

**PAINESVILLE TOWNSHIP
BOARD OF ZONING APPEALS
MEETING MINUTES**

Tuesday, March 9, 2021

Painesville Township Office 55 Nye Rd. Painesville Twp., OH, 44077

Present: Tom Hill, Dave Enzerra, Ken Sullivan, Randy VanBuren
Absent: Dave Lindrose
Zoning Inspector: Rich Constantine, Harley DeLeon
Legal Counsel: Jason Hartzell

Chairman, Tom Hill called the meeting to order at 6:37 P.M. The Pledge of Allegiance was not recited due to the virtual hearing. The Public Hearing was held by video conference due to respectful response to the coronavirus mandates in the State of Ohio. A roll call revealed that a quorum was present.

Due to the meeting being virtual, the applicant for **Case 21-BZA-01** was having technical difficulties joining the meeting. Zoning Inspector Harley DeLeon helped the applicant join over speakerphone.

Legal Advisor Jason Hartzell swore in the persons who were present to speak, and intended to testify during the public hearing.

Jay Patel spoke in favor of the request. No one spoke against the request.

Public Hearing:

- **Case 21-BZA-01:**

Applicant Hema Jay One LLC filed a Variance Application for property located at 880 Oakwood Blvd. (PPN 11-B-041-G-08-066-0). The request is to allow a 31' by 15' pole building to maintain a 0 foot setback from the main dwelling in violation of Section 15.02(C)(5) which requires a minimum separation of ten (10) feet between accessory structures and a dwelling.

Chairman found no error in the Zoning Inspector requiring a variance.

Jay Patel stated that he had mistakenly called Painesville City instead of calling Painesville Township, acquiring about a permit for the proposed structure. Mr. Patel continued that he had misunderstood that he had called the wrong office, and had thought that he did not need a permit for the proposed structure.

Chairman asked Zoning Inspector Rich Constantine how the violation of the proposed structure had come before the Board.

Rich Constantine replied that he had observed the proposed structure while driving by the property in question. Rich Constantine continued that after looking into Zoning records of the property, no permit was on file for the proposed structure. Rich Constantine had passed the violation onto Zoning Inspector Harley DeLeon. Harley DeLeon had also found that Mr. Patel had also mistakenly built the proposed structure without a Lake County Building Permit. Rich Constantine stated that the proposed structure has a 1 (one) foot clearance from the main building on the property, that is in violation of accessory structure. Rich Constantine continued that the proposed structure may also be in violation due to lacking proper rear line and right sideline clearance. Rich Constantine let the Board know he had difficulty seeing the clearances of the rear and right sidelines on the overhead of the property.

Chairman replied that the overhead was showing six (6) foot side and rear yard. Rich Constantine reminded the Board that five (5) foot rear and 5 (5) foot side line clearances are required.

Chairman asked if anyone had taken a look at the proposed structure's rear and side line clearances. Rich Constantine replied that he had difficulty verifying that the five (5) foot rear and five (5) foot sideline is being observed. Rich Constantine continued that normally a survey was not required; but for this case, it was unsure if the proposed building would comply with the rear and sideline clearances.

Mr. Patel replied this was his first mistake while owning six (6) properties. Mr. Patel continued that the Pandemic has made it difficult to maintain and require permits.

Zoning Inspector Rich Constantine reminded the Board that Mr. Patel had failed to obtain a building permit from Lake County. Rich Constantine continued that Zoning Inspector Harley DeLeon has advised Mr. Patel to wait to file for a building permit, until Mr. Patel's zoning issue was resolved.

Chairman stated that it would be hard to ask for another Variance without knowing what the proposed buildings' sidelines were. Chairman asked staff if that would be Mr. Patel's responsibility to get the property surveyed.

Rich Constantine replied that the property survey is the responsibility of the property owner if questioned by the Township.

Chairman asked if any of the Board members had any questions for Mr. Patel.

Ken Sullivan asked Mr. Patel if the property in question was owner occupied or rental property.

Mr. Patel responded that the property was rental property and he did not live on the property.

Chairman asked Mr. Patel why he needed the extra space for storage.

Mr. Patel responded that the proposed building was storage of material that had been stored outside. Mr. Patel continued that he wanted to keep the property looking nice.

Dave Enzerra asked Mr. Patel how the proposed building had been constructed, if Mr. Patel had used a contractor.

Mr. Patel responded that he had drawn the plans from other property's garages, and built the proposed building himself.

Chairman asked Mr. Patel if the proposed building was used to store material for all of Mr. Patel's rental properties, or just to store material pertaining to the rental property in question.

Mr. Patel responded that the proposed building was to store material just for the property in question.

Chairman asked Mr. Patel what material was being stored.

Mr. Patel responded that the material stored was drywall, tile, plumbing and so forth.

Chairman asked Mr. Patel if these materials were for use at Mr. Patel's other rental properties.

Mr. Patel responded yes.

Chairman commented that the proposed building was possibly being used for commercial storage.

Ken Sullivan commented that that was a non-conforming use.

Chairman stated that the Variance Request was not going to cover what the applicant needed. Chairman reminded the Board that the structure was being used as a non-conforming use. Chairman reminded the Board that they were unsure of the sideline and rear line clearances. Chairman suggested continuing **Case 21-BZA-01** and having the applicant put together the correct application to bring before the Board at a later date. Chairman asked for staff input.

Zoning Inspector Rich Constantine replied that a survey of the property in question may be needed; laying out where the main building is located, and where the proposed building is relative to property lines. Rich Constantine continued that there would then be a better idea of what variances are required. Rich

Constantine let the Board know that a Use Variance may be needed, as the property was being described as a commercial use by a commercial landlord.

Chairman agreed.

Randy VanBuren asked Legal Advisor Jason Hartzell, that if the Board were to approve the Variance Request, and approve a Conditional Use for storing materials, would the Board be liable if something were to happen on the property. For example, a fire with occupants inside.

Legal Advisor Jason Hartzell replied that the Board should not be held responsible, if there were renters to the property, it would be the property owner's responsibility. Jason Hartzell continued, that it would be something to look into.

A discussion was held regarding if the Township would be held responsible, and that the Township may fall under immunity.

Chairman entertained a motion to continue **Case 21-BZA-01**, and to have the applicant come back to the Board with a survey of the property. Chairman continued that he would also like a list of the stored material in the proposed building in case of a Use Variance, and to make sure no hazardous materials are being stored.

Mr. Patel commented that nothing hazardous was being stored.

Chairman replied that that would need to be in writing.

Ken Sullivan stated that he would like the Fire Department's input to the construction of the proposed building, the lack of setback from the main dwelling; and what issues the Fire Department may have with the property, prior to the next meeting that the applicant would come before the Board.

Zoning Inspector Rich Constantine reminded the Board that when the applicant files for a Building Permit from the Building Department, the Fire Department will also be consulted. Rich Constantine continued that it was within the Board's right to also ask for the Fire Department's input to help with the Board's decision. Chairman asked if that was the Board's responsibility or the Staff's to ask for the request, and who was responsible in getting the Fire Department to look into the request.

Rich Constantine replied that the Board can direct the Staff to make a request on the Board's behalf. The Board agreed.

Chairman asked if the Board had any other questions. Hearing none. Chairman asked if anyone else would like to speak in favor of or against the request. Hearing none. Chairman asked the Board to make a motion to continue **Case 21-BZA-01**.

Ken Sullivan made a motion to continue **Case 21-BZA-01** for the April 13, 2021 Meeting, with the following conditions:

1. Revised application addressing potential clearance issues
2. The Applicant acquires a survey of the property showing rear and sideline clearances.
3. Zoning Staff request guidance from the Painesville Township Fire Department in regards to the property.

Chairman asked Zoning Inspector Rich Constantine if the applicant would have to get a building permit after zoning issues were resolved.

Rich Constantine replied yes.

Randy VanBuren asked if the Conditional Use that may be needed, is a separate issue from the requested Variance.

Chairman asked Rich Constantine if a Conditional Use Permit or a Use Variance was needed.

Rich Constantine replied that it would be a Use Variance.

A discussion was held regarding whether a Conditional Use Permit or Use Variance was needed. Ken Sullivan needed a clarification on a Conditional Use versus a Use Variance. If a Use Variance were granted; the Board would not have the ability to attach a time duration, and would it become permanent to the property. Where as a Conditional Use has a time attached.

Rich Constantine replied that it was within the Board's right to attach certain conditions to a variance. Which would include a time limit.

A discussion was held how a Use Variance and Conditional Use Permit differs.

A discussion was held to clarify Use Variance and adding conditions.

Chairman asked Zoning Secretary Rachel Muro to read back conditions set on the motion.

Rachel Muro read as followed with clarification from Chairman:

Case 21-BZA-01 was to be continued for the April 13, 2021 Meeting with the following conditions:

1. Revise application.
2. The Applicant acquires a survey of both the rear and side yard clearances.
3. Zoning Staff request guidance from the Painesville Township Fire Department in regards to the property.

Chairman clarified with Ken Sullivan that this was to become a Use Variance with conditions added.

Ken Sullivan replied yes.

Chairman asked Mr. Patel if he understood what the Board was asking. If Mr. Patel had any questions, he could contact the Zoning Staff.

Mr. Patel replied yes.

Dave Enzerra seconded the motion.

Roll Call: Sullivan; Aye, Enzerra; Aye, VanBuren; Aye, Chairman; Aye.

Motion carried.

Regular Meeting:

Chairman asked if the Board had any edits to the January 12, 2021 Meeting Minutes. Hearing none.

Chairman asked the Board to make a motion to approve the **January 12, 2021 Meeting Minutes**.

Randy VanBuren made the motion to approve the **January 12, 2021 Meeting Minutes** as submitted. Ken Sullivan seconded.

Roll Call: Enzerra; Aye, VanBuren; Aye, Sullivan; Aye, Sullivan; Aye, Chairman; Aye.

Motion carried.

Old Business: None

New Business:

Rich Constantine let the Board know of a Conditional Use Permit that will come before the Board for the April Meeting. It would be for the property previously known as Sam and Tommy's. The property would be used similarly to how it had been used in the past.

A discussion was held regarding SafStor breaking ground.

Chairman asked Zoning Inspector Harley DeLeon and Zoning Secretary Rachel Muro to reach out to the members of the Board to see who would like to come in for in-person meetings, and who would like to be virtual.

Zoning Secretary Rachel Muro let the Board know that when she sends out the digital copies and quorum email, if the Board could let her know who would like to be in-person or virtual for the April Meeting.

Chairman asked if the April Meeting would be enough time to let the Public know of in-person meetings.

Rich Constantine let the Board know that the Zoning Commission had decided to open back up for in-person meetings, but for the Commission only. The Public would still be virtual. Rich Constantine continued that the Trustees have left it up to both the Zoning Commission and Board of Zoning Appeals to set their own standards for their meetings.

Chairman replied that depending on the number of cases to come before the Board, this will let the Board know how to social distance at the April 13, 2021 Meeting. Chairman continued that at time of attendance, the Board and Staff will know better.

Chairman adjourned the meeting at 7:23 P.M.

Next official meeting date is Tuesday, April 13, 2021.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Tom Hill", is written over a horizontal line.

Tom Hill, Chairman

Rachel Muro, Secretary