

Minutes of a Meeting of
BOARD OF ZONING APPEALS
Held December 5, 2013

Members Present: Bruno, Burke, Campbell, Dostal, Norton, Taylor, Tyo

Also Present: Mr. John Cheatham, SAFEbuilt, Law Director Ebert

Audience: Gary Naim, Tony DeCarlo, Martin Reuben

Chairman pro tem Tyo called the meeting to order at 7:30 p.m. (Mr. Norton arrived at 7:45 p.m.)

A copy of City of Bay Village Codified Ordinance 1127.01 was posted and Mr. Tyo advised that the code states that the Board shall consist of seven electors of the City not holding other municipal office or appointment. If all members are not present at a meeting, the applicant may request a delay so that all members may be present. An applicant may delay a decision up to two times.

Motion by Taylor, second by Dostal, to approve the minutes of the meeting held November 21, 2013 as prepared and distributed. **Motion passed 6-0.** (Mr. Norton arrived at 7:45 p.m.)

Tony DeCarlo
493 Bradley Road

C.O. 1370.05 (A) Variance for
Sideyard generator

Mr. DeCarlo stated that he was a resident of Bay Village from 1991 through 2004 with his wife and four children. They are now relocating back to Bay Village and are living at Crocker Park until their home on Bradley Road is finished.

Mr. Gary Naim of Petros Homes spoke on behalf of the homeowner. He advised that they have been before the Board with this request in the past, however, they are contemplating a different location than the first location that was not approved by the Board. This alternate location would be significantly further from the neighboring property. They feel that there are conditions in the ordinance that would allow for placement of the generator on the side of the home. The home was designed for specific needs which include features along the entire rear property and access to those features by a handicapped resident. The ordinance allows the placement on the sideyard if there are certain factors that will better serve the homeowner and not create adverse conditions on the neighboring property. The conditions listed in the ordinance that would be considered acceptable to side yard placement that affect the subject property include:

- Landscaping
- Topography
- Location of Porch, Patio, Pool
- Window Placement

The only flat area within ten feet of the home at the rear is beneath a window connected to the residents living quarters. To place the generator away from the window would make it more difficult to screen, and would negatively impact the subject property. Placement of the generator on the side of the home would still put it 55 feet away from the neighboring home. The area of the yard where the generator will be placed will be enclosed by privacy fencing. The neighbor homeowner on the side where the generator will be placed has submitted a letter giving their approval.

Mr. Burke and Mr. Bruno expressed that they see nothing unusual about the property that would permit a sideyard placement, either in this newly proposed location or the location to the north that was not approved previously by the Board.

Further review and discussion followed. Mr. Cheatham, Chief Building Official stated that the way the ordinance is written is open-ended, allowing the building official to make a determination about sideyard placement if these features listed in the ordinance exist. Mr. Cheatham advised the applicant that he would feel uncomfortable doing that since he has been before the Board previously. An inspection of the property by Mr. Cheatham has revealed that every feature listed in the code is on the property.

Mr. Burke noted that a concrete pad installed in the back of the property for installation of the generator is within the required distance away from the window.

The homeowner explained that the backyard is the sanctuary area for their physically disabled son.

Law Director Ebert advised that the ordinance prohibiting sideyard placement is being reviewed by the City Council for amendment. It is estimated that revisions should be made to the ordinance by the beginning of February. The new legislation will basically mirror the code for air-conditioner placement.

Motion by Burke, second by Dostal, to table the request of Tony DeCarlo, 493 Bradley Road, for the placement of a generator until February 6, 2014.

Roll Call Vote: **Yeas – Bruno, Burke, Campbell, Dostal, Norton, Taylor, Tyo**
 Nays – None

Motion carried 7-0.

Judith and Larry Scott
31207 Lake Road

C.O. 1359.01 Placement of Air
Conditioner Condenser

Mr. Larry Scott stated that he is asking for a variance to keep his air conditioner condenser in the same location as it has been for thirty-seven years. Mr. Campbell requested that the unit be equipped with a sound blanket.

Motion by Dostal, second by Burke, that a variance be granted to the property at 31207 Lake Road, to the provisions of Codified Ordinance 1359.01 for the placement of a new air conditioning unit in the present location of the old air conditioning unit, that the unit be located 2' from the home and that a sound blanket be installed on the unit.

Roll Call Vote: **Yeas – Bruno, Burke, Campbell, Dostal, Norton, Taylor, Tyo**
 Nays – None

Motion carried 7-0.

Phillip Dunfee
30229 Crestview Road

C.O. 1370.05 (A) Variance for
Sidyard Generator

Mr. Dunfee requested that his application be tabled as was the previous generator placement application this evening until the new ordinance is passed by City Council.

Motion by Burke, second by Dostal, to table the request of Phillip Dunfee, 30229 Crestview Road, for the placement of a generator until February 6, 2014.

Roll Call Vote: **Yeas – Bruno, Burke, Campbell, Dostal, Norton, Taylor, Tyo**
 Nays – None

Motion carried 7-0.

Bridget O'Donnell
23724 Cliff Drive

C.O. 351.16 requesting variance to enlarge
driveway more than 40% of the width of
the lot (only 50 ft. wide area)

The Board has visited the property and viewed the site. Mr. Tyo reviewed the questions of the November 21 meeting regarding the timing of the pour, when the materials were ordered, and when it was delivered.

Mr. Norton commented that the pouring of the driveway could have been delayed. It is most likely that the O'Donnells would have to pay for the special blue aggregate that they ordered, but

it had not been mixed at the point when the building official notified the O'Donnells that the pour could be stopped.

Mr. Bruno stated that the original drawings of the house and property lines indicate that the driveway is very different than what was poured.

Mr. Cheatham reiterated his previous report listed in the minutes of November 21, 2013 as follows:

“Mr. Cheatham stated that Mrs. O'Donnell asked him on-site when he was out there for another reason about her front drive and how wide it could be. Chapter 11, Zoning, and Chapter 13, Building, were thoroughly searched and nothing was referenced or cross-referenced. Mr. Cheatham informed Mrs. O'Donnell that as far as he could see, he could not see any specific requirements for grass or anything that would prohibit her from having a concrete yard. She was informed that Mr. Cheatham did not think it would look nice or would be in the best interest of the neighborhood, but he did not see anything that would prohibit it. On the day they were to pour it, SAFEbuilt Inspector Bob Lyons came in and stated that there was a rule somewhere about 40%. After further review, they found the rule in Chapter 3, the Traffic Code. They went immediately to the site. They were mostly ready to pour; the wire was in, and they were finishing up a few forms and mesh. It was 90% ready. Mrs. O'Donnell was informed about the code that was found and told that the pour needed to be stopped. At that point, Mrs. O'Donnell explained that they had ordered a special aggregate-type concrete which had already been made up and for which the O'Donnell's would have to pay for the cost. Mr. O'Donnell called and stated that it is ordered and paid for, and they were going to pour. Mrs. O'Donnell followed Mr. Cheatham back to the office and filled the paper work out for the variance, and they proceeded with the pour. Mr. Cheatham stated that he did explain to them that if they did pour it knowing the rule, the BZA had the right to tell them it is illegal according to the ordinance and the least would be they could end up having a front yard patio with barriers that would designate it as a patio area rather than a parking spot.”

Mr. Norton stated that they could have stopped the pour because it was not poured until the next morning. They would have had to pay for the special-purchase aggregate. The drawing shows a conventional driveway width, and it was not completed that way. The city officials, understandably and accidentally misled the situation and some of the damage, such as the excavation, and the preparation was already done in good faith by the owner. The city has a little responsibility because the code for driveways was buried in the traffic code and should have been referenced back into the building code.

There are examples of other driveways in the City of Bay Village that are way more than 40%. One is almost across the street from the O'Donnell property on Lake Road.

Mr. Norton stated that the curb cut is 35 feet. It should be 22 to 24 feet that would match the garage frontage. He suggested redoing the curb cut and removing the concrete between the sidewalk and the curb so that the throat of the curb cut is in the neighborhood of 22 to 24 feet.

Law Director Ebert stated that the pour could have been stopped, understanding that the O'Donnell's would have had to pay for the special aggregate they ordered. Mr. Norton's suggestion may be a compromise.

Mr. Burke asked Mrs. O'Donnell if it would be acceptable to her that a compromise would be worked out where a curb cut would be reduced to the same width as the front of the garage, the tree lawn restored from the curb cut east of the lot line, and there would be no parking to the east of the garage area. Mrs. O'Donnell stated that a legal counselor is looking into the situation right now.

Mr. Ebert noted that the lots in this area are very narrow.

Mr. Norton noted that this was an official request to which the building official gave permission and the property owner moved forward. Mr. Bruno stated for the record that Mr. Cheatham and Mr. Lyons, after finding the correct code, instructed the property owner not to take delivery and not to have the concrete poured. Mr. Norton stated that the property owner had already been caused economic damage by the city. Mr. Bruno reiterated that the drawings that were submitted to the city indicate a driveway of legal size. Mr. Norton stated that after the drawings were submitted, the homeowner approached the city to ask permission to do something else instead. She was informed that it was permissible.

Further review and discussion followed.

An audience member stated that she feels that the property has the appearance of a commercial property and she envisions the driveway being used as a parking lot. It speaks loud and clear that it should not be that way.

Mr. Martin Reuben, 23728 Cliff Drive, stated that his objection has nothing to do with the aggregate. He considers the apron as the driveway and it is the 32' width of the apron that is most bothersome. The compromise that is offered is acceptable.

Motion by Burke, second by Dostal, that the property at 23724 Cliff Drive be granted a variance from the requirements of Codified Ordinance Section 351.16 so as to permit a driveway of more than 40 % of the width of the lot, further to permit to remain the concrete and curb cut that has been made to the property, prior to this meeting.

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Roll Call Vote: Yeas – None.

Nays – Bruno, Burke, Campbell, Dostal, Norton, Taylor, Tyo

Motion denied – 0-7.

There being no further business to come before the Board, the meeting adjourned at 8:30 p.m.

Jack Norton, Chairman

Joan T. Kemper, Secretary