

BOARD OF ZONING APPEALS

July 21, 2022

CALL TO ORDER: The Board of Zoning Appeals met on Thursday July 21, 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, and Mr. Dunay. Also in attendance were Assistant Law Director, Joe Gurley; City Manager Doug Lewis; Planning Consultant Rita McMahon, and Secretary Tara Baumgartner. Ms. Aston 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 June 16, 2022. Mr. Behrens stated that he had found a section that needed a correction. He stated that the minutes referenced Mr. Lyons being present, when it was actually Mr. Gurley who attended the meeting as Legal Counsel. Chairman Behrens asked for a motion. Motion by Mr. Briggs, seconded by Mr. Bartholomew, to accept the Board of Zoning Appeals Meeting Minutes of June 16, 2022 with the correction made by Mr. Behrens. Chairman Behrens asked the Secretary to call the Roll. On Roll Call, Mr. Briggs, Mr. Dunay, Mr. Bartholomew, and Chairman Behrens, answered "yes". **Motion carried, 4-0.**

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. Gurley, the City's Legal Counsel, City Manager Doug Lewis, and Ms. McMahon the Planning Consultant.

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. 2384.

Refusal No: 2384
Applicant: Jessica Ruff of Ruff Neon & Lighting
Owner: Nucciarone Management
Location: 161 Richmond St. (15D0060000120)(15D0060000110)(15D0060000130)
District: B-2 General Business District
Variance: 1127.11(a)(1) & 1127.11(e)(2)

An application has been submitted by Jessica Ruff requesting a variance to Section 1127.11(a)(1) & Section 1127.11(e)(2) of the Painesville Unified Development Code. Section 1127.11(a)(1) permits the allowable wall sign area to be a maximum of 200 square feet. The applicant wishes to increase the wall sign area to 374.37 square feet. A variance of 174.37 square feet is requested from Section 1127.11(a)(1). Section 1127.11(e)(2) states the total area of a sign copy shall not exceed 25% of the total area of the canopy that is parallel, or within 30 degrees of being parallel of the wall of the main building. The applicant wishes to increase the total sign copy area to 100%, and to allow 3 additional canopy signs that are not parallel or within 30 degrees of being parallel to the wall of the main building. The additional canopy signs would be located along the South, East, and West canopy elevations. A variance to allow of 100% of the canopy area to be used, along with 3 additional canopy signs 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.

Jessica Ruff of 295 W. Prospect Street explained that she was proposing putting branding on all three sides of the canopy, as that is what Marathon wants. She stated that they are a national brand with standardized, recognizable branding and they want it to look like all of their other locations.

Mr. Briggs asked if the logo would only be on one side of the canopy.

Ms. Ruff answered that yes, the logo would only be on one side of the canopy.

Mr. Briggs asked if the City considered the proposed stripes on the sides of the canopy to be signs.

Ms. McMahon stated that yes, as the stripes are part of their logo it would be considered a sign.

Mr. Briggs asked if he were to disagree with the City's position, what they would say to defend their decision.

Ms. McMahon answered by giving the City's definition of a sign and by stating that if a person was looking for a Marathon they would look for the red, white, and blue stripes.

Mr. Briggs asked if the sides of the canopy were a solid color would it still be considered a sign.

Ms. McMahon stated that it would not be considered a sign.

Mr. Briggs stated that he understood the City's position, whether or not he agrees with it.

Ms. McMahon stated that the issue is that they are allowed to put signs on the canopy, but that they use part of their allocated wall signage to put it on the canopy. The City allows a maximum of 200 square feet of wall signage whether it's on the wall or the canopy. The problem is that if all four sides of the canopy are counted as signage then that in itself is 285 square feet, which exceeds the maximum allowable of 200 square feet. They already have a wall sign that is 89 square feet, which puts them well over the allowable signage. She went on to say that they were to put the wall sign on the building and one canopy side then they would be at 160 square feet and the City could have issued the permit, but they're asking for the stripes on the sides.

Mr. Bartholomew asked for clarification as to if they were there for the stripes on the sides.

Ms. McMahon stated that yes.

Mr. Briggs asked the City to explain why they felt it needlessly cluttered the eye line.

Ms. McMahon stated that the City's position was that it was needless signage. That people would hardly see it since it was up against the building, and that it was excessive signage and not necessary.

Ms. Ruff responded that every gas station has branding and that it was just stripes.

Ms. McMahon stated that the City's recommendation is that they would compromise and allow signage on the two most visible sides.

Mr. Bartholomew asked who was paying for this and if Marathon was excepting any financial responsibility for the matter.

Ms. Ruff stated that she didn't know.

Mr. Bartholomew asked what would happen to her business if they weren't granted their request as written and instead were to take the compromise the City suggested.

Ms. Ruff stated that she didn't know as it hasn't happened, but that it was part of the agreement with Marathon to move into the space and that they needed the full signage and that's that. She stated that they are adamant that they get their signage as requested. She stated that it was just striping.

Mr. Bartholomew asked if it sounded to her that Marathon was saying that they needed to have all four signs or they won't be able to sell their gas station.

Ms. Ruff stated that she didn't know, but that they were pretty adamant that they get what they requested. She again stated that it was just stripes and that every gas station has it's own branding and that people look for that branding.

Mr. Behrens asked why it would matter if it wasn't going to be visible anyway.

Ms. Ruff stated that to Marathon it matters since they're a national brand.

Mr. Bartholomew asked if there was any possible occasion that there would be anything added to the canopy, such as the price of gas, or eggs.

Ms. Ruff stated that nothing would be added to the canopy.

Mr. Behrens asked if Marathon had seen the proposed compromise that the City had suggested with the stipulations.

Mr. Ruff stated that she had not forwarded them to Marathon. She stated that she had made suggestions to keep it under the 200 square feet, but that it was a no go. She stated that she had gone around and round with the Planner and it had cost them a lot of time, so that was why she was there to get a variance to allow the stripes and that it had caused her a lot of sleepless nights.

Mr. Behrens asked if she understood the intention behind the code.

Ms. Ruff stated that she understood the intent behind the code and respected what the Board has to do, but these are just stripes and that it doesn't present a lot of clutter and she felt it looked clean.

Mr. Bartholomew stated that without the stripes the canopy would look incomplete and like they're waiting to put something there. He then asked if the presence of the stripes was somehow offensive to the City.

Ms. McMahon stated that the City has no objection to the stripes or the signs, but they're enforcing the code as it's written.

Mr. Dunay asked if it was in combination with what was currently on the building.

Ms. McMahon stated that it was.

Mr. Dunay asked if there was any way that the size of the wall sign could be reduced.

Ms. Ruff stated that they were re-facing and that it would cost more money.

Mr. Briggs stated that Ms. Ruff was using the existing sign structure, so it couldn't be reduced.

Mr. Dunay stated that it was just a point of clarification.

Ms. Ruff stated that Harry's Food Mart has so many colors that if it's not an eyesore she doesn't know what is.

Mr. Behrens asked if they could legally add a stipulation that said that no additional signage on the canopy.

Ms. McMahon stated that they could add the stipulation if they so choose.

Mr. Bartholomew stated that he understood the purpose of the code, but that to him if the canopy variance wasn't granted it would look less attractive.

Ms. McMahon stated that if that's the case then she would suggest that they put the logo on the front and leave the other sides white and then it would look completed and if that were the case then they wouldn't need the variance.

Ms. Ruff stated that that sounds great, but that she has to answer to Marathon.

Mr. Behrens asked if Ms. Ruff had the right to agree to the City's proposed compromise on behalf of Marathon.

Ms. Ruff stated that she did not.

Mr. Behrens stated that we don't have anyone present from Marathon.

Mr. Bartholomew asked if Ms. Ruff could talk to Marathon about the matter.

Ms. Ruff stated that they've gone around and round with different scenarios and at the end of the day they want what they want.

Mr. Behrens asked if Ms. Ruff would like to table the matter until someone from Marathon could attend.

Ms. Ruff stated that Marathon wouldn't come, but that she could talk to them, but it would just prolong the matter.

Mr. Behrens again asked if she would like to table the matter to see if Marathon would agree to the compromise.

Ms. Ruff stated that she already knew that they wouldn't agree to any compromise. She stated that she's been going around and round with Ms. Buathier about the stripes for months and months.

Mr. Behrens asked if there was anyone present who would like to speak for or against the request. There was no one present.

Mr. Behrens then Ms. Baumgartner if she has received any correspondence on the matter.

Ms. Baumgartner responded that she had not received any correspondence.

Mr. Behrens then asked if Ms. McMahon, Mr. Lewis, or Mr. Gurley had anything to add.

Ms. McMahon reiterated the points she had previously addressed, but added that from a design standpoint it would not be damaging to the area.

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

Motion by Mr. Briggs, seconded by Mr. Bartholomew to approve for 375 square feet of signage and allowing it on all four sides of the canopy to match the submitted plan and that wording will only be allowed on one face of the canopy.

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

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

Refusal No: 2385
Applicant: Jason and Courtney Cole
Owner: Courtney Cole
Location: 131 S. Settlers Lane (35A010A000890)
District: R-1; Residential District
Variance: 1119.04(c)

An application has been submitted by Jason Cole of 131 S. Settlers Lane requesting a variance to Section 1119.04(c) of the Painesville Unified Development Code. 1119.04(c) requires the setback for accessory structures to be 5 feet. The applicant wishes to construct an 8x12 (96 square foot) shed two feet from the property line. A variance of 3 feet 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. Mr. Behrens stated that it looked as though the foundation for the proposed shed was already installed and asked if they were anticipating the Board's decision.

Jason Cole of 131 S. Settlers Lane stated that yes, the foundation was already in place. He explained that he thought that the people he had hired to install the shed had already pulled a permit, and he found out later, after the foundation had been poured, that he needed a variance.

Mr. Behrens asked if that was where he intended for the shed to be built if it was approved.

Mr. Cole stated that it was.

Mr. Cole stated that due to the unique positioning of his house he has what he calls dead space in his yard, and the only place he feels he can fit a shed is where he has requested to put it. Without the variance he doesn't feel like they'll be able to enjoy and use their yard as much as they could. He stated that they have two feet and they need three feet, so they're only asking for the minimum variance needed. He stated that he spoke to quite a few of his neighbors about it and he doesn't feel that his request would hurt the look of the neighborhood and that he feels he has a very nice looking back yard. He didn't feel it would hurt anyone else's yard and that lots of his neighbors have sheds that are visible. He stated that it wouldn't interfere with any government services and it wouldn't be in the way of anything that would need to be attended to by the City. He explained that when his wife purchased the property she wasn't aware of the zoning requirement. He stated that without the variance he wouldn't be able to put in the shed due to what he already has on the property and the size and shape of the yard. If he were to adhere to the code it would put the shed in the middle of the yard. He stated that he didn't feel that his request went against the spirit or intent of the code.

Mr. Briggs asked why the shed couldn't be moved over to where it was labeled on the map.

Mr. Cole stated that moving it would leave him with almost no green space in his yard. He stated that it would put it in the middle of the yard and would be awkward in positioning. He stated that where he is requesting to put it would make the most sense and allow them to enjoy their yard.

Mr. Bartholomew stated that if it were him he would put the shed exactly where Mr. Cole is proposing to put it. He asked if the pool was above ground.

Mr. Cole stated that it was an in ground pool.

Mr. Bartholomew stated that Mr. Cole already has a fence up so he didn't see how it could, or would be an issue to the neighbor since the shed wouldn't be cutting off accessibility to anyone for anything. He stated that he understood that there was a guideline, but asked if the City see something wrong with placing the shed where Mr. Cole is asking for it to go.

Ms. McMahon answered that there is a storm sewer easement that runs through the property, so if Mr. Cole gets too close he would be within the easement. She stated that the easement runs five feet onto his property. She stated that the storm sewer itself is within two feet of the area not covered by the shed. She stated that if the Board grant the variance Mr. Cole would be required to sign an easement letter that would state that if the City, or the Home Owner's Association had to do something on the property, he would need to remove the shed at his own expense and then put the shed back.

Mr. Cole stated that he and his neighbor both have fences and that they both left open space between the fences for the sewer. He asked if the sewer was larger than that.

Mr. Briggs explained that if there was a problem with the sewer that they would have to dig around the sewer.

Ms. McMahon stated that the total width of the easement is ten feet, five feet on Mr. Cole's property and five feet on his neighbor's property. She stated that you're not supposed to build within the easement and that's why she would require the easement letter. She stated that he had probably had to sign something similar to build the fence. She stated that she could understand why he would want to put the shed in the proposed location, it's practical and convenient. She said that her concerns were the easement and that the shed would be taller than the fence.

Mr. Cole stated that he can see a lot of sheds over his neighbor's fences.

Mr. Bartholomew stated that if someone needed to come into the easement to do something, they wouldn't care what's in the way, they're going to get it out of the way. He asked if Mr. Cole understood this.

Mr. Cole stated that he understood.

Mr. Bartholomew asked if he understood and accepted that liability.

Mr. Cole stated that he did, but asked if they would give him time to take it down.

Ms. McMahon answered that they may or may not depending on the situation.

Mr. Cole stated that he was fine with the situation and that he would be willing to sign something today to that effect.

Mr. Briggs asked if the situation whereby sheds and fences in easements are torn down for emergencies happens often.

Ms. McMahon answered that it has happened, but not often. She stated that it happened during the floods.

Mr. Bartholomew stated that countless times since he's been on the Board he's heard homeowners say that they didn't know that something was part of the deal when they purchased the property, he asked if there was a way to assure that someone buying this property in the future is aware that responsibility in regards to the easement and requirements of the variance.

Ms. McMahon answered that if the Board grants the variance they could require an Affidavit of Fact that would be filed with the County Recorder, which would go with the title of the property, and would assure the next owner would be aware of the conditions of the variance.

Mr. Behrens then asked the secretary if there had been any correspondence regarding the request.

Ms. Baumgartner answered that she had received an email from George and Maribel Young of 754 Congress Drive who said that they were okay with the granting of the variance.

Ms. McMahon reiterated all the points she had made previously and asked that if the Board did grant the variance that they add the stipulation requiring an Affidavit of Fact. She stated that she saw no practical difficulty with the variance that it was a pretty standard lot, the only thing that made it different is that the owner had already put quite a few things in his yard already, such as the pool that made placing the shed difficult.

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

Motion by Mr. Briggs, seconded by Mr. Bartholomew to approve the variance with the stipulation that an Affidavit of Fact be filed with the County Recorder's Office.

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

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