Minutes of a Meeting of
Board of Zoning Appeals
held August 17, 2017

Members Present: Bruno, Burke, Miller Norton, Tyo, Young

Excused: Gess

Also present: Jeff Fillar, Building Official of SAFEbuilt, Inc.

Audience: Russell Thompson, Alex Dade and Kelly Brown

Chairman Norton called the meeting to order at 7:30 p.m.

Motion by Bruno, second by Burke, to approve the minutes of the meeting held August 3, 2017 as prepared and distributed. Motion passed 6-0.

Ben and Kelly Brown
31217 Narragansett Road

C.O. 1163.05 (H) (1) (3) The applicant is requesting to enclose their rear yard with 264 feet of a 6 foot high wood privacy fence to contain their dog.

Mr. Norton advised that the Board has had an opportunity to visit the site and review the application.

Mr. Bruno explained that the function of the Board of Zoning and Appeals is not to legislate, that is the duty of City Council and the Board of Zoning Appeals is only permitted to make minimal changes to city ordinances. What is being asked of the board is to make a substantial change to the requirements of the ordinance. He also explained that he does not see any elements of hardship met to vote affirmative for what is being requested.

Mr. Norton explained when council passed this ordinance they wanted the neighborhoods to be sort of knit together instead of separated into boxes. They reasoned that a person walking in their backyard would easily be able to see over a 4 foot 4 inch fence. They rationed and some 6 foot high fence privacy fence is allowed. Periodically, we get requests for more than what it is allowed and it’s very seldom its given favorable consideration. If we go outside of what council has determined then we are setting a precedent.

Ms. Brown explained that she was hoping there would be leniency to people like her because her dog hops the fence, she has an infant and a 2 year old. Right now she has to take the dog out on a leash and it is very challenging. She noted that she has lived in Bay Village for 8 years and at their old house they had a 4 foot fence but also had to use a tie-up for their dog. This became
dangerous for her children to have a dog on a chain running around. She explained that she has taken the dog to a trainer to teach her not to jump over a fence but did not work. She also noted that her dog is on puppy Prozac and she does not know what she will do if the board says no, because she cannot contain her.

Mr. Norton asked Ms. Brown if she has tried an invisible fence. She explained that part of her dogs training was to use an electronic collar. The electronic collar did not work. She stated that her fear is that she would invest in the invisible fence and then have it not work and the dog would still escape. She explained that this is a hardship for herself and she has no idea what to do with her dog. She explained that she feels that it is more of a nuisance to have her dog run around the neighborhood than it is to have a 6 foot high fence.

Mr. Norton stated that a variance is permanent it is not “your” variance it’s the properties variance. He explained to Ms. Brown that her circumstances will evolve and change and the board has to be very careful about setting a precedent.

Ms. Brown stated that she believes that if your dog jumps over your fence as a resident you should be able to contain your dog. Mr. Norton stated that you can. You can put your dog on a run, invisible fence, a collar. He explained that a lot of people in the city have dogs and would like to open their door let them out and not have to worry. He stated we cannot set a new law for your particular circumstance. Ms. Brown assumed that this meeting was for the board to hear her special circumstance and as resident.

Mr. Norton stated that council passed this law and by ordinance the BZA is not allowed to ignore the law. It is mandated that we find certain findings of facts to a property in order to grant variances.

Mr. Tyo stated there has to be something unique about the property to grant a variance not unique as to its use or occupancy. He explained we have had to turn down many requests not just for dogs. We can’t legislate we can only make minimal variances.

Ms. Brown asked about the 10% rule. Mr. Burke explained that the 10% comes from the perimeter of your entire property. In Ms. Brown’s case she has 550 feet, so the max allowable of 6 foot privacy fence is 55 feet and she is asking for a variance of 209 feet. He stated that the variance requests for a 6 foot high privacy fence are 42 feet on the south lot side, 38 feet on the west lot side and 57 feet on the east lot side. Those variances go way beyond what a Board of Zoning Appeals can do by granting minimal variances where the requirements are met.

Motion by Burke, second by Tyo that the property at 31217 Narragansett lane be granted 2 variances both from section 1163.05(H). The first variance is to the requirement that a 6 foot privacy fence not exceed 10% of the perimeter of the property as in this case moving that a variance there be requested of 209 feet to the 10% rule. Secondly, to the section requiring no more than 32 feet in any one direction of a 6 foot privacy fence I would move that we grant a 42 foot variance along the south lot line, 38 foot variance on the west lot line and 57 foot variance on the east lot line.
Roll Call Vote: Yeas – none
Nays- Bruno, Burke, Miller, Norton, Tyo, Young

Motion Denied 6-0

Mr. Norton suggested that everyone look at the email that was sent regarding the results of the lawsuit. It shows how important it is to take seriously any requests and then to discuss it in an open way that isolates why we make the decisions we try and make. In this case, thanks to Terry Burke’s finding of fact being and very methodical about it the BZA’s decision was upheld. He noted that since he has been on the board a ruling has never been overturned which means the board has taken seriously their job.

The meeting adjourned at 7:50 p.m.

Jack Norton, Chairman

Kristine Jones, Secretary