

## BOARD OF ZONING APPEALS

April 21, 2022

**CALL TO ORDER:** The Board of Zoning Appeals met on Thursday April 21, 2022, at 7:30 PM in Courtroom 1 of City Hall.

Chairperson Behrens asked the Secretary to call the roll. Members in attendance were Ms. Aston, Mr. Briggs, and Chairman Behrens, and Mr. Bartholomew. Mr. Dunay was absent. Also in attendance were Law Director, Jim Lyons; Assistant City Manager Derek Feuerstein; City Planner Rita McMahan, 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 March 17, 2022. 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 March 17, 2022. Chairman Behrens asked the Secretary to call the Roll. On Roll Call, Mr. Briggs, Ms. Aston, and Chairman Behrens answered "yes". Mr. Bartholomew abstained **Motion carried, 3-0.**

### **OLD BUSINESS: None**

### **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, Assistant City Manager Derek Feuerstein, and Ms. McMahan 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. 2378.

**Refusal No:** 2378  
**Applicant/Owner:** Traden Properties  
**Location:** 545/547 Mentor Ave. (15-C-016-A-000-026-0)  
**District:** R-1; Single Family Residential District  
**Variance:** 1119.04 (b) limits a garage to 768 square feet

An application has been submitted by Traden Properties of 545/547 Mentor Avenue requesting a variance to Section 1119.04(b) of the Painesville Unified Development Code establishes the maximum size of an accessory structure to be 768 square feet. The applicant wishes to add to an existing garage which will result in a 968 square foot garage. A variance of 200 square feet is requested.

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.

Mr. Scott, a contractor, spoke on behalf of Traden Properties. He stated that they would like to add an additional bay to the garage to house another car. He stated that it would look the same as before, just larger.

Mr. Briggs asked if Mr. Scott was aware that the City wouldn't allow them to build another structure on the property.

Mr. Scott answered that they wouldn't need another structure.

Ms. McMahan stated that the code requires 2 parking spots in a garage and that the house is non-conforming. She stated that the City wasn't opposed to the request and that it would actually make it more up to code. She stated that the City would want an Affidavit of Fact to be filed.

Motion by Mr. Briggs, seconded by Mr. Bartholomew to approve the variance request with the following stipulations:

- That no additional accessory structures are to be built on the property

- That the owner file an Affidavit of Fact at the Lake County Recorder's Office

On Roll Call for the motion, Mr. Bartholomew, Ms. Aston, Mr. Briggs, and Chairman Behrens answered "yes"  
**Motion carried 4-0.**

Chairman Behrens then moved on to the next item on the agenda.

**Refusal No:** 2379  
**Applicant/Owner:** George Davis of Pro-Built Homes  
**Location:** Michael Court (15-C-030-D-00-021-0, 15-C-030-D-00-020-0, 15-C-030-D-009-0, 15-C-030-D-00-017-0, 15-C-030-D-00-010-0, 15-C-030-D-00-015-0, 15-C-030-D-00-011-0, 15-C-030-D-00-014-0, 15-C-030-D-00-012-0, 15-C-030-D-00-013-0)  
**District:** R-1; Single Family Residential District  
**Variance:** 1117.01(a) Variance to Dwelling Size

An application has been submitted by George Davis of Pro- Built Homes requesting a variance to Section 1117.01 (a) of the Painesville Unified Development Code to allow the construction of 10 1407 square foot dwellings. Section 1117.01(a) requires homes in the R-1 district to be 1600 square feet. A variance of 193 square feet is requested.

Mr. Davis stated that Michael Court subdivision was put in 25 years ago and that several lots are still vacant. He stated that the homes to be built would be of a higher value than the existing homes in the surrounding area.

Mr. Bartholomew asked what the setback would be. Ms. McMahon answered that it was 30 feet.

Mr. Behrens stated that he was concerned about the parking situation because three cars probably won't fit in the driveway.

Mr. Davis stated that they don't want to go above \$300,000 and that every change adds to the cost.

Mr. Bartholomew stated that on street parking is the issue and that he felt the setback should be further back.

Mr. Behrens stated that the 35 ft. setback in Encore Estate wasn't enough and 30 ft. definitely won't work.

Mr. Davis responded that the lots wouldn't be big enough. He stated that they were platted 25 years ago and it would be hard to fix the roads now.

Mr. Briggs asked if the homes would have two car garages, and if four cars would fit in the drive.

Mr. Davis answered that they would be two car garages and four cars would fit if two were parked in the garage and two in the drive.

Ms. Aston asked for clarification as to how many lots Mr. Davis planned to build on.

Mr. Davis responded that there are 13 vacant lots; 3 of which are owned by other people. He owns the other 10 and plans to build on them.

Mr. Behrens asked Ms. McMahon why the homes couldn't be built further back on the lots.

Ms. McMahon answered that the back part of the lots is in a storm retention area and have storm retention easements. She stated that the whole lot isn't usable. She stated that the code has changed since the lots were originally platted.

Mr. Behrens stated that City Council passed legislation regarding frontage and that is what they want.

Ms. McMahon stated that was true but that because of the lots it would be difficult to build on without a variance.

Mr. Bartholomew wanted to know since Council changed the legislation, how many homes didn't meet the new criteria?

Mr. Davis answered that the ranch style homes in Encore Estates are smaller.

Mr. Lyons stated that Encore Estates were grandfathered in and didn't require a variance.

Mr. Bartholomew again asked what percentage of the new homes meet the requirements of the new legislation.

Ms. McMahon answered that about 80% are compliant and that all the colonial style homes are compliant.

Mr. Bartholomew asked how effective the legislation was.

Ms. McMahon responded not very.

Mr. Lyons stated that there have been no new subdivisions since Council passed the legislation.

Mr. Bartholomew asked how long ago the legislation was passed.

Ms. McMahon answered that it was passed two years ago.

Mr. Andrew Lipps of Jefferson Ohio, stated that he is the project manager for Ryan Homes and he wished to speak on behalf of the request. He stated that he felt the project would be a good thing for Painesville, and that it would be better to have the new homes rather than vacant lots.

Mr. Lyons asked if the new homes would have basements.

Mr. Lipps stated maybe, that it depended on the hydrology test results.

Mr. Lyons then asked if the smaller homes in Lexington Village have basements and whether or not a basement creates more usable space in a home.

Mr. Lipps responded that yes the majority of the smaller homes in Lexington Village have basements, and that buyers prefer a home with a basement. He also stated that a basement creates a lot more usable space in a home since they can put the mechanicals of the home in the basement and free up space on the main floor.

Mr. Lyons asked Mr. Davis if the hydrology of the property supported it, would he agree to a condition that he would be required to put in basements in the homes.

Mr. Davis stated that he would agree to the condition.

Mr. Feuerstein stated that the City looks at the aesthetic of a neighborhood and considers whether a request fits in with that aesthetic. He stated that the smaller homes fit the aesthetic of the neighborhood.

Mr. Lyons asked Mr. Davis if the BZA were to deny his request, would it be a deal breaker for his project.

Mr. Davis stated that it would be.

Ms. Aston asked if there was an easement for drainage to address the water issue.

Mr. Davis answered that there was a basin for the water and they would clear them out first to address the issue.

Mr. Bartholomew asked if the properties were lower or higher than the street.

Mr. Davis answered that they were higher.

Ms. McMahon stated that the parcels have been for sale for 25 years with no return on the parcels. She stated that this was an opportunity to make them usable and benefit the community. She stated that she felt that the request was keeping with the spirit and intent of the Zoning Code.

Mr. Briggs asked if a vacant lot would be better or worse for the property value of the existing homes.

Ms. McMahon stated that new homes would increase the value of the surrounding existing homes.

Mr. Bartholomew asked Mr. Lyons to explain the stipulation regarding basements that he had discussed earlier in the meeting.

Mr. Lyons stated that the Planning Commission could add a stipulation that required Mr. Davis to build basements, thereby freeing up some usable space within the home, if the hydrology report would support it.

Ms. McMahon stated that some of the lots have a high water table and others are in wetlands, so basements may not be feasible on all the lots. She stated that the City Engineer will work with them about the retention basin.

Mr. Lyons asked Ms. McMahon if she agreed with adding the stipulation regarding requiring basements when the hydrology tests support it.

Ms. McMahon stated that she had no objection to it.

Mr. Behrens asked if Mr. Davis was alright with the stipulation.

Mr. Davis stated that he was ok with it because if he didn't get his variance granted he had no deal.

Motion by Mr. Bartholomew, seconded by Ms. Aston to approve the variance request with the following stipulations:

- That if a hydrology study supports it, they will be required to build basements on all of the ranch style homes.

On Roll Call for the motion, Ms. Aston, Mr. Bartholomew, Mr. Briggs, and Chairman Behrens answered "yes"  
**Motion carried 4-0.**

**Refusal No:** 2380  
**Applicant/Owner:** NVR INC/ Ryan Homes  
**Location:** 449 Community Lane (15-C-024-0-00-084-0)  
**District:** R-1; Single Family Residential District  
**Variance:** 1125.10 (a)(2) Setback for driveway in Single Family Residential

An application has been submitted by NVR INC. representative of Ryan Homes requesting a variance to Section 1125.10 (a)(2) of the Painesville Unified Development Code to allow 1 foot setback on a driveway in lieu of the 3 foot required. NVR INC installed a temporary parking pad when the home was built as the model home for the development. The house has been sold and the buyer wishes to keep the parking pad at its current location. A variance of 2 feet requested.

Mr. Andrew Lipps of Jefferson Ohio, Project Manager for Ryan Homes spoke on behalf of the request. He explained that the property was the model home for the development and has a temporary concrete parking pad. The potential buyer for the property would like to keep the pad in place.

Mr. Behrens asked where the property line was.

Mr. Lipps stated that the transformer splits the property line.

Ms. McMahon stated that the code does allow for widening of driveways. She stated that the City would like to keep cars off the street. She also stated that the applicant could cut two feet off the end of the end of the pad and it would meet the code requirements, but that the City was not opposed to granting their request.

Mr. Behrens asked if the City Engineer had approved the request.

Ms. McMahon stated that the City Engineer had approved it.

Motion by Mr. Briggs, seconded by Ms. Aston to approve the variance as requested.

On Roll Call for the motion, Ms. Aston, Mr. Bartholomew, Mr. Briggs, and Chairman Behrens answered “yes”  
**Motion carried 4-0.**

**Refusal No:** 2381  
**Applicant/Owner:** Phil Smith  
**Location:** 141 E. Jackson Street (15-D-005-0-00-048-0)  
**District:** R-1; Single Family Residential District  
**Variance:** 1125.03(a)(2) and 1119.04 (c) Variance to garage size and side and rear setbacks

An application has been submitted by Phil Smith of 141 E. Jackson Street requesting a variance to Section 1125.03(a) (2) of the Painesville Unified Development Code to allow them to build a single car garage that is 14 feet by 24 feet in area in lieu of the 24 feet by 22 feet two car garage required. The applicant is also requesting variances section 1119.04 (c) to reduce the garage setback from 5 feet in the side yard, to 3 feet, and from 3 feet in the rear property line to 2 foot. A variance of one car in the garage and a 2 foot variance to the side setback and a 1 foot variance on the rear yard are requested.

Mr. Phil Smith spoke on behalf of the request. He stated that it is a non-conforming property. He stated that he’s actively working on improving the curb appeal and utility of the property. He stated that he was also trying to maximize the space.

Ms. McMahon stated that this property was before this Board for demolition prior to Mr. Smith purchasing the property. She went on to explain that the parcel was small and oddly shaped, and that a two car garage won’t fit. She stated that Mr. Smith’s request would actually make it more conforming.

Motion by Ms. Aston, seconded by Mr. Bartholomew to approve the variance as requested.

On Roll Call for the motion, Ms. Aston, Mr. Bartholomew, Mr. Briggs, and Chairman Behrens answered “yes”  
**Motion carried 4-0.**

Mr. Bartholomew asked Ms. McMahon if the issue of the Council legislation regarding setbacks could be addressed with Council.

Ms. McMahon stated that it could.

## **ADJOURNMENT**

Chairman Behrens asked if there was any further business the Board should address. There being no further business, the meeting was adjourned.

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Tara Baumgartner, Secretary

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Jim Behrens, Chairman