

Minutes of a Meeting of
BOARD OF ZONING APPEALS
Held June 5, 2014

Members Present: Bruno, Burke, Dostal, Norton, Taylor, Tyo
Mr. Campbell arrived at 8:15 p.m.

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

Audience: Becky Olson, Jim Violette, John and Barb Hemsath, JoEllen Walker,
Ed Pavicic, Sean Duffy

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

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 Burke, second by Dostal, to approve the minutes of the meeting held May 15, 2014, as prepared and distributed. **Motion passed 7-0.**

Sean and Naomi Duffy
29617 Electric Drive

C.O. 1359.01 Air Conditioning
Unit Replacement

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

Mr. Taylor noted that it is a tight fit, and recommended something be placed next to the unit to keep a car from hitting the unit when coming through the driveway. Mr. Norton agreed, and asked that screening be placed on all sides of the unit.

Mr. Tyo asked for a copy of the specifications. Mr. Duffy stated that he does not have specifications, but this is a new unit replacing a much older unit. Mr. Norton stated that normally the Building Department has the applicant provide a form filled out with the decibel rating. The form was not included in the applicant's material. Mr. Tyo noted that 78 decibels is the normal acceptable range.

Motion by Burke, second by Dostal, granting a variance of 8 feet to the side yard setback requirements of C.O. 1359.01 to the property at 29617 Electric Drive for the placement of an air conditioning unit per the application, provided that 1) a protective item be placed to protect the unit from being struck by a car pulling into the neighbor's driveway; and 2) the unit be screened on the east, north and south sides by a year-around permanent screening; and 3) that the unit not exceed 78 decibels per the manufacturer's specifications; and 4) the unit include a sound blanket if not already provided.

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

Motion carried 6-0

Harry and Mary Tino
29801 Osborn

C.O. 1163.05 Height Variance for
Fence to 6 feet and more than 32 ft. length

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

Mary Tino addressed the Board explaining the need for the variance to provide screening for her property. There are no homes behind Mrs. Tino's property. Mrs. Tino also asked how the maximum length of 32 feet was determined by Council.

Lengthy discussion followed. Mr. Norton thought that perhaps 32 feet is the area that covers a patio. Mr. Dostal explained that years ago there was an issue with a patio near the former golf course and that may have started legislative proceedings. Mr. Bruno suggested 32 feet of fencing for the six feet height along the middle with Arborvitae planted at each side would provide adequate privacy.

Mr. Norton stated that there is nothing unique about the property itself that would substantiate a variance.

Motion by Burke, second by Tyo, to grant a variance to the property at 29801 Osborn to the requirements of Codified Ordinance 1163.05 to permit the applicant to install a 6' high privacy fence 70 feet in length across the back lot lines of the property.

Vote resulted: Yeas – None
Nays – Bruno, Burke, Dostal, Norton, Taylor, Tyo

Motion defeated 0-6.

**David and Pamela Barnett
307 Walmar Road**

**C.O. 1359.01 (a) – Air Conditioning
Unit Placement**

Mr. Norton advised that the Board has had an opportunity to visit the site and review the application. Mr. Taylor noted that the unit is snug in its location, and he would ask the Building Department to make sure there is clearance around the unit for maintenance purposes.

Motion by Tyo, second by Burke, to grant a variance to the property at 307 Walmar Road for air conditioning placement provided that if the existing fence is removed there be year-around screening to shield visibility from the street and from the neighbors to the north.

Roll Call Vote:

**Vote resulted: Yeas – Bruno, Burke, Dostal, Norton, Taylor, Tyo
Nays – None.**

Motion carried 6-0.

**Becky Olson
24624 Lake Road**

**C.O. 1125.02 (b) Request variance to
rebuild non-conforming structure
with larger structure**

Mr. Norton advised that the Board has had an opportunity to visit the site and review the application. He noted that the applicant has new plans for the location and the size of the building. Mrs. Olson advised that they listened to their neighbor, JoEllen Walker, and members of the Board, of their concerns about the height variance.

Mr. Burke asked if there has been any accommodation reached with the builder of the house to the east. Mrs. Olson stated that they informed the builder to disconnect the sewer line. Mr. Burke asked if he has disconnected. Mrs. Olson stated that she does not know if he disconnected. Mr. Burke stated that he has a concern that there may be a municipal interest in seeing that the whole issue is resolved. Mrs. Olson stated that she would like the records to be clear that the Board is holding up her application for the cottage on the north side and does not share a sewer line with that property. The cottage for which they are applying has its own sewer line and has nothing to do with the sewer line for that neighboring property. As long as it's clearly stated that you are holding up our cottage for a sanitary sewer line that is connected improperly by another person, we are ok with that as long as it is stated in the minutes and voted on by this panel. Because, you are choosing by this action to stop us from building. You are holding up a project that we want to

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do for an action that we had nothing to do with. We didn't know that he connected illegally on our property.

Mr. Norton asked if the house that was there previously on the front lot....Mrs. Olson stated that it was completely blocked and we believe that their sewer, according to them, was working fine and running directly to the lake. You can see where it was running to the lake. It used to connect to our property to the septic tank. But it was completely blocked. We have evidence from the city and the plumbers that came in that the line was non-functional when they built the house.

Law Director Ebert stated that it is Mrs. Olson's opinion that it is illegally connected; it is not the city's position. We have had this discussion before. Our engineers from the city as well as our consulting engineer have gone out and looked at it and it is the city's position that it is properly connected and will remain. It is legally connected to a sewer that preexisted. When the new home was built they used the same connection. We had it televised and it is properly connected.

Discussion followed regarding the televising of the sewer and dye testing.

Mrs. Olson questioned why south of the city main has anything to do with their cottage. Mr. Norton stated that he does not know what the Board of Zoning Appeals position is in this. When you read the ordinance that created the Board of Zoning Appeals, it imparts certain duties on the Board of Zoning Appeals and certain limitations. One of the things they are charged with taking into consideration is how a variance affects the neighboring properties. We do not have clarification as to what the Board of Zoning Appeals responsibility is here. Until we are comfortable with that clarification, I would be afraid to move on this. This should be put off until we have legal clarification of our responsibilities and limitations. We are responsible for whatever we say, and I don't know what our authority is in this, whether we are allowed to act on this because of this conflict, or whether we are required to act on it and ignore the conflict.

Mr. Norton suggested the Board consider tabling this until the next meeting and getting clarification as to exactly the Board's obligations and limitations.

Further discussion and review followed. Mrs. Olson stated that it is very important to her attorney that the Board state that they are holding up the cottage plan until the sanitary line is corrected.

After discussion with Mr. Taylor regarding Mrs. Olson's plans for the cottage, Mrs. Olson explained that they are tearing it down and rebuilding. Mr. Ebert stated that when the home is torn down and rebuilt the grandfather provisions are lost. That is why the application is before the Board of Zoning Appeals as a special permit. You can rebuild something that predates our ordinance, however, since it is not being built in the same footprint it loses that provision and that is the reason it has to come to the Board of Zoning Appeals. Mrs. Olson stated they are trying to

rebuild it because it looks horrible right now. They have had a complaint from one neighbor regarding the look of it. The sewer issue may take some time and since the cottage is not tied in any way to that front sewer, I don't feel it needs to be held up for it.

Mr. Burke stated that as he understands Mrs. Olson is saying this is being held up because a decision has not been made as to whether her neighbor is correct or she is correct as to whether it is a legal sewer. Mr. Burke said it seems to him that the issue is whether this body has the authority to grant a variance in a situation where a dispute exists. Mr. Norton stated the concern is the Board of Zoning Appeals authority and obligation in this. Mrs. Olson stated that there is absolutely no problem with the sewer from the cottage. It does not tie into the other lateral. It has been dye tested. It is a clean, running sewer. All of the utility lines are running for the cottage. The cottage just hasn't been approved. We can remodel it and use the new lines. Or, we can rebuild it which would look better.

Mr. Burke stated that the question is whether the Board of Zoning Appeals has the authority to act on this given that there is a dispute over a sewer and it a sewer the city has an interest in.

Mrs. Olson noted that they will be out of town until the beginning of August.

Mr. Pavicic commented that holding up this issue is affecting his property sale. Mr. Tyo stated that it is not Mrs. Olson's intent to hold this up; she wants to move ahead. It is the decision of the Board of Zoning Appeals that they do not feel comfortable. Mr. Burke noted that a legal opinion is being sought from the city as to whether or not the Board of Zoning Appeals can consider the application under the present circumstances.

Motion by **Burke**, second by Dostal, to table the matter of the application of Becky Olson, 24624 Lake Road, until the August 7, 2014 meeting of the Board of Zoning Appeals and that the Law Department advise with a legal opinion as to whether the Board of Zoning Appeals has the authority to vote on this request for the special permit given the circumstances that have been discussed in this meeting and the May 15, 2014 meeting of the Board of Zoning Appeals.

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

Motion passed 6-0-1 abstention.

Bridget O'Donnell
23724 Cliff Drive

Driveway Dispute
(Variance Denied December 5, 2013)

Mrs. O'Donnell stated that she was told that she had to fix the apron of the driveway because it is necessary to be five feet from the hydrant. The contractor stated that he was not informed of this.

Mr. Ebert stated that the reason this is on the agenda is because he had a conversation with Mrs. O'Donnell's attorney and Mr. Ebert indicated that right now the property is in violation. The Board of Zoning Appeals denied the request for a variance in the front yard. The city's next recourse is to have John Cheatham of SAFEbuilt, Inc. issue a citation and file it to have the situation corrected. It is hoped that Mrs. O'Donnell would come back with a different plan.

Mrs. O'Donnell stated that neighbor Martin Reuben gave her his blessing and stated it looks fine; he doesn't care. Mr. Ebert stated that the property is in violation of city ordinance. Mrs. O'Donnell made reference to and stated that she called upon the Disability Rights Section of the Civil Rights Division of the U.S. Department of Justice, the ADA, American Disability Act, American Civil Liberty Union, Department of Housing and Urban Development, the Sight Center of Cleveland, all the local news channels, Housing and Civil Enforcement Section, Uniform Federal Accessibility Standards, the UFAS House to be Modified Appendix 8 to 41, CSR Part 101 to 196, Path of Travel, Unobstructed Way to an Exterior of Pedestrian Passage.

Mr. Norton stated that the Board did not have any intention of insisting that the modification would in any way negatively affect ADA accessibility. The Board's difficulty was that the way the property is configured right now, there is an 8 car parking lot in front of the house. It needs to be modified in such a way that it cannot be used as a full parking lot in the front yard. That can be modified without impinging on any ADA access.

Mr. Burke stated that over six months ago the Board of Zoning Appeals denied a request for a variance. There has been no proposal for a compromise for consideration. Law Director Ebert stated that the city will be filing for violation.

There being no further discussion, the meeting adjourned at 8:30 p.m.

Jack Norton, Chairman

Joan Kemper, Secretary