

Minutes of a Meeting of
BOARD OF ZONING APPEALS
Held December 3, 2015

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

Also Present: Law Director Ebert, Jeff Fillar, SAFEbuilt, Inc.

Audience: Gene Hebble, Elyria Fence Company, Clifton L. Bennet

Mr. 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 Campbell to approve the minutes of the meeting held November 19, 2015 as prepared and distributed. **Motion passed 7-0.**

Clifton L. Bennet
26721 Normandy

C.O. 1141.04 (E) Dog Hosting
Business in Home

Mr. Norton advised that this matter had been before the Board previously and was tabled until this evening's meeting for further discussion.

Mr. Burke stated that on November 5, 2015 the Board of Zoning Appeals voted that the business of the applicant is not a customary home occupation, as that term is used in Section 1141.04 (E) of the Codified Ordinances of the City of Bay Village, and therefore a variance is being requested.

Mr. Burke stated that he has given this matter a lot of thought and study, and he does not believe that the request for a variance meets the requirements for a use variance. In order to grant a use variance there is a much heavier burden than there is on a footage or setback variance. One of the important things in order to be able to grant a use variance is there is no other economically viable use which is permitted in the zoning district. In this case, as zoned residential, it is an economically viable use. Mr. Norton brought a different approach concerning proportionality. He suggested that the Board look at this on a basis of size and effect on the neighborhood in a proportional way. If, in a proportional way, it seems insignificant in the overall picture, than it is something that should be considered with a number of limitations. Both approaches are worthy of consideration.

Mr. Burke stated that zoning has been a hot-button issue in Bay Village for decades, to a point if any owner wanted to have a parcel rezoned to a different zoning, it has to be put on the ballot and there must be approved by the voters citywide and approved by the voters in the ward. Since the use would be a rezoning of the property, it is not appropriate that a majority of the Board of Zoning

Appeals, unelected members of a commission, should supplant the City Council, the voters citywide and the voters within the ward.

Mr. Burke proposed that the matter be sent back to the legislative body. City Council will need to review Section 1141.04 (E), the section dealing with customary home occupation, and set forth certain descriptions and requirements to permit someone to have a home occupation. The home occupation standard thirty years ago does not seem to fit with modern businesses.

Mr. Burke proposed that the matter be referred to City Council for their study and review, with the hope that legislation will be drafted that will be better equipped to deal with this issue, and that the enforcement against this particular applicant be withheld for an additional six months from the date of this meeting to allow City Council to study the matter and legislate, and that the request for the variance be tabled until the earlier of the six months or until Council takes action.

Lengthy discussion ensued.

Messrs. Bruno, Campbell and Norton expressed agreement. Mr. Taylor expressed fear of setting a precedent by either Council or the Board of Zoning Appeals.

Law Director Ebert commented that the original intent of allowing home occupations was for the purpose of allowing professionals, such as doctors or attorneys, to see clients in their homes. It was not intended for an on-going, day-to-day business that may be disruptive to the neighborhood. By extending permission based on proportionality would be putting a difficult enforcement situation in place.

Mr. Bennet stated that his point would be that Bay Village has no limit on the number of dogs allowed in a home.

After continued discussion, it was **Moved** by **Burke**, second by Bruno, that in connection with the request of Mr. Clifton Bennet for a dog hosting business in his home at 26721 Normandy Road, and the request for a use variance, that the Board of Zoning Appeals immediately request that City Council study the issue of customary home occupation based on the fact that such home occupations have changed in recent times, and that one or more ordinances that set such definition and limitations on that phrase "Customary Home Occupation" as to permit the governmental agencies as well as the citizens of Bay Village to understand what is and what is not permitted, and, secondly that Council be requested to issue a moratorium on the execution of the violation found against Mr. Bennet for six months or the earlier of six months from tonight or action to enact an ordinance by City Council, whichever comes first, and, that the request for a use variance by Mr. Bennet be tabled to a meeting the earlier of six months from tonight or action taken by Council in connection with Section 1141.04 (E).

Roll Call Vote: Yeas –Bruno, Burke, Campbell, Dostal, Norton, Taylor
Nays – No.

Motion carried 6-1.

**Linda Battist
24811 Sunset Rd.**

C.O. 1145.02 (C) to construct an arbor

Mr. Norton stated that the Board has had an opportunity to review the application and visit the property. A representative of the Pattie Group was present on behalf of Linda Battist.

Motion by Dostal, second by Tyo, to grant a special permit to Linda Battist, 24811 Sunset Road, in accordance with Codified Ordinance 1145.02 (C) for the construction of an arbor in the rear yard per the plans submitted.

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

Motion carried 7-0.

**Stephen and Melissa Wank
24860 Sunset Rd.**

**C.O. 1153.04 (A) Clarification of
Variance Granted 5/21/15 for two-
story deck – clarification related to
wall on the west side of the deck**

Mr. Norton stated that the Board has had an opportunity to review the application and visit the property.

Mr. Norton notified Mr. Wank’s architect, Stephen Schill, that SAFEbuilt, Inc., who functions at the City of Bay Village Building Department, has no construction drawings related to the deck.

Mr. Schill stated that there was something he prepared for the builder when there was a problem with the gas well. An email from John Cheatham, Chief Building Official, dated October 27, 2015 was shown by Mr. Wank, stating, that “The roof is ok, I need plans from Steve to add to the original plans. No walls are allowed unless a variance is granted which is unlikely.”

Mr. Schill stated that the plans were completed but he does not have a copy of them with him tonight. Mr. Norton suggested holding this request in abeyance until all the proper paperwork is presented.

Further discussion followed. The minutes of a meeting held May 21, 2015 were provided to the Board of Zoning Appeals to review previous approval given to this project as follows:

“Architect for the Wank’s, Mr. Stephen Schill presented a colored drawing of what is being proposed for the allotment on Sunset Drive. The darker green areas on the drawing are the areas that are projecting into the rear yard setback. The larger, shaded green areas are an elevated deck proposed off the back of the house for outdoor living space. The neighbor immediately to the east has a rear, elevated deck, as shown in photographs provided by Mr. Schill. Both homes are built directly on the property lines.

Mr. Norton noted that the lots in this area are unique in that they once were cottage lots that have now become home lots. The area has many unique building situations that have occurred to accommodate those lots. The elevated deck will remain open underneath.

Further review and discussion followed. Mr. Burke expressed concern about the deck going so far back because the other house is so close to the property. The deck on the second floor will be looking right into the windows of the neighboring property. Mr. Tyo noted that this is the uniqueness of the neighborhood. Mr. Norton suggested that because there are multiple areas and the dimensions vary with the angle back, a motion for approval include the date of the drawing which show clearly the setbacks.

Motion by Burke, second by Dostal, to approve a variance to the property at 24860 Sunset Drive from the rear setback requirements of Codified Ordinance 1153.04 for the construction of a home and a two story deck, provided that the variance shall be limited only to those areas shown in need of such variance on the drawing submitted with the application, the drawing being numbered SB 1 dated May 1, 2015, and revised May 5, 2015, and further provided that the deck shall at no time be enclosed either on the main level or second floor, and that the fencing around the deck shall be of an open design, all as approved by the Building Department.”

Mr. Norton noted that a roof would change the whole nature of the deck. Further information and a drawing will be needed before this matter is settled. Information will be sought from John Cheatham, Chief Building Official, SAFEbuilt, Inc.

Motion by Bruno, second by Campbell, to table the matter of Stephen and Melissa Wank, 24860 Sunset until the next meeting of the Board of Zoning Appeals, to review further paperwork and confirmation of drawings.

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

Motion carried 7-0.

Sara Block
27111 Midland Road

C.O. 1149.01 Build Utility Shed to
be placed approximately 4 feet from house

Mr. Norton stated that the Board has had an opportunity to review the application and visit the property. Mr. Norton noted that the lot is tight and it will require that the interior of the shed be clad with fire rated drywall, as approved by the Fire Department with the time burn factor the Fire Department will request.

Motion by Campbell, second by Tyo, to permit a variance to the property at 27111 Midland Road, to Codified Ordinance 1149.01 for the construction of a utility shed to be placed approximately 4 feet from the house, per the plans and illustration submitted, and that the shed be constructed with interior-clad fire rated drywall as approved by the Fire Department and adherence to fire codes in the building structure. Mr. Fillar of SAFEbuilt, Inc., noted that the 2013 Residential Code of Ohio is followed for this construction. Mr. Campbell amended his motion to include this reference.

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

Motion carried 7-0.

**Colleen Connor
29727 Lincoln Road**

C.O. 1145.02 (C) to construct an arbor

Mr. Norton stated that the Board has had an opportunity to review the application and visit the property.

Motion by Bruno, second by Burke to grant a special use permit to Codified Ordinance 1145.02 (C) to the property at 29727 Lincoln Road to construct an arbor per the plans and illustration submitted to the Board of Zoning Appeals.

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

Motion carried 7-0.

The meeting adjourned at 8:52 p.m.

Jack Norton, Chairman

Joan Kemper, Secretary