

Minutes of a Meeting of
BOARD OF ZONING APPEALS
Held May 7, 2015

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

Not Present: Mr. Campbell

Also Present: John Cheatham, Chief Building Official, SAFEbuilt, Inc.

Audience: Joseph Todaro, Abby Fenske, Mark and Ellen Boland, Tom Haas, Mick Banasiak, Justin Kapela, T.J. Liller

A copy of City of Bay Village Codified Ordinance 1127.01 was posted and Mr. Norton 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 Dostal, second by Taylor to approve the minutes of the meeting held April 16, 2015, as prepared and distributed. **Motion passed 6-0.**

Joseph Todaro
7689 Webster Road
Middleburg Heights, OH

C.O. 1127.03 Appealing Adjudication
letter regarding work done at
28915 Wolf Road

The Board listened to Mr. Todaro explain the procedures he used when performing concrete work at 28915 Wolf Road. He informed the homeowner that he did not guarantee the concrete. He explained to the homeowner what their work would entail after the pour as far as sealing the concrete, shoveling the snow and ice off the concrete, and not using salt. He noted that there was a foot of ice on the driveway this winter.

Mr. Norton asked how many trucks it took to deliver this concrete. Mr. Todaro stated that the 25 yards poured included the front patio which did not pit at all. Mr. Norton stated that it appears as though there were four truck loads. It also appears that you can almost tell where each truckload was laid. The drive immediately in front of the garage is ok. The beginning of the turnaround is ok. The spalling starts near the end of the turn around, and goes across that area. Then there is a middle area that is smooth, and then spalling is present at the end of the drive and apron. They had to have a bad mix, or, too much water was added because it was a heavy mix and hard to use. The City has an obligation in accordance with Codified Ordinance 1322.08 that work done by contractors in our City must be up to good workmanship levels. The driveway across the street that is five years old looks perfect, and this, after the first and second year is falling apart.

Further discussion between Mr. Todaro and the members of the Board of Zoning Appeals followed.

Mr. Dostal asked Mr. Todaro if he took a core sample of the concrete and had it analyzed. Mr. Todaro stated that he did not because that is not his responsibility.

Mr. Norton read Codified Ordinance 1322.08 to Mr. Todaro as follows:

“All construction work, regardless of trade, shall be completed in a workman like manner within acceptable standards and tolerances recognized by such trade or industry, meeting the performance of these standards of the applicable code, and thus being functional shall not be deemed a sufficient level of workmanship in and of itself. Work that is deemed shoddy, incomplete, half-hazard, or inferior shall be construed as poor workmanship. The quality of work shall reflect the value received and meet or exceed the minimum codes of the industry standards.”

The question before this Board is: “Is this ordinance of the City of Bay Village that the Building Official has cited in this case valid?”

Mr. Todaro has asked his Board to consider whether the Building Official was proper.

Mr. Burke proposed the following Finding of Fact:

“I would propose that this Board find as a matter of fact that there were four separate truckloads of concrete used in the job. The first one was the patio area that is of a different color than the rest. That section does not appear to have the issue of spalling. The next day there were three truck loads. The first truck load was in the area closest to the garage and into the turn-around area. That area does exhibit substantial spalling. The next truck load was in the middle section of the driveway which appears not to be exhibiting any spalling. The final truck load was at the sidewalk and apron, and that does in fact appear to be spalling significantly. This Board further finds as a matter of fact that whether as a result of the mix that was provided to Mr. Todaro’s company by the concrete mixture, or for some other reason, installation or otherwise, as a matter of fact the final result did not exhibit a good and workmanship level as required by Codified Ordinance Section 1322.08 of the ordinances of Bay Village.” Second by Mr. Dostal.

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

Finding of Fact Approved. 6-0

Motion by Burke, second by Bruno, that this Board grant the appeal of Mr. Todaro and that the order of the Chief Building Official be overturned. A yes vote would overturn Mr. Cheatham’s order; a no vote would deny the appeal.

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

Motion carried 0-6

Mark Boland
28030 Oakland

C.O. 1163.05 (e) Variance to construct
5 ft. fence in rear yard

Mr. and Mrs. Boland addressed the Board requesting an increase in height of their existing fence to prohibit their large dog from jumping the fence when he sees deer. Mr. Norton noted that the Board is wary of setting a precedent in allowing this extension. Further review and discussion followed.

Mr. Bruno recommended that in order to keep the dog from jumping out, the one place to have 5 feet of fence for 32 feet in length, according to code, is in the northwest corner of the property, bringing it south. There is a foot, to a foot-and-one-half drop off from the driveway. Otherwise, the Board is limited to 4 ft. in height everywhere else. Mr. Boland will take Mr. Bruno's recommendation under advisement. Mr. Norton noted that Mr. Boland can have a total of 39 ½ feet of fence, 32 feet in one direction, based on the circumference of the lot.

It was **MOVED** by Burke, second by Dostal, to table the request of Mark Boland to the next meeting of the Board of Zoning Appeals to be held May 21, 2015, to allow an amendment to the request.

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

Motion passed 6-0

Mark Fenske
31328 Nantucket Row

C.O. 1153.03 Variance to reduce
required 30 feet total side yards by 5 ft.

The Board has had an opportunity to visit the site and review the application

Justin Kapela, of J. Kapela Designs addressed the Board stating that the scope of the addition and remodeling project is to completely renovate and restore the home. The current shed and garage will be removed and replaced with a new garage, mud room, and family entry. The home is a colonial, much wider than the other homes on the street. The width of the main home doesn't allow for the splitting of the garage door for two single doors. The State Building Code requires two feet on each corner of the garage door walls, creating a wider garage space than there is now. Granting the variance will maintain the 10 feet sideyard requirement.

Mr. Banasiak, neighbor to the west of the proposed garage, stated his one concern is that there be a firewall as part of the new construction. Otherwise, he has no problem with the request.

Mr. Norton stated that the fire separation is 5 feet on each side of the property. This garage will be 25 feet from Mr. Banasiak's house. This is an attached garage and must have fire rated drywall throughout.

Motion by Bruno, second by Taylor, to grant the request for the property 31328 Nantucket Road for a variance to Codified Ordinance 1153.03 to reduce the required 30 feet total side yards by 5 feet, in accordance with plans and specifications submitted.

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

Katie and George Ebenger
28534 Osborn Road

C. O. 1153 Variance to construct 2-car garage by extending current garage 10 Feet forward then 19 feet east.

The Board has had an opportunity to visit the site and review the application.

Motion by Burke, second by Dostal that the property located at 28534 Osborn Road be granted a variance from the total sideyard setback requirements of Section 1153.03 of the Codified Ordinances of the City of Bay Village. The amount of the variance will be the lesser of 3 feet or 5 1/2 feet such as would be required to construct the enlarged garage, in accordance with the specifications submitted by the applicant.

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

Motion passed 6-0

Alice O'Donnell

Mr. Norton advised that Mr. Ebert wrote a long missive to the O'Donnell's current lawyer reiterating the City's stand in this matter.

There being no further discussion, the meeting adjourned at 8:36 p.m.

Jack Norton, Chairman

Joan Kemper, Secretary