Minutes of a Meeting of
Board of Zoning Appeals
held November 16, 2017

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

Excused: Tyo

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

Audience: Bela Persanyi, Diane May, Richard McLendon, Julia Hirst, Travis and Brenda Bennett.

Chairman Norton called the meeting to order at 7:32 p.m.

Motion by Bruno, second by Burke, to approve the minutes of the meeting held November 2, 2017 as prepared and distributed. Motion passed 6-0.

Bela Persanyi
30666 Wolf Road
Tabled from October 19, 2017

C.O. 1373.01 The applicant is requesting a variance to store their boat on a trailer in their front yard.

Mr. Norton advised that the board will not be making any decisions on Bela Persanyi’s application tonight. However, he noted that Mr. Persanyi has new information that he would like to share with the board members.

Mr. Persanyi explained that after looking at the City of Bay Villages Codified Ordinances definitions he has determined that for the past 27 years his boat has been in his side yard not his front yard. According to 1121.39 in the definitions it says the side yard is a portion of the yard between the side of your house and your nearest property line. He explained that is exactly where the boat is and has been for the past 27 years. Mr. Persanyi added that the boat is about 33 feet behind the building line and 113 from the street. He said nothing has changed except that he is not seeking a variance for the front yard because his boat was never in the front yard. Mr. Norton verified that Mr. Persanyi contention is the boat is located on his side yard. Mr. Persanyi said yes, based on the definitions. Mr. Norton said that the request will still need a variance because the boat is not in the rear yard. Mr. Persanyi wanted to clarify that he was working on the assumption that his boat was in the front yard and based on the definition of side yards his boat is actually in the side yard.

Mr. Burke noted that the drawing that was submitted it shows the bow of the boat forward of the house. Mr. Persanyi showed him on the drawing the dimensions of the boat to the house.

Mr. Norton stated that the board is going to postpone further discussions for tonight based on the final completion of Law Director Ebert’s memo.
Mr. Burke asked Law Director Ebert if Mr. Persanyi’s request can be amended based on tonight’s conversation. He said yes.

Mr. Fillar noted that Mr. Persanyi was cited by Mr. Bob Lyons for the boat in the front yard. If he was cited for front yard and it turns out to be side yard the letter is mute. Mr. Fillar is concerned with letting Mr. Lyons know that the letter is not valid. Law Director Ebert said he would talk to Mr. Lyons regarding the clarification.

**Motion** by Burke, **second** by Bruno that the property at 30666 Wolf Road regarding the request of Bela Persanyis boat storage be continued to the first meeting in January 2018.

**Roll Call Vote:**  Yeas – Bruno, Burke, Gess, Miller, Norton, Young  
Nays - None  

**Motion Carried 6-0**

Diane May  
612 Humiston Drive  

C.O 1163.05(E) The applicant is requesting a variance to install a 5 foot high fence (5'6" including post caps) to enclose part of their rear yard for dogs.

Mr. Norton advised that the Board has had an opportunity to visit the site, review the application and asked for any discussion.

Ms. May stated that Mr. Richard McLendon, 608 Humiston, and Ms. Julia Hirst, 618 Humiston, are here tonight and they are her neighbors on either side of her property. Mr. McLendon and Ms. Hirst, are also in full support of installing a higher fence because Ms. May’s dogs since they can easily jump over a 4 foot fence.

Mr. Burke explained that over the past serveral years there have been numerous requests for an increase in fence height because of dogs and he believes that in all cases the board has declined to grant a variance. Mr. Burke referenced The Board of Zoning Appeals application:

- **A)** Is there a practical difficulty or unnecessary hardship exists and is peculiar to the premise (the property itself). As opposed to how it is used in this case dogs.
- **B)** Refusal of the board will deprive the owner of your property rights.
- **C)** Granting the appeal will not be contrary to the purpose and intent of the zoning codes.

Mr. Burke noted that unfortunately Ms. May’s request does not meet any of these requirements to grant a variance.

Mr. Burke noted that he is aware that both the neighbors are in support of the fence but that does not change the answers to the 3 primary questions that are asked.
Mr. Bruno asked in regards to the perimeter of the property what percentage of the fence can it not exceed. Mr. Norton said 10% and the fence height requirement is 4 foot 4.

Mr. Bruno added that the Board of Zoning Appeals role is not to legislate we are here to enforce the 3 criteria’s on the application. Ms. Hirst asked what does that mean. Mr. Bruno explained that the BZA cannot go out of the spirit of the code. Ms. Hirst mentioned that Mr. Norton referenced the openness of the fence. Mr. Norton stated that is his interpretation of the spirit of the fence. He added that by ordinance we cannot create law we can only tinker around the edge and we need to be very careful about setting precedent.

Ms. Hirst asked who made this law. Mr. Bruno said council. She asked if they need to go in front of council. Mr. Norton said in a certain sense yes. The council members are the elected officials, the Board of Zoning Appeals members are appointed. The council members create the ordinances because they are elected to make law however, occasionally there are times that situations do not cover that law. Therefore that is why the BZA was created to be able to tinker with that law. Mr. Norton stated that he would welcome council to revisit the fence in terms of how dense the fence is in addition to the height. If it is a certain percent of openness does that make a difference, but the BZA cannot make that decision.

Ms. May noted that the second criteria on the application mentions property rights. Mr. Burke said the refusal of property rights was not intended for homeowners to be able to do anything they want with their property. He does not believe giving a height variance to contain dogs is necessarily a property right. Mr. Gess added that this seems to be a use request as opposed to something that is inherently different or challenging about the property that would allow the BZA to grant a variance.

Ms. Hirst asked if Ms. May would have to go in front of council to get her request approved. Mr. Burke said yes and no. He explained that Ms. May can go to her councilman or councilwomen to seek a change in the ordinance but to seek a variance from council she cannot do, that is the job of the Board of Zoning Appeals.

Mr. Norton suggested an electric fence. Ms. May said that an electric fence is not recommended with her types of dog which are Labradoodle.

Mrs. Young explained that Ms. May is allowed 32 feet in one direction and she has 28 feet in front of the garage and 36 across the back. Mr. Norton stated that Ms. May is allowed to have her fence go 32 feet in one direction as a privacy fence up to 6 feet high. He asked if she knew the size of her lot. Mr. Miller said the lot is 50 x 190. Mr. Norton explained a secondary rule to the privacy screen is that the length of the screen shall not exceed ten percent of the perimeter of the total lot. Mr. Miller said the perimeter is 480, therefore there can be a maximum of 48 feet.
A lengthy discussion followed pertaining to a solution and an alternative plan for Ms. May’s request. Mr. Norton suggested to Ms. May that she asks the board to table the request and try and revise her request.

**Motion** by Burke, **second** by Bruno that the application of the owner of 612 Humiston Drive regarding a fence installation be tabled until the December 7, 2017 Board of Zoning Appeals meeting.

**Roll Call Vote:**
- **Yeas** – Bruno, Burke, Gess, Miller, Norton, Young
- **Nays** - None

**Motion Carried 6-0**

*Mr. Norton asked the board if they would wanted to consider a note to council that would be accompanied by the drawing that was submitted by Ms. May. He believes this is a good example of the fence density question. Mr. Bruno stated that chain link fences would then fall into this category. Mr. Bruno stated that he would be in favor in reviewing the fence requests as they come to the BZA.*

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**Travis Bennett**  
30233 Ednil Drive

**C.O. 1350.03** The applicant is requesting a variance for a 10x20 shed instead of the required 10x12 shed.

Mr. Norton advised that the Board has had an opportunity to visit the site, review the application and asked for any discussion.

Mr. Burke asked Mr. Bennett how the shed has been built as far as long as it is without a permit. Mr. Bennett stated that he started building the shed one weekend with his son and never went and got a permit.

Mr. Norton asked Mr. Bennett if he was aware of the size limitations of a shed. Mr. Bennett said no and if he would have known he stated he would have made the shed 10x12.

Mr. Miller asked if there is an easement on the property because of the utility. Mr. Fillar said yes. Mr. Miller asked if the front of the structure is within the easement. Mr. Fillar noted that CEI and Cable Companies are okay with a shed.

Mr. Norton explained that the code for a shed is 10x12 or 120 square feet. In the past the board has granted minimal variances on sheds particular on larger lots. The current request of Mr. Bennett is not a minimal request it is a 66 % percent increase.

Mr. Bennett presented drawings of his proposed shed. On the last page of the packet he referenced a picture of what the shed would look like minus the porch accessory. He explained that there will be two entries a 5 foot entry and then a 4 foot entry with the 2 windows in the
front. Mr. Burked asked Mr. Bennett if he is contemplating adding a driveway to the shed. Mr. Bennett stated no and the shed will hold his riding lawnmower, ATV and snowplow.

Mr. Burke asked Mr. Bennett if he knew the dimensions of his property. Mr. Bennett responded that his property is 130 x 190. Mr. Burke explained that the board has denied similar requests because of the ordinance. He added that the BZA cannot legislate that the board can only make small changes to the ordinance, where the requests fits the criteria.

Mr. Bennett explained that he is in a situation where the shed is pre built with cement pillars and it is a very substantial project right now. He noted if he would have to remove the ¾ inch sub flooring it would be difficult. Mr. Bennett referenced the project packed and explained that in option 2 the shed would be the same except that it is a 12x10 structure with an 8x10 porch. In order to make it look nice he would add a tiered deck. Mr. Burke asked Mr. Bennett if he is considering covering the porch. Mr. Bennett noted that he does not have to cover the porch but the ideal situation would be to cover.

Mr. Norton explained to Mr. Bennett that if he had a 10x12 enclosed shed with a roof and the rest of the area is a floor than that is considered a deck because it is raised up. Mr. Bennett added that the raise is very minimal about 7 to 8 inches because it is off the grade. Mr. Norton added that the shed could not have a roof over the deck, if it did not have a roof over the deck than Mr. Bennett would not need the BZA. Mr. Bennett said he could make it work where there would not be a roof over the area of the deck.

Mr. Bruno noted that the board needs to know how many inches above grade the floor is and asked Mr. Fillar how many inches above grade would require railings and post around the deck. Mr. Fillar said 28 above grade. Mr. Bruno added that the railings and post will have to be 75 % open.

Mr. Norton explained that if the roof covered the entire shed but it was only enclosed by 10x12 that the board has allowed sheds to have a front porch. They were more decorative. He asked if the board would want to consider this footprint of 10x20 as long as only 10x12 of the shed is enclosed and the roof being the whole 20 feet.

Mr. Fillar explained to Mr. Norton that we are now leaving the shed genre and moving towards accessory structure in a rear yard. Mr. Fillar noted that if the shed is now an accessory structure then the shed will have to go by lot coverage. Mr. Norton added that a shed is an accessory structure.

Mr. Bruno suggested that Mr. Bennett needs to submit an amended application with drawings, lot plot and correct measurements. Also, the distances from the side and rear yards as well.
Motion by Bruno, second by Burke to table the application for the property of 30233 Ednil Dive per codified ordinance 1350.03 per the applicant is requesting a variance for a 10x20 shed as submitted per the application.

*Before there was a second Mr. Bennett interrupted and asked the board that before the request is tabled he wanted to make sure he understood everything correctly. He asked if he would need a variance if he builds a 10x12 shed now uncovered and on the other side it will be open for an 8 x10 porch/deck. Mr. Norton stated to Mr. Bennett that he will need a permit. Mr. Bruno added he would need a permit and drawings of the shed that will represent what will be built, the decking and how the shed would be covered. Then after the Building Department reviews the plans and the shed is up to code than Mr. Bennett may not need the BZA.

Mr. Fillar explained that the Building Department cannot base an application on something that is already built. He said that Mr. Bennett is here because of what was already started without a permit. The Building Department based everything on what is visible in the yard at this time. Mr. Bennett disagreed.

Mr. Burke asked Mr. Fillar if a 20 foot footprint that is there now in anyway change a simple application for a 10x12. Mr. Fillar noted that there is a way to do this with what is currently on the property, if we are going to allow it to be called a patio. This can be done without Mr. Bennett losing a lot of the work he has already built. Mr. Burke asked Mr. Fillar if Mr. Bennett would not have to come back to the Board of Zoning. Mr. Fillar said correct as long as we agree that the area is a patio and it is also an accessory structure where he is allowed to cover 30% of his rear lot. He added that this would put this application in a “new” place. Mr. Norton added that the shed will not be able to have the extended roof. Mr. Fillar said no roof. Mr. Norton added that Mr. Bennett could add a railing around the deck and then later come back to the BZA if he wanted to add more to the shed.

Mr. Fillar explained that if the Building Department had drawings, plot plan, construction drawings, fasteners, footers, concrete posts, wood, dimensions everything than the Building Department can determine from those plans what Mr. Bennett would need. This came together a little odd.

Roll Call Vote: Yeas – Bruno, Burke, Gess, Miller, Norton, Young Nays - None

Motion Carried 6-0

There being no further business to discuss the meeting adjourned at 8:41 p.m.

Jack Norton, Chairman

Kristine Jones, Secretary