

Minutes of a Meeting of
BOARD OF ZONING APPEALS
Held August 7, 2014

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

Also Present: Gary Ebert, Law Director, City of Bay Village, John Cheatham, SAFEbuilt, Inc.

Audience: Russell Schmidt, John and Ann Stanton, Pam Keating, Ed Pavicic, Jim Violette, Becky Olson, Ed Smith

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 Dostal, second by Tyo, to approve the minutes of the meeting held July 17, 2014, as prepared and distributed. **Motion passed 6-0.**

Pamela Kay Keating
371 Kenilworth Road

C.O. 1359.01 variance to place
air conditioning unit in rear yard

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

Mr. Burke asked the exact nature of the variance required. Mr. Cheatham of SAFEbuilt, Inc., stated that the installation will be 7 feet from the required 10 feet of the side property line.

Mr. Campbell stated that the new unit is quiet, but he would advise making sure a sound blanket is provided with the installation due to the side yard installation.

Motion by Dostal, second by Burke, that a variance to C.O. 1359.01 be granted to the property located at 371 Kenilworth Road in the amount of 3 feet for the replacement of an air conditioner in the same location as the previous installation on the property at 28533 Knickerbocker Road. Mr. Tyo asked for further clarification on the matter of the sound blanket. Mr. Campbell stated that the sound blanket is recommended due to the decibel rating being higher than a 6.4, and the

fact that the installation is at the side yard. Mr. Dostal amended the motion to include the requirement of a sound blanket.

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

Motion carried 7-0

John Stanton
29131 Lincoln

C.O. 1145.02 (c) special permit for
an outdoor fireplace

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

Mr. Burke stated that when viewing the property he inquired about the distance of the fireplace from the side lot line. Mr. Stanton stated that it is a little over 11 feet from the side yard lot line.

Mr. Norton stated that the Board will require a spark arrestor on the chimney. Mr. Taylor asked if there is a problem with the height of the chimney being that close to the house. Mr. Cheatham of SAFEbuilt, Inc., said that there is not a problem. Neighbors to the side and to the rear have been communicated with by Mr. Stanton, and Mr. Stanton will landscape around the fireplace.

Karen Lieske, 29211 Lincoln, the home adjacent to the left of the subject property, stated that the Lieske's are totally supportive of the request.

Motion by Burke, second by Taylor that the property at 29131 Lincoln be granted a special permit for the construction of a fireplace as per the specifications, at the location shown in the application provided that a spark arrestor be installed on the chimney and provided that there be evergreen screening between the fireplace and the property to the east.

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

Motion carried 7-0

Bridget O'Donnell
23724 Cliff Drive

Move Driveway Apron 5 ft. from hydrant
Put up Planters on Existing Driveway

Chairman Norton advised that because of a medical situation this matter will not be decided tonight, but they will discuss the request so that Mrs. O'Donnell will be able to be apprised of the discussion through the minutes of the meeting that will be provided for her.

Mr. Norton stated that this matter has been before the Board previously. Mr. Taylor asked if the proposed portable plants will be able to be moved on and off the drive. Mr. Cheatham stated that this is correct. Mr. Burke asked if the proposal requires that the curb cut be put back to that standard size curb cut that was shown in the original drawings submitted to the city. Mr. Cheatham responded affirmatively. He noted that their drawings are not clear. Mr. and Mrs. O'Donnell had a conversation with Mr. Cheatham in which Mr. O'Donnell stated that the tree lawn and curb would be restored as it is supposed to be with the normal driveway apron. Mr. O'Donnell made a phone call to a contractor in Mr. Cheatham's presence and said it would be done that week. That conversation took place six weeks ago and nothing has been touched. Mr. Cheatham has relayed the feelings of the Board to the O'Donnell's and told them the barrier to the concrete area to the east had to be a permanent barrier of some sort. They consistently say that they will do what they show on the plans. They will not remove concrete and will not do a permanent barrier. Neighbors have complained that the O'Donnell's have four to eight cars parked on the driveway at one time. Members of the Board stated that they have viewed many cars parked on the property.

Mr. Cheatham advised that Mrs. O'Donnell stated that the original home on the property always had a full drive. They have a pool, parties, and entertain, and do not want to block the street with parked cars. Mr. Cheatham stated that his feeling is that they really do intend to park on the property.

Mr. Taylor asked how realistic it is that the city will go out to check to see if the plants are still there or if they have rolled them aside. Mr. Cheatham stated that they do not have the time nor the manpower to continually check.

Mr. Burke stated that last fall or early winter the Board of Zoning Appeals rejected the request for a variance for the property. Law Director Ebert stated that the property is now in violation. The O'Donnell's were given a drawing as to how the situation could be corrected. Mr. Norton stated that having the pavement to the east is not the issue, but the tree lawn and distance from the hydrant is problematic. It is necessary to have the tree lawn and apron adjusted so that the apron matches the garage face. The nature and the permanence of the barrier to the concrete surface to the east is to be a true block, with a description sent to the Board for consideration.

Mr. Cheatham stated that the neighbors have complained about the O'Donnell's many dogs and by virtue of the fact that the O'Donnell's have all concrete have no place for the dogs to urinate or void. They are constantly using neighbors' yards for that purpose.

Mr. Burke stated that unless there is a significant change from what they had previously applied for and turned down, this matter should not even be on the agenda.

Mr. Norton stated that the submittal before the Board this evening is not considered a solution. The city should pursue through Common Pleas Court the clear violation on this property.

Mr. Ed Smith, the neighbor to the east, stated that they get many yellow spots on their property and they do not have dogs. It is a problem. Mr. Smith stated that what he finds most frustrating is the disrespect for the city's ordinances and for the Board of Zoning Appeals, who has taken this under consideration since late last summer with no positive action on the part of the O'Donnell's. Mr. Smith further noted that the O'Donnell's have a swimming pool. The Smith's grandchildren are frequently in the Smith's back yard, but since last September or October when they built that pool there was no fence until April of this year. Our ordinances call for a fine of up to \$50.00 per day for being noncompliant. There hasn't been any action along those lines. The fence is still not 100% compliant because it is too far from the ground in some places.

Mr. Smith noted that the plans approved showed a standard driveway going up to the garage. That is what was approved by the City. Mr. Cheatham had a minor slip-up when he was at the property, which he corrected before the cement was even mixed or poured. So, they have no basis for saying that there is liability on the part of the City if that concrete has to be removed. They are non-compliant with the City rules. The ordinances say that you cannot cover more than 40% of your front yard with your driveway. We really need to stand behind the ordinances.

Mr. Taylor asked if the property owner is allowed to use the pool without the fence. Mr. Cheatham stated that they are not permitted to do so. One area of the fence is undone and Mr. Cheatham has notified them many times that they cannot use the pool and the cover must be placed on it. They put a grill there to block the four feet area that is open on the west side. Mr. Cheatham spoke to them very strongly about children, and about Mr. Smith's grandchildren and their response was that it is up to the people to take care of their own children.

Law Director Ebert directed Mr. Cheatham to prepare the paperwork for filing the complaint in Rocky River Municipal Court. Mr. Norton stated that once the property owner is notified by certified mail that he is in violation of city ordinances, the fines per day would be appropriately applied.

Mr. Smith noted that the other neighbors decline to be present for fear of retribution in the way of harassment.

**Becky Olson and Jim Violette
24624 Lake Road**

**Continuation of previous application:
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 explained that the last issue was that the Board requested a ruling on whether it is in the jurisdiction of the Board of Zoning Appeals to consider the dilemma of the sewer hook-up from one lot to the other as it relates to joining the west lot and the rear lot and the rebuilding of the non-conforming structure which covers both of those lots. Law Director Ebert has opined that it is within the jurisdiction of the Board of Zoning Appeals to consider that as part of the overall issue.

Law Director Ebert commented that there has been discussion between Mrs. Olson's attorney, Mr. Pavicic's attorney and Mr. Ebert, as recently as today. A resolution is proposed that the City remove the connection of the sanitary sewer and connect with the 10 feet easement that goes back of the property of Mr. Pavicic to the lake. The problem is the City would not have enough work area to do that without having a work easement. The recent proposal of August 5 from Mr. Olson's attorney is for a 5-point proposal, of which the City can agree to four of the points. They are near reaching an agreement to disconnect the sewer line and reconnect within the 10 feet easement. The property is flag-shaped and does not have access to Lake Road. Several years ago the City passed legislation that prohibits property such as this without frontage on the road from being a buildable lot. There is an issue because the Permanent Parcel No. assigned to the property pre-dates that ordinance. Therefore, there is a cloud in the title concerning that issue. There is a cloud in the title concerning the sanitary sewer that exists but there is no recorded easement. It is the City's position that it is an easement by necessity because the sanitary sewer runs across the back property. There is a cloud in the title for Mr. Pavicic to close and sell the property until that is determined, which could take up to 18 months if it goes to Common Pleas Court. This is why the City came up with the proposed solution where the City would use its labor to resolve this issue with either contributions from the parties in some form or fashion for materials to make the disconnect and reconnect of the sanitary sewer. However, the City would go in there on an easement. The property owner would have to restore the property after the work is finished. This is the last item that has to be agreed upon. Mr. Ebert feels cautiously confident that there is a solution that could be imminent. Mr. Ebert commented that the Board of Zoning Appeals could take action contingent on the necessary steps occurring.

Mr. Pavicic commented that what is being proposed is reasonable but there are still issues that need clarification before going forward.

Mr. Norton stated that the Board could consider the matter with a variance granted dependent on the resolution of the issues involved.

Mr. Pavicic commented that with the rebuilding of this new structure there will be three non-conforming structures on the property. There is a shed and a tree fort now on the property. Mr.

Pavicic was informed that the tree fort is considered playground equipment, for which there are not restrictions, and sheds are permitted.

Motion by Burke, second by Dostal, that the property at 24624 Lake Road be granted a non-conforming use variance for the demolition and replacement of the existing structure cottage at the rear of the property per plans revised as of May 15, 2014, provided that the variance shall not be effective unless and until there is a satisfactory agreement between the applicant and Mr. Edward Pavicic, and the City of Bay Village, resolving the issue that had been discussed previously regarding the sewer connections of Mr. Pavicic's and Ms. Olson's properties, and further that there be no permit issued or construction commenced on the replacement cottage until that agreement is fully executed. The approval is subject to adjoining of the two parcels upon which the existing cottage exists and the new cottage will be placed.

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

Motion carried 7-0

John Mago
31516 Lake Road

C.O. 1153.04 – Rear yard setback
to add 16 ft. x 16 ft. 2-story sunroom

Mr. Norton advised that the Board has had an opportunity to visit the site and review the application. This application has reappeared before the Board of Zoning Appeals following a survey which revealed a discrepancy in the original measurement to the rear property line. It is a 14.69 feet distance from the back of the house to the back property line. The Board previously granted a variance to 3 ft. from the rear property line based on the county records of 19 feet to the rear property line. The proposed construction to the back of the house is 14.5 feet to the rear of the property. There is additional land behind the rear lot line that is owned in common by the Eagle Cliff Beach Association. However, research has failed to reveal a Statement of Continued Existence. Mr. Ebert noted that the proposal before the Board of Zoning Appeals is going up to the common property but not on the common property.

Motion by Burke, second by Taylor that the property located at 31516 Lake Road be granted a variance from the rear set back requirements of Codified Ordinance 1153.04 to permit the construction of an addition to the home. The variance shall permit the addition to be construction up to but not more than nineteen one-hundredths-of-a-foot from the lot line between the subject property and the property owned by the Eagle Cliff Beach Association to the north. The addition is to be constructed per the plans and specifications submitted to the Board of Zoning Appeals this evening, August 7, 2014.

Board of Zoning Appeals
August 7, 2014

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

Motion carried 7-0.

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

Jack Norton, Chairman

Joan Kemper, Secretary