Also, the metering station currently blocks the view coming out of the Lake Erie College parking lot.

Mr. Horacek asked for comments from the Board. Ms. Waytes asked Mr. Lehtonen if the intention is to install the metering stations all within the front setbacks, what is the danger if a car were to hit a metering station. Mr. Lehtonen replied that certainly it could sustain damage and be subject to a gas leak, however, it could be shut off easier than a backyard location. Ms. Waytes asked if these meters are monitored. Mr. Lehtonen said yes, they are monitored by a technician rather than a remote control. Ms. Waytes asked how many employees work for Orwell. Mr. Lehtonen says he has 10 people in the field beside people in the office, 13 total in Mentor. In Orwell, they have 3 people in that office. Mr. Lehtonen also added that with backyard meters, roads would have to be constructed through resident's backyards. Orwell is not allowed to use private driveways and land for access; Orwell must purchase an easement from the property owner and then construct a stone road on the side of the house back to the meter. Ms. Waytes asked how often the meters are monitored. Mr. Lehtonen replied they are monitored monthly. They have safety switches on them so once the pressure is set, it automatically corrects itself.

Mr. Horacek stated that Orwell Natural Gas already has service in Liberty Greens and Heisley Park. Discussion ensued with regard to metering stations. Mr. Horacek asked if service was expanded, could the service still be monitored by these metering stations. Mr. Lehtonen said they are fine for now, but if more services are added, particularly commercial and industrial applications, Orwell would have to find ways to deliver a larger volume of gas. Mr. Horacek asked Mr. Lehtonen if he knew about Dominion's meter upgrades, particularly if they are also going to be above ground. Mr. Lehtonen replied that all upgrades will have to be installed above ground, but if all lines being installed are plastic, no metering stations are needed.

More discussion ensued. Mr. Lewis asked Mr. Lehtonen for clarification. He asked if Orwell has an association with the property owner at 521 Mentor Avenue. Mr. Lehtonen said yes. Mr. Lewis said he assumed there would not be an issue then to move the metering station to the back and using the existing driveway. Mr. Lehtonen explained that yes, there would be a problem in doing that because although the property is owned by someone associated with Orwell Natural Gas, the company does not own the property for their use. It is still private rental property that will be rented to families for residential use. Orwell would still need to install a driveway access to the meter and Mr. Lehtonen stated he is sure that the landowner will not want this. Mr. Lehtonen added that he is not sure as a property owner that he would want to let a company come in and put in a driveway next to his house and then have trucks driving up and down the property while his kids are outside playing in the back yard. Mr. Lehtonen also added that there will be site restrictions from the property at Lake Erie College. Mr. Lewis asked if the PUCO has a minimum required distance from meter to house. Mr. Lehtonen explained that it is company

policy to set distance but there is no minimum. Mr. Lewis asked what the purpose was for the installation of the new metering stations. Mr. Lehtonen replied that the main demand was the YMCA but there was a secondary demand for residences on Route 20 and Wood Street. More residences can be added as demand increases. Mr. Lewis asked if the fencing is a company requirement or PUCO requirement. Mr. Lehtonen answered that it is company policy to fence it but PUCO requires that it be secure. Discussion ensued. Ms. Waytes asked if the City regulates other utilities. Mr. Schaedlich replied that if they are in the right-of-way, no, the City does not. Mr. Schaedlich stated that gas lines are actually located underground so they are all in the right-of-way.

Mr. Lewis says he has a metering station across from his house encased in a sealed structure. Mr. Lehtonen said Orwell is not permitted to seal a structure, it must be vented. If it is enclosed, gas cannot escape and that is regulated by the PUCO. Mr. Lyons stated that perhaps Mr. Lehtonen can supply that regulation verbiage provided that this matter is tabled. Mr. Lyons recommended that this matter be tabled until the next meeting so that Orwell can provide some answers to the questions that the Board has asked this evening.

Mr. DeLeone moved to table Refusal 2199 until the next meeting. Ms. Waytes seconded motion. Ms. Waytes, Mr. Callender, Mr. DeLeon and Mr. Horacek answered yes. Motion carried, 4-0.

REFUSAL NO. 2200

APPLICANT: Orwell Natural Gas Company

DISTRICT: Single Family Residential

LOCATION: 521 Mentor Avenue

VARIANCE: 1135.01(a)(1) B

An application has been submitted by Orwell Natural Gas Company requesting a variance of Section 1135.01(a)(1) B of the Painesville Codified Ordinances. The applicant installed a fence within the front setback of the property that is six (6) feet in height. Section 1135.01(a)(1) B prohibits installations of fences taller than 3 feet within the front setback. A variance of three (3) feet (fence height) is being requested.

Mr. Schaedlich made a correction to Refusal 2200 stating that the fence has not yet been installed.

Mr. DeLeone moved to table Refusal 2200 until the next meeting. Ms. Waytes seconded the motion. Mr. Callender, Mr. DeLeone, Ms. Waytes and Mr. Horacek answered yes. Motion carried, 4-0.

OTHER BUSINESS:

Mr. Anthony Cimaglio stated that although Mrs. Nancy Bihary, 1014 North St. Clair Street, was forced by the City to build a garage, the property at 27 Axtell Avenue had a garage fire two years ago and has not been rebuilt. The secretary stated that the owner of the property was issued a violation notice and has until July to procure building permits. At that time, if the owner does not comply, the matter will then go to the Court.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:25 p.m.

Joshua Horacek Vice Chairperson

Tina B. Pomfrey, Secretary