Minutes of a Meeting of  
Board of Zoning Appeals  
Held January 4, 2018

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

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

Audience: Kimberly Haselwerdt, Bela Persanyi

*Full recording of the meeting is permanently available on the City of Bay Village website under City Government / Board of Zoning Appeals.

Chairman Norton called the meeting to order at 7:34 p.m.

**Motion** by Bruno, **second** by Gess, to approve the minutes of the meeting held December 20, 2017, as prepared and distributed. **Motion passed 7-0.**

Mr. Norton advised the board that he will be switching the agenda this evening and Travis Haselwerdt will be going first instead of second.

<table>
<thead>
<tr>
<th>Travis Haselwerdt</th>
<th>C.O. 1359.01(A) Homeowner is requesting a variance for the placement of an A/C unit on the side yard and will be 5 feet from the property line instead of the required 10 feet.</th>
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<tr>
<td>26509 Russell Road</td>
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Mr. Norton advised that the Board has had an opportunity to visit the site, review the application and asked for discussion.

Mr. Burke asked the applicant where the new air conditioner unit will be installed. Mrs. Haselwerdt responded that the old unit was 6 feet away from the property line and they would like to move the unit 5 feet away from the property line in order to do construction on their patio. She stated that from the pictures the unit will be placed at the north east corner of the screened in porch.

Mr. Norton commented that he believes the unit will be able to be seen from the front of the Haselwerdt property. He noted that the board often requests that yearlong screening be installed. Mrs. Haselwerdt stated that there is currently vegetation in front of the unit and they are working on the process to install a fence.

**Motion** by Burke, **second** by Tyo that the property at 26509 Russell Road be granted a variance of 5 feet from the required 10 foot side setback per codified ordinance section 1359.01(A) for the
Board of Zoning Appeals  
January 4, 2018

installation of an air conditioning unit, provided that the air conditioning unit is installed at the northeast corner of the screened in porch area of the property and not forward. Also, provided that the unit if not equipped with a sound blanket that a sound blanket be installed and there will be yearlong screening installed around the air conditioning unit.

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

Motion Carried 7-0

Bela Persanyi  
30666 Wolf Road

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

Mr. Norton stated that Mr. Persanyi’s request has been tabled from the October 19, 2017, and November 16, 2017, meetings.

Mr. Norton stated that Law Director Ebert has provided a memo to the Board of Zoning Appeals members regarding his research on the matter of Mr. Persanyi storing his boat in his front yard.

Mr. Ebert stated that Mr. Persanyi has indicated that because of the time he has kept his boat in his front yard he is grandfathered in due to the change from the old ordinance in 2005 to the new ordinance in 2016. The old ordinance stated that the storage of boats and trailers must be 100 feet back from the right of way. Then in 2016, Council removed the 100 feet and said you could have a boat stored in your yard as long as it is in the rear yard, not closer than 12 feet from the property line and 30 feet off of any street.

Mr. Ebert referenced his memo.

See document attached to these minutes, marked Exhibit A, as if fully recorded herein.

Mr. Ebert explained that from his research there needs to be further discussion based on what size vehicle fits in this criteria and whether it is based on length and size. Also, Mr. Ebert commented that he believes that the issue of Mr. Persanyi’s boat needs to be reviewed a little further before there is motion by the Board of Zoning Appeals.

Mr. Ebert stated with regards to Mr. Persanyi’s boat that the ordinance was adopted, amended and changed to the rear yard and not the front yard is constitutional, based on the intent of the character of Bay Village. This is a legal change in the ordinance without having to grandfather in a provision. Mr. Persanyi’s boat is not a permanent structure and is moveable.

Mr. Gess asked that at a previous meeting there was discussion of the boat residing in the side yard because of the configuration of the front of the house and how the garage is set back. Mr.
Norton responded that you could argue that the boat is technically in the side yard, however, the ordinance treats the side yard just like the front yard.

Mr. Persanyi referenced the Board of Zoning Application which states: When variances are requested, the appellant per Section 1127.04 (D) must state and the Board must find that:

A. A practical difficulty or unnecessary hardship exists and is peculiar to the premises.
   Mr. Persanyi stated that in order for him to move his boat into his backyard he would have to incur a large expense to put in a hard surface.

B. Refusal will deprive the owner of property rights.
   Mr. Persanyi stated that it was his property right at the time he purchased the house in 1973. It is a property right that he has exercised for 27 years in full compliance with the ordinance as how it read at the time.

C. Granting the appeal will not be contrary to the purpose and intent of the zoning code.
   Mr. Persanyi stated that the zoning code permitted this for an excess of 40 years. He believes that the last time this ordinance was amended was 1970 or 1972. If the zoning code permitted it back then, why is it suddenly now not acceptable to the community? He also stated that boat has not affected the neighborhood negatively.

Mr. Ebert referenced his memo. “Mr. Persanyi storing his boat in his front yard for several years is considered a vested non-conforming property use. This category of use is normally permitted even if a zoning ordinance prohibits its continuance. However, if a vested non-conforming property use is considered a nuisance to a City, then the City has a legitimate interest in preventing that use”.

Mr. Miller referenced a statement in Mr. Ebert memo:
“Once the burden of proof is meet, the municipality will then have an opportunity to present evidence to support the validity of the ordinance on the bases of health, safety, morals or general welfare. Id.”. Mr. Miller asked how this statement meets the criteria. Mr. Ebert stated that this issue came about with a discussion regarding storing boats in front yards of first resident district city. If this was challenged in court, you would have to show the character of your city and what you are trying to make your city look like. It would also have to show how storing a boat in the front yard would have an effect on the character and the evaluation of property, not aesthetic.

A discussion followed in how you address a residential community where the character may be affected by this type of use.

Mr. Norton suggested that the ordinance needs to be revisited by council.

Mr. Miller suggested that perhaps this request should be for a special permit not a variance. He explained that this type of request is a non-conforming use that is more associated to the property owner at the time.
Mr. Burke suggested that if council has a discussion on the ordinance they should include specific measurements of a boat, trailer etc. to not exceed certain heights, lengths and widths. Then it would be a request for a variance rather than special permit that an applicant can come to the BZA. The whole idea of a variance is being that it is a minimal request. He believes that it would be better for the citizens to know what exactly is and isn’t permitted as opposed to putting it on a discussion of a board that changes over the years and is not a legislative body. Mr. Ebert responded that this is a moveable object and he would not like to see a variance that would go with the land. Mr. Burke asked in Municipal Law is there such a thing as a license that could be granted by the city as opposed to a special permit. Mr. Ebert responded that he would look into that further. A discussion was had over boat storage and a special permit.

Mr. Norton stated that more thought needs to be given to the subject and recommends the board prepare and submit suggestions to city council. Mr. Ebert stated that he has given the issue a lot of thought. Mr. Burke asked Mr. Ebert what a reasonable time frame would be to table Mr. Persanyi request and give council time to review the ordinance. Mr. Ebert stated 60 days.

**Motion** by Burke, **second** by Tyo that the matter of the boat storage at the property located at 30666 Wolf Road be tabled until the first meeting of March, 2018. Also, that City Council be made aware, through the chairman, the minutes of this meeting and the Law Director that the issue here with a request that they consider the provisions of the current ordinance to see whether someway could be approved to cover this situation.

**Roll Call Vote:**

Yeas – Bruno, Burke, Gess, Miller, Norton, Tyo, Young
Nays – None

**Motion carried 7-0**

There being no further business to discuss the meeting adjourned at 8:20 p.m.

[Signatures]

Jack Norton, Chairman

Kristine Jones, Secretary
To: Board of Zoning Appeal

CC: Paul Koomar, Mayor, Dwight Clark, President of Council, Peter Winzig, Ward 4 Councilman

From: Gary A. Ebert

Date: January 3rd, 2018

Re: Bay Village – Bela Persanyi/BZA, Chapter 1373
Trailer Storage (Residential Districts)

I. ISSUE

Does the City of Bay Village have a legitimate City interest in preventing Mr. Bela Persanyi/or others from parking his boat in his front yard violate Chapter 1373, Trailer Storage in Residential Districts (See Attached).

II. QUICK ANSWER

YES. Mr. Bela Persanyi’s storing his boat in his front yard for several years is considered a vested non-conforming property use. This category of use is normally permitted even if a zoning ordinance prohibits its continuance. However, if a vested non-conforming property use is considered a nuisance to a City, then the City has a legitimate interest in preventing that use. A City has a legitimate City interest of “preserving and protecting” the orderly development, the character and the integrity of a single-family neighborhood. 90% of the City of Bay Village is made up of single family homes. The parking of recreational vehicles outside on a single-family premise in a single-family neighborhood can become a nuisance and can have an adverse effect on the character and integrity of a single-family neighborhood. Therefore, Mr. Persanyi’s property use is a nuisance to the City of Bay Village’s
legitimate City interest. The City of Bay Village has the right to prohibit Mr. Persanyi’s vested non-
conforming property use.

III. DISCUSSION

In Ghaster Properties, Inc. v. Preston, the Ohio Supreme Court recognized that “a zoning
regulation may not interfere with an existing use of property” provided that such non-conforming
use is neither unlawful nor a nuisance. 176 Ohio St. 425, 441, 200 N.E.2d 328 (1964); see also
City of Akron v. Chapman, 160 Ohio St. 382, 116 N.E.2d 697 (1953) (a lawful prior use of property
is protected by Section 1, Article XIV, Amendments, Constitution of the United States, and Section
16, Article I of the Ohio Constitution). A right to use one’s property for a lawful purpose not
otherwise constituting a nuisance is a vested and enforceable interest. Gibson v City of Oberlin,
171 Ohio St.1, 167 N.E.2d 651 (1960). However, if the municipality determines that the amended
or new ordinance “bears a real and substantial relation to the public health, safety, morals or
general welfare and is not unreasonable or arbitrary.” Curtiss v. City of Cleveland, 170 Ohio St.
127, 130, 163 N.E.2d 682 (1959); see also N. Ohio Sign Contractors Ass’n v. City of Lakewood,
32 Ohio St. 3d 316, 513 N.E.2d 324 (1987) (City’s enactment of new sign ordinance with sunset
 provision for bringing non-conforming signs into compliance was valid where city vouched that
 ordinance was necessary for promoting public safety and enhancing aesthetical appearance, thus
 protecting property values).

The Ohio 8th District Court of Appeals in Cuyahoga County found that “preserving and
protecting the orderly development, the character and the integrity of a single-family
neighborhood,” to be a valid purpose. City of Pepper Pike v. Dantzig, 8th. Dist. Cuyahoga No.
3486, 2005 WL 1593650. In Dantzig, the court stated that “An ordinance that is rationally based
on the objective of promoting health, safety, morals, or the general welfare of the community is
constitutionally within the police power of a municipal government. Village of Euclid v. Ambler
Realty Co. (1926), 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303. However, an ordinance may still be attacked as unconstitutional on its face or as applied to the person attacking the ordinance. Belden v. Union Central Life Ins. Co. (1944), 143 Ohio St. 329, 55 N.E.2d 629.

The principle argument used against the implementation of City ordinances such as this City of Bay Village ordinance and the Dantzig ordinance is that it “is not based on the health, safety, morals or general welfare of the community but that its primary objective is one of aesthetic considerations and this renders the ordinance unconstitutional.” City of Pepper Pike v. Landskroner (1977), 53 Ohio App.2d 63, 69, 371 N.E.2d 579. Ohio courts have long held that aesthetic considerations alone will not sustain the exercise of the police power in the enactment of zoning regulations, but that aesthetics may properly be an incidental or secondary reason for enacting the ordinance where the primary purpose is one of health, safety, morals or the general welfare of the community. Youngstown v. Kahn Bros. Bldg. Co., supra; Pritz v. Messer, supra, at 637, 638, 149 N.E. 30; Reid v. Board of Review (1963), 119 Ohio App. 67, 72, 192 N.E.2d 74. See Welch v. Swasey (1909), 214 U.S. 91, 29 S.Ct. 567, 53 L.Ed. 923. City of Pepper Pike v. Landskroner, 53 Ohio App. 2d 63, 73, 371 N.E.2d 579, 585 (Ohio Ct. App. 1977).

There is a presumption of validity “that attaches to an ordinance but this presumption is not a conclusive presumption it is a rebuttable one that may be overcome by competent and relevant evidence.” State, ex rel. Jackman v. Court of Common Pleas of Cuyahoga County (1967), 9 Ohio St.2d 159, 224 N.E.2d 906; Curtiss v. Cleveland (1959), 170 Ohio St. 127, 163 N.E.2d 682. However, A City ordinance will not be disturbed “unless it is shown that the action taken by the municipality in denying the property owner the unrestricted use of his property is arbitrary, capricious, and bears no reasonable relationship to health, safety, morals, or general welfare.” Ambler Realty Co., supra. City of Pepper Pike v. Dantzig, 2005-Ohio-3486, ¶ 49. The burden of
proof is on the person wishing to attack the ordinance as unconstitutional and mere allegation or conclusions of law that the ordinance is not based on health, safety, morals or general welfare is considered unreliable. Id, ¶49. Once the burden of proof is meet, the municipality will then have an opportunity to present evidence to support the validity of the ordinance on the bases of health safety, morals or general welfare. Id.

In Landskorner, the court upheld a similar ordinance involving recreational vehicles, stating that, “if an ordinance prohibiting outside storage of recreational vehicles in a single-family neighborhood were enacted principally for aesthetic reasons, the ordinance would be invalid.” City of Pepper Pike v. Dantzig, 2005-Ohio-3486, ¶52. However, “when recreational vehicles are stored outside on single-family premises in a single-family neighborhood, they can become a nuisance and can have an adverse effect on the character and integrity of a single-family neighborhood...” Id. The court concluded that “an ordinance enacted for the purpose of preserving and protecting the orderly development, the character and the integrity of a single-family neighborhood has as its general purpose that of the general welfare, even though its implementation may have an incidental or secondary aesthetic effect. Id; See also, Reid v.Board of Review, supra, at 72, 192 N.E. 2d 74.

Recreational vehicles are movable objects, they are not fixed structures that integrate into a single family residential neighborhood. The nuisance associated with allowing this recreational vehicle to park in a single family residential neighborhood is that this vehicle is designed to be on the water and not designed to be in front of a home or in a car garage. The recreational vehicle is incompatible with the low density, spacious, and residential character of a single family residential neighborhood. This adversely effects the character and integrity of the single family residential neighborhood. The City of Bay village has a valid legal interest to protect.
IV. CONCLUSION

A City has a legitimate City interest of "preserving and protecting the orderly development, the character and the integrity of a single-family neighborhood. 90% of the City of Bay Village is made up of single family homes. The parking of recreational vehicles outside on a single-family premise in a single-family neighborhood can become a nuisance and can have an adverse effect on the character and integrity of a single-family neighborhood. Therefore, Mr. Persanyi's property use is a nuisance to the City of Bay Village's legitimate City interest, and as such has the right to prohibit Mr. Persanyi's vested non-conforming property use.
Chapter 1373 - TRAILER STORAGE IN RESIDENCE DISTRICTS

1373.01 - Storage in front of building line; exceptions.

(a) No person shall store, keep or maintain in any residential district in the City any of the following objects: self-propelled camper, house trailer, boat trailer, boat, camper trailer, or any other object mounted on wheels and designed to be towed or trailed, unless the same is stored, kept or maintained within a garage or other enclosed accessory structure permitted by Zoning Ordinance of the City. However, one such object may be stored, kept, or maintained in the rear yard area, provided that such object be stored, kept or maintained no less than 12 feet from any property line and no less than 30 feet from any abutting street. Any such object so stored, kept or maintained shall be titled to the owner or resident of such property and carry current registration or license plates for use on public highways or waterways. The temporary storage of such objects for the purpose of loading or unloading for periods not to exceed 72 hours within a 21-day period shall not be deemed unlawful under the provisions of this section.

(b) No person shall store, keep or maintain in any Administrative Office and Apartment House, Commercial, Retail Business or Research and Development and Limited Manufacturing Districts in the City any of the following objects: self-propelled camper, house trailer, boat trailer, boat, camper trailer, or any other object mounted on wheels and designed to be towed or trailed, unless such object is customary to the use of the business occupying said premises, is stored in the rear yard and any such object so stored, kept or maintained shall be titled to the owner or occupant of such property and carry current registration or license plates for use on public highways or waterways.

(Ord. 05-137, Passed 12-12-05.)

(Ord. No. 16-53, § 1, 7-11-2016)

1373.02 - Portable temporary storage units.

Placement of a portable temporary storage unit is permitted in a residential district for a period not to exceed 30 consecutive days, provided that the unit is placed on an approved firm surface not more than five feet from the dwelling. An application for a special permit must be submitted to the Board of Zoning Appeals if additional time is needed in case of hardship.