

BOARD OF ZONING APPEALS

August 18, 2022

CALL TO ORDER: The Board of Zoning Appeals met on Thursday August 18, 2022, at 7:00 PM in Courtroom 1 of City Hall.

Chairperson Behrens asked the Secretary to call the roll. Members in attendance were Mr. Briggs, Chairman Behrens, Mr. Bartholomew, Ms. Aston, and Mr. Dunay. Also in attendance were Assistant Law Director, Joe Gurley; City Manager Doug Lewis; City Planner Phoenix Buathier, and City Consultant Rita McMahon. Secretary Tara Baumgartner was absent.

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 July 21, 2022. Chairman Behrens asked for a motion. Motion by Mr. Dunay, seconded by Mr. Briggs, to accept the Board of Zoning Appeals Meeting Minutes of July 21, 2022. Chairman Behrens asked the Secretary to call the Roll. On Roll Call, Mr. Briggs, Mr. Dunay, Mr. Bartholomew, and Chairman Behrens, answered "yes". Ms. Aston abstained. **Motion carried, 4-0-1.**

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. Gurley, the City's Legal Counsel, City Manager Doug Lewis, and Ms. Buathier 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. 2386.

Refusal No: 2386
Applicant/Owner: Kevin Moore
Location: 579 Fairlawn Ave. (15-D-016-B-00-031-0)
District: R-1, Single-Family Residential District
Variance: 1125.03(a)(3)

An application has been submitted by Kevin Moore requesting a variance to Section 1125.03(a)(3) of the Painesville Unified Development Code to allow a 436.5 square foot gravel driveway. A paved driveway is required.

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.

Kevin Moore, of 579 Fairlawn Avenue stated that this proposal is in addition to the existing driveway, he stated that it would be 8 ft wide by 16 ft long, and wouldn't extend beyond his house. He stated that approximately 4-6 inches of number 304 gravel would be the base and 2-4 inches of number 4 gravel or suitable material would be the topping. He stated that he felt it would enhance the value of the property and would allow him to park his three vehicles in the driveway, which would enhance the safety of the neighborhood as there would be one less vehicle parked on the street.

Mr. Briggs asked how long Mr. Moore has lived at the address.

Mr. Moore answered that he has lived there since September of 2019.

Mr. Behrens asked for clarification regarding how the parking situation would lead to less in and out traffic.

Mr. Moore stated that he would be able to keep all his vehicles on his property.

Ms. Aston stated that according to the drawing that was submitted it looked like he was cutting his front yard in half.

Mr. Moore responded that is approximately a third of his yard.

Ms. Aston asked if he was trying to eliminate moving cars in and out.

Mr. Moore stated that that was correct.

Mr. Behrens stated that it looked like the driveway was long enough to park three cars without a problem, and asked if the request was more to avoid moving cars in and out.

Mr. Moore stated that that was correct. The extension would allow him to move cars without having to back out onto the street.

Mr. Bartholomew asked if he had three vehicles.

Mr. Moore answered that he has three vehicles and two Harleys, but that the motorcycles won't fit in the drive, so they're kept in the shed.

Mr. Briggs asked if he had looked into concrete or asphalt as an alternative.

Mr. Moore stated that he had not.

Mr. Briggs asked why he hadn't.

Mr. Moore responded that he didn't know that he needed to.

Mr. Briggs stated that if he used concrete or asphalt he wouldn't need the variance.

Mr. Dunay asked if he would be willing to use concrete or asphalt.

Mr. Moore responded that it would be a lot more expensive and would serve the same purpose as the gravel. He stated that he understood the issue of gravel getting into the sewer system, but that it was packed and he broomed his gravel back into his drive.

Mr. Briggs asked where the closest storm sewer is to his property.

Mr. Moore stated that it was down the street a ways away, and that due to improper grading in his front yard, it floods when it rains. He stated that Christine Shoop told him that it was scheduled to be corrected in 2025.

Mr. Briggs asked the City if the storm sewer concern was a particularized concern, or a generalized concern in relation to this property.

Ms. Buathier responded that when the 2019 ordinance went into effect it was a general concern.

Mr. Briggs asked what month the ordinance went into effect in 2019, since Mr. Moore moved in in September.

Ms. Buathier responded that it went into effect in October of 2019.

Mr. Briggs asked if it would be fair to say that the month Mr. Moore moved in, he could have carried out the driveway expansion without a variance.

Ms. Buathier stated that was correct.

Ms. Aston stated that her concern was, that when the drive was plowed he would lose a lot of the gravel.

Mr. Moore stated that he probably wouldn't plow that part of his driveway.

Mr. Bartholomew asked if there have been maintenance issues regarding stone in sewers.

Ms. Buathier stated that there have been issues, not necessarily with this property, but with others and that is why not permitting gravel became a part of the code.

Mr. Bartholomew asked if there was a real viable concern that led to the changing of the code.

Ms. Buathier stated that it was her understanding in speaking with the City Engineer that it was a problem. Ms. Buathier also stated that concerns regarding sewer clogging and roadway flooding had become a problem according to the City Engineer and that is why the Unified Development Code does not allow gravel as a permitted driveway material.

Mr. Bartholomew stated that given what Ms. Buathier said about the reasons the code was changed, the City is saying that they don't want anything with gravel because it gets into our sewers and they don't want to have to clean it out, and City Council is saying that moving forward they only want driveways made of concrete or asphalt. He stated that there is a maintenance concern that caused the City's decision, and he asked how the Board was to get over that in order to grant Mr. Moore's request.

Mr. Moore responded that the topping would solidify and wouldn't be like the gravel he has now, it would be harder. The stone that would go on top would be a slag stone and would solidify.

Mr. Moore asked if Mr. Bartholomew was an Engineer for the City.

Mr. Bartholomew responded that he was not, he was a resident.

Mr. Moore stated that he was using the term gravel loosely.

Mr. Briggs stated that in order for the Board to grant the request, Mr. Moore would need to show that he faced a practical difficulty, and he was having a hard time seeing the difficulty in this situation, since Mr. Moore hadn't sought out quote for asphalt or concrete.

Mr. Moore stated that he didn't know that was something he needed to do.

Mr. Briggs explained that Mr. Moore needed to convince the Board that he was facing a practical difficulty.

Mr. Moore asked what he meant by practical difficulty.

Mr. Briggs explained that it would mean something special about his property or application that made it hard for him to follow the rules.

Mr. Moore stated that there was no real practical difficulty beyond the cost.

Mr. Briggs asked him to walk him through the cost analysis of concrete or asphalt vs gravel.

Mr. Moore stated that he had no idea other than that it would be substantially more money than gravel.

Mr. Bartholomew asked how much the stone would be.

Mr. Moore stated that it wasn't much, he thought around \$100 a load from DiMilta.

Mr. Bartholomew stated that he would need to remove some dirt and asked how much that would be.

Mr. Moore stated that he could just move dirt around, and it wasn't going to cost him much money, if any.

Mr. Behrens stated that Mr. Moore didn't really have a cost for the project as he proposed it.

Mr. Moore stated he thought it would cost \$300-\$400 based on the price of the gravel.

Mr. Bartholomew asked if the cost could be considered a practical difficulty.

Ms. Buathier stated that it was for the Board to determine.

Mr. Gurley stated that it specifically excludes cost from being a practical difficulty.

Mr. Dunay asked if the code states that driveways are to just be asphalt or concrete and that's it.

Ms. Buathier stated that the code says that vehicles are not to be parked on lawns or other non-paved areas, and explained that gravel was considered a non-paved area.

Ms. Buathier gave a summary of the request and stated that staff felt that the extension of the driveway could be achieved using asphalt or concrete. She stated that staff has concerns about potential issues from the use of gravel, such as the potential to clog sewers. She stated that due to gravel not being compliant with the code, and due to the issues it could cause to the sewers, staff has recommended denial of the variance.

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

Motion by Mr. Briggs, seconded by Mr. Dunay to approve the request.

On Roll Call for the motion, Mr. Bartholomew, Mr. Briggs, Mr. Dunay, Ms. Aston, and Chairman Behrens answered "no" **Motion denied 0-5.**

Chairman Behrens explained that Mr. Moore had a couple of options, he could either complete the addition with concrete or asphalt, or he could go to Common Pleas Court and appeal the Board's decision within 30 days.

Ms. Buathier read the section of the code that explained how to file an appeal.

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

Refusal No: 2387
Applicant/Owner: Juliana Medeiros
Location: 58 Frederic St. (15-C-011-A-00-011-0)
District: R-1, Single-Family Residential District
Variance: 1119.04(c)

An application has been submitted by Juliana Medeiros of 58 Frederic Street requesting a variance to Section 1119.04(c). The applicant wishes to place a shed 1.67 ft. from the property line, the Painesville Unified Development Code requires a setback of 5 ft. A variance of 3.33 ft. is requested.

Chairman Behrens explained to the applicant all of the items regarding the application that the Board has in front of them, including a site plan and aerial view.

Ms. Medeiros, of 437 Valleyview Drive, stated that she is the trustee of 58 Frederic Street. She stated that she previously came before the Board approximately a year ago to attain a variance to build a shed in lieu of a garage. She said that she was able to remove the garage, but had to delay in getting the shed, due to her contractor disappeared on her and things became difficult for her financially. She however, was able to put a down payment on an 8x8 shed. She stated that she was asking for the previous variance that she received, to have a shed instead of a garage. She stated that she was also asking to place the shed exactly where the front of the garage was. She stated that if she were to place the shed where she had previously asked to put it, it would ruin the very small yard.

Mr. Behrens stated that he understood her logic, but asked what the difference was between placing it towards the front of the former garage, versus towards the rear of the former garage.

Ms. Medeiros stated that this location is where her son, who lives there, wants it. She stated that her son, who she stated has a lot of mental health issues, liked it where the garage was. She went on to say that when she bought the shed, the person she purchased it from came and put a gravel pad down without her permission.

Mr. Behrens stated in his experience he found, that when structure is placed that close to a property line, the back side never gets maintained, and that may have a fair amount to do with the city's stance on this application.

Ms. Buathier agreed.

Mr. Briggs asked how close the former garage was to the property line.

Ms. Medeiros responded that it was 1.67 feet.

Mr. Briggs stated that was markedly similar to what she was asking for now.

Ms. Medeiros agreed, and stated that there were other thing to consider regarding the space between the proposed shed and the property line. On the neighbor's side, is a 5 foot in diameter oak stump that she has no power to remove it. She states that it impedes the property significantly. She went on to say that she's a single mom, her son has mental health problems, and his father was a drug addict. She stated that she purchased this home out of her retirement, so that he wouldn't end up homeless. She stated that she has very little money or resources, and she is doing her best to help her son have a safe and clean home. She stated that he does occasionally struggle with the yard maintenance, but that she is on him to clean it up. She stated that she has every intention of making sure her son maintains the property up to the City's code, and that her son has developed a sense of pride since moving in.

Mr. Behrens asked where the tree stump was on her property.

Ms. Medeiros stated that it was on her neighbor's property.

Mr. Briggs asked if she had spoken to her neighbor since she was going to be so close to the property line.

Ms. Medeiros stated that she had tried, but the people who live there are renters and she doesn't know how to get ahold of the owner.

Mr. Bartholomew stated that she already has a pad in place.

Ms. Medeiros stated that in order to have the location of the pad changed she would have to challenge the company that installed it and get them to agree that it was placed in the wrong place.

Mr. Behrens asked if there was any correspondence regarding the request.

Ms. McMahon stated that she received a phone call from Dennis Brewer of 548 Liberty Street, who shares the back property line. He stated that is fine with the request, he sees no issue with it, and doesn't think that it's a big deal.

Ms. Buathier gave a summary of the request.

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

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

On Roll Call for the motion, Mr. Bartholomew, Ms. Aston, Mr. Briggs, Mr. Dunay, 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.

Tara Baumgartner, Secretary

Jim Behrens, Chairman