

Minutes of a Meeting of  
BOARD OF ZONING APPEALS  
Held September 17, 2015

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

Excused: Mr. Bruno, Mr. Campbell

Audience: Carol Schneider, Kurt Van Gunten, Michael Kaczka, Jeffrey Barker

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 Tyo, to approve the minutes of the meeting held August 20, 2015 as prepared and distributed. **Motion passed 5-0.**

**Kurt Van Gunten**  
**415 Dover Center Road**

**C.O. 1163.05(H) Additional 2 feet**  
**above 6 ft., 4 inch fence height**

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

Mr. Burke asked the zoning of the Van Gunten property. Mr. Cheatham advised that the property at 415 Dover Center Road is zoned Office/Apartment. Mr. Van Gunten has residential use of the property, grandfathered in. Mr. Norton stated that under the current laws, the adjoining School Board property is considered Commercial. The neighboring properties, the bank and the office building are Commercial properties. Mr. Van Gunten stated that he is not sure the bank is zoned Commercial. He believes the bank is zoned Office/Apartment. Mr. Cheatham agreed, but noted that Office/Apartment is a Commercial zoning. Mr. Norton stated that the School Board is obligated to shield to a Residential Zoning, but not to a Commercial (Office/Apartment) Zoning. There is no obligation on the School Board's part to screen their property to the bank or office building. Mr. Cheatham stated that this would be a technicality Law Director Ebert would have to address. As long as it is offices and businesses, the answer is no. But, once you have apartments with residential use, the answer becomes yes. Mr. Norton responded that this would mean that as long as it is zoned Apartment the School Board is obligated to shield that potential use. Mr. Cheatham responded affirmatively. It is reasonable to say that the School Board has an obligation to provide screening. Mr. Taylor noted that there is a closed fence, facing the homes, on Normandy Road facing the school that he is sure the School Board installed.

Mr. Cheatham stated that SAFEbuilt, Inc., in the past has adjudicated the School Board for screening issues. The rule for the School is that they have to have a certain amount of fence and a certain amount of natural plantings (living fence) that they are required to buffer against Mr. Van

Gunten's property. Superintendent of Schools Keener was at the August 20, 2015 meeting of the Board of Zoning Appeals to ask for a variance to install a continual wood-on-wood fence, 6 feet high, to fulfill his requirement and obligation to buffer. However, because of the dip in the ground, Mr. Van Gunten has said that 6 feet in height is not going to be enough, and would only give a 4 foot buffering. Mr. Van Gunten had asked for the School Board to install an 8 foot high fence. Mr. Keener denied the request. Mr. Van Gunten is asking tonight to put his own fence up, 8 feet high. Mr. Van Gunten advised that the School Board is obligated for 80% opacity from top to bottom and point of contact on each side.

Mr. Taylor asked who is responsible for the change of the grading of the School Board property. Mr. Van Gunten advised that this change in grading caused flooding and sinking to his property.

Mr. Burke asked Mr. Van Gunten if he has a good estimate of how much that ground on his side of the fence has sunk. Mr. Van Gunten estimated that it has sunk at least one-half foot.

Mr. Van Gunten explained the difficulties he is having with the pedestrian traffic behind his home due to the lack of buffering. He stated that even though he is asking for an 8 foot fence, a 10 foot fence would give him the privacy he needs due to all of the traffic behind his home.

Mr. Burke asked how many feet there are on the eastern side of the fence that is there now before the land comes up to the level of the asphalt. Mr. Norton stated that it is approximately 50 to 60 feet before it rises up about two feet and becomes the back of the Normandy School. When the addition to Normandy School was built, it was built so that the floor level joined the existing building. They did not want steps or a ramp in the corridor between the existing wing of Normandy School where it ended, and the additional classrooms added. Mr. Cheatham noted that this was reviewed and approved by CT Consultants, the city engineer. The City Planning Commission also approved these plans.

Mr. Taylor asked if topography is reviewed with these larger projects. Mr. Cheatham stated that the city engineer, who in this case is CT Consultants, reviews the topography. They make site visits and they completely check the topography. Sometimes what they approve, the reality isn't always the greatest result.

Mr. Tyo asked if this is causing draining in Mr. Van Gunten's yard that was not there before. Mr. Van Gunten responded affirmatively. He reiterated his complaint about continuous pedestrian traffic behind his home now that the area is paved.

Mr. Burke stated that what is troubling to him is that the citizen is coming forth and is willing to put in and pay for a fence to buffer his property. It seems that the School Board is being relieved of their obligation in this matter. Mr. Van Gunten stated that the School Board has offered to pay for half of the fence.

Mr. Tyo noted that this fence will not rectify the problem of drainage. If the drainage was taken care of, that would limit the height that Mr. Van Gunten would have to request for a fence. Mr. Van Gunten stated that the height requested would still be needed.

Mr. Norton asked Mr. Cheatham if the School Board is aware that they have to resolve this matter with the City. Mr. Cheatham stated that Superintendent of Schools Keener has spoken with Law Director Ebert and the School Board has agreed to put in a solid fence but not to increase the height of the fence. Mr. Van Gunten was informed by Mr. Keener that if Mr. Van Gunten wants a higher fence, he would have to install it but the School Board would pay for half of the fence. Mr. Cheatham stated that if this variance request by Mr. Van Gunten fails, SAFEbuilt, Inc. will go back to the School Board.

Mr. Burke stated that the reconfiguration of the elevation was caused by dirt added by the School Board. Mr. Van Gunten responded affirmatively. Mr. Burke asked Mr. Cheatham if the School Board should be required to put a swale in between the asphalt and near the fence to carry some of the drainage that is coming off the asphalt, raise up the dirt along there, and put a 6 ft. fence, which, if you raised the dirt, would bring it up higher to protect Mr. Van Gunten's property. Mr. Cheatham stated that he would have to confer with Law Director Ebert on that suggestion. He acknowledged that there is a City ordinance that requires that property's water cannot drain on the neighboring property. There is also specific language about impervious areas such as a parking lot. They could take action to require the School Board to regrade their property and install drains and swales. Mr. Cheatham stated that this will take time. SAFEbuilt, Inc., would first have to write an order. The School Board would have thirty days to respond. They would have to hire an engineer to design and submit for approval. This could easily go into next spring.

Mr. Tyo noted that if the grade had not been changed Mr. Van Gunten would not be here tonight. Mr. Cheatham agreed. If this variance request fails this evening, Mr. Cheatham will go back to the School Board and let them know that the buffering must be fixed. The School Board would come back and ask for a variance for a solid fence, as opposed to planting/fence. Mr. Cheatham will address the drainage.

Mr. Cheatham noted that a year or two ago the School Board put in several drains through the wooded area trying to take care of some of the water problem. A month ago they put a drain on the west side of the property. They tied in some of these drains to the sewer system.

Mr. Norton noted that a fence above 6 feet in height is a visual obstacle. It would be allowed to stay there forever if a variance is granted. What has to be done is that the School Board has to be held accountable for the fact that this property and possibly the bank property are zoned for a use that requires the School Board to address that as buffering. And, at the same time address it as drainage. They must install the proper drainage, a swale, and raise it up so that they don't end up with an 8 ft. fence to protect it but they have a natural rise along the line so a 6 foot fence would suffice.

Mr. Norton continued, stated that a solution is being sought to hold the School Board accountable. They decided to keep the elevation of the floor so that they raised up the elevation. Now, they have to account for that and provide the buffering.

Mr. Taylor noted that ignoring the topography and allowing drainage on the neighboring property is not acceptable. This sounds very much like those circumstances.



occupancy inspection was done, the air conditioning unit was found. Mr. Cheatham noted that there is not an area behind the house for the unit. Mr. Barker was given a temporary occupancy permit, pending the approval of the variance requested.

Mr. Cheatham stated that he measured to the property line, and then measured the large shrubbery to the windows north of the unit. Mr. Burke discussed the actual lot line with Mr. Cheatham. Mr. Cheatham acknowledged that Mr. Barkers unit is 3 feet from the lot line, but by measuring from the shrubs to the windows there is additional distance.

Mr. Norton noted a plan that was included with the application. The drawings were approved by the Building Department. Mr. Norton stated that the Building Department should have noted that this was out of compliance. Mr. Barker stated that the plan was not on the topography plan that Mr. Cheatham reviewed; it was on the house drawings only. He noted that his neighbor agreed to placement on the side. Both the east and west side neighbors do not want anything installed in the rear of the property.

Mr. Norton asked if the contractor who did the installation is licensed in the City. Mr. Cheatham stated that he is licensed. Mr. Norton noted that the contractor should have known that a variance would be required for the installation. The contractor should be notified by SAFEbuilt, Inc. that he will not be allowed to create this type of situation again for the homeowner. Mr. Taylor noted that this type of infraction has occurred frequently.

Mr. Burke noted that this home appears to be 7 feet from the lot line. He asked if there is a 10 foot requirement. Mr. Cheatham stated that on that particular lot the sideyards are to be 30% of the width of the lot. Mr. Barker has a 50 foot lot, 15% of that is 15 feet. He has 6 feet on one side and 9 feet on the other side. He did not need any variances on the home.

Mr. Norton noted that the unit has a low decibel rating. He recommended that it be screened from view.

**Motion by Dostal**, second by Burke, that a variance of 7 feet on the west side of the property located at 27238 Lake Road be granted, pertaining to Codified Ordinance No. 1359.01, Placement of an Air Conditioning Unit. Vegetation and year around screening must be provided around the unit.

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

**Motion carried 5-0.**

Prior to adjournment, Mr. Norton stated that the fence by the sidewalk to the north of the **Van Gunten property** is set back 10 feet from the property, in compliance with the ordinance. However, it also has to be 20 feet from the front property line, and it is only 10 feet from the property line, in accordance with C.O. 1363.05 (B1). Mr. Cheatham noted that this is a buffering regulation. He asked when a fence becomes buffering on a residential property. Mr. Van Gunten is not required to buffer, so the installation is a fence.

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Mr. Norton noted that the fencing requirement to be back from a sidewalk is for visual safety.

Mr. Cheatham advised that technically Mr. Van Gunten is legal with the fence installation, even though it is not aesthetically attractive.

There being no further items to review, the meeting adjourned at 8:30 p.m.

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Jack Norton, Chairman

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Joan Kemper, Secretary