

BOARD OF ZONING APPEALS

August 19, 2021

CALL TO ORDER: The Board of Zoning Appeals met on Thursday, August 19, 2021, at 7:30 PM in Courtroom 1 of City Hall.

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

ACTION ON MINUTES OF PREVIOUS MEETING:

Chairman Behrens indicated the Board had a set of minutes from the previous meeting that required action by the Board. Chairman Behrens asked for additions or corrections to the minutes of the Board of Zoning Appeals Meeting of June 17, 2021. 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 June 17, 2021. Chairman Behrens asked the Secretary to call the Roll. On Roll Call, Mr. Dunay, Mr. Briggs, Ms. Aston, Mr. Bartholomew, and Chairman Behrens answered "yes". **Motion carried, 5-0.**

MEETING PROCEDURE AND SWEARING IN:

Chairman Behrens explained the procedures for the meeting, and then swore in those who planned on speaking 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. In addition, representatives of the City Administration are present; Mr. Lyons, the City's Legal Counsel, Doug Lewis, City Manager, and Ms. McMahon the City Planner.

Chairman Behrens explained that the meeting is being recorded and informed the applicants that the results of the meeting will stand as an official public hearing. He asked the applicants if they agree to the meeting procedures. The applicants in attendance agreed with the meeting procedures.

NEW BUSINESS/PUBLIC HEARING ITEMS:

Chairman Behrens moved to the first item on the agenda. He asked the secretary to read the application for Refusal No. 2370.

Refusal No: 2370
Applicant/Owner: Christopher and Angela Hill
Location: 43 Wood Street (15-C-002-0-00-017-0)
District: R-1; Single Family Residential District
Variance: 1119.0 5(b) (1) B Fence Height on Corner Lot

An application has been submitted by Christopher and Angela Hill requesting a variance to Section 1119.05 (b)(1)B of the Painesville Unified Development Code to allow the placement of a 4-foot high ornamental fence within the front setback. The property is a corner lot with two front setbacks. Section 1119.05 (b)(1)B Fences, states the following:

B. Fences within the front setback line of record or existing main building line whichever is less shall not exceed three feet in height. On corner lots all sides adjacent to the right of way shall be treated as a front setback line.

The applicant is requesting the placement of approximately 74-feet of 4-foot high ornamental fence within the front setback adjacent to Sterling Avenue. A 1-foot height variance for the fence is required at the proposed location.

Chairman Behrens 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, Angela Hill of 43 Wood Street passed out some photos to show the Board. She explained that she and her husband are requesting to erect the fence along the Sterling Ave side of her property. She said that the fence should not obscure the view for drivers. She stated that they are requesting the variance for safety and security reasons. She said that they had owned the home for 42 years, and over that time the neighborhood has changed, and there are a lot of rentals and multifamily homes. In the past the people renting the apartments stayed in the property for several years at a time, and now the tenants are much more transient, with people staying two years or less. She also stated that Sterling Avenue has a lot of traffic, both foot and vehicle. Ms. Hill went on to say that recently there have been several serious crimes that occurred

within 3 blocks of her home. She stated that her grandchildren play in her back yard and she needs more than a 3 foot fence to keep her family safe.

Mr. Behrens asked for clarification on the height of the proposed fence. Ms. Hill stated that it would be 4 feet high and was similar to the fences that have been erected around the former school grounds.

Mr. Dunay questioned if the proposed style of fence was acceptable in the Historic District. Ms. McMahon stated that it was.

Chairman Behrens asked the Secretary if any correspondence had been received regarding the variance. Ms. Baumgartner stated that she had received a letter from Mr. Adams, of 59 Sterling Avenue who stated that the Hills take good care of their property and are good neighbors and that he thought the variance should be approved.

City Manager Lewis stated that the Hills have one of the nicer homes in their neighborhood and take great care of their property and he recommends approval.

Ms. McMahon stated that she agreed with Mr. Lewis, and that the proposed fence fits in with the Historic District. She recommends that it be approved with the stipulation that the fence be a four foot version of the one that Ms. Hill submitted to the Board at tonight's meeting.

Mr. Briggs made a motion, seconded by Mr. Dunay that the variance be approved with the stipulation that the fence be the four foot high aluminum ornamental fence that was presented to the Board by Ms. Hill. . On Roll Call for the motion, Ms. Aston, Mr. Dunay, Mr. Briggs, Mr. Bartholomew, and Chairman Behrens answered "yes" **Motion carried 5-0.**

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

Chairman Behrens then moved on to the next item on the agenda, the Administrative Appeal.

IN RE APPEAL OF:

APPLICANT: Reisenfeld & Associates LLC on behalf of Sarah McMichael & PennyMac Loan Service

DISTRICT: R-1; Single Family Residential District

LOCATION: 448 Liberty Street (15C0100000140)

APPEAL: 1339.05 Appeal of Unsafe Structure

In accordance with the Building Code of the City of Painesville, Ohio Section 1339.05, a request has been submitted by Jane Jones of Reisenfeld & Associates LLC on behalf of Sarah McMichael and PennyMac Loan Service, regarding the Violation/Demolition Order dated December 28, 2020. The demolition order is for the unfit and unsafe living conditions located at 448 Liberty Street. The order states the entire structure has been determined to be unsafe based on the criteria of Sections 1339.01 and 1339.02 of the Codified Ordinances of the City of Painesville, Ohio and must be demolished. Section 1339.05 states the applicant shall be afforded a hearing by the Board within thirty days. After such hearing, depending upon its finding as to whether the provisions of this chapter have been complied with, the Board shall continue such order in effect or modify it or revoke it.

The applicant/appellant appealed the decision of the Building Official of Chapter 1339 Unsafe Structure in regards to declaring the property at 448 Liberty Street an unsafe structure. The Board of Zoning Appeals has the power to sustain or modify such order held a hearing on August 19, 2021 on this request.

As no one was present to speak on behalf of the appeal, Chairman Behrens asked Mr. Lyons to advise on how they should proceed. Mr. Lyons said that he thought that the City should go ahead and present it's case.

Mr. Lyons explained that there had been a fire at 448 Liberty that caused significant damage to the property. He said that it was insured and that there is a mortgage on the property that is held by PennyMac. He stated that he was unsure the amount of the mortgage, but that he assumed that it was most of the value of the home before it burned down. He said that the property went in to foreclosure and that the PennyMac has the right to try to recoup it's investment in the property. Mr. Lyons stated that Lt. Larry Armstrong had been corresponding with PennyMac and that they had had requested multiple extensions while they tried to decide if fixing the damage and selling the home, or demolishing it would better suit them. He stated that because of state law the city is entitled to a portion of the insurance money to demolish the house if it is a danger to the community, and that the City had \$10,600 from the insurance for demolition. Mr. Lyons said that PennyMac had requested that the matter be set for an Administrative Appeal. Mr. Lyons on or about August 4, 2021 Lt. Armstrong received permission by way of email from PennyMac to demolish the home. He stated that it looked to him like PennyMac was going to write off their investment. Mr. Lyons suggested that since

no one from PennyMac is in attendance, that Mr. Lewis be placed under oath and be allowed to testify since he was very familiar with the property.

City Manager Lewis was sworn in by Chairman Behrens.

Mr. Lewis stated that the city has been dealing with the property for some time and that the city has given PennyMac a number of chances to determine exactly what they were going to do with the property, and it has gotten to the point where the city had received a number of complaints about the property. Another concern is that kids have gotten inside the home and it's unsafe. Mr. Lewis stated that because of these reasons, and because they hadn't told the City what they intend to do about the property, and the City has the demolition money in escrow, he advised Lt. Armstrong to give PennyMac a Final Notice that the City would be moving ahead with demolition. He stated that at this point because of the eminent danger the property presents to the neighborhood, and because it has continued to deteriorate the City would like to move forward with the demolition.

Mr. Behrens asked the secretary if any correspondence had been received regarding the matter. Ms. Baumgartner stated that she had not received any correspondence.

Mr. Behrens asked if anyone would like to make a motion.

Motion by Mr. Bartholomew, seconded by Mr. Dunay to deny the appeal. On Roll Call for the motion, Ms. Aston, Mr. Dunay, Mr. Briggs, Mr. Bartholomew, 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, the meeting was adjourned at 7:45 p.m.

Tara Baumgartner, Secretary

Jim Behrens, Chairman