

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

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

Excused: Mr. Taylor

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

Audience: Paul Zagaria, Clifton L. Bennet, Melissa Wank, Chris Nowak, Isabella Bruno, Councilman David L. Tadych, Ward 1

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 Bruno, to approve the minutes of the meeting held December 3, 2015 as prepared and distributed. **Motion passed 6-0.**

Clifton L. Bennet
26721 Normandy

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

Mr. Norton 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. Norton advised further that this matter was referred to the Bay Village City Council on December 3, 2015 for input from the elected officials.

A memorandum from Gary Ebert, Director of Law, dated December 8, 2015, was read as follows:

“The above matter was discussed briefly at City Council Monday (December 7, 2015) night and Council’s opinion is that the matter should not be entertained by Council during the pendency of a matter before the Board of Zoning Appeals. They do not plan to introduce a moratorium and any discussion concerning the review of Section 1141.04 E will be a matter they will review in committee sometime in 2016. Therefore, the current matter pending on behalf of Mr. Bennet should be addressed at the next Board of Zoning Appeals meeting.”

Mr. Burke stated that from his own view point he is opposed to any use variance in this situation because he does not believe that the application for the use variance meets the conditions for granting the use variance.

Mr. Burke reiterated the thoughts expressed at the December 3, 2015 meeting of the Board of Zoning Appeals as follows: “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 continued, stating that he has put together a list of the conditions that would be considered in granting a use variance.

1. The applicant, Clifton Bennet, shall remain a full time resident of the property and at all times be the person actually conducting the dog hosting business. Should the applicant no longer reside on and/or own the property or fail to conduct the business continuously for more than 120 days, the use variance shall lapse and shall no longer apply to the property.
2. The applicant shall not have any employees assisting in the conduct of the business.
3. No sales of goods or products shall be conducted on the property.
4. At no time shall the number of dogs on the property, including dogs owned by the applicant, members of the applicant’s family or other persons residing at the property, exceed five (5). *(This number was deemed acceptable by the Board and Mr. Bennet after considerable discussion by the Board)*
5. No interior or exterior signage or advertising, whether designating or otherwise describing the business, shall at any time be placed on the property where it shall be visible from the exterior of the house.
6. Except as otherwise granted by this use variance, at all times the applicant shall conduct the business and maintain the property in compliance with all applicable federal, state, county and local statues, ordinances, laws and governmental rules and regulations.
7. The yards of the property shall be cleaned daily and devoid of noxious odors.
8. At all times except when walking or exercising the dog(s), the business shall be conducted inside the house on the property and not in the garage or any other outbuildings.

9. The business shall be limited to boarding dogs. No other services (e.g. grooming, bathing, etc.) shall be provided unless necessary for the health of the dog while it is in the custody of the applicant.

10. In the event of an emergency which necessitate the removal of a dog from the property or any significant absence of the applicant from the property, the applicant shall make immediate arrangements for the removal of the dogs being hosted there.

Further discussion by the Board followed.

Mr. Campbell asked if this could be a renewable variance. Mr. Norton advised the difficulty with that approach since there is no mechanism in place for reasonable review. When Council addresses the matter, they will have to deal with issuing a license for an in-home business with certain caveats.

Lengthy discussion ensued. Councilman Tadych relayed that when the matter came before the City Council, Council decided that when a request is pending before the Board is not the time to consider a review of the ordinance.

Mr. Tyo stated that the biggest problem he sees is that he knows from speaking with the Law Department that there are other people waiting to see what happens with this case. Most special permits and appeals that the Board of Zoning Appeals get are for things that are static, such as a gate or second floor balcony. Today's dogs, and the dogs that Mr. Bennet has tomorrow are going to change every single day. One barking dog would be more upsetting to neighbors than ten quiet and obedient dogs. The next person that comes before the Board might not have dog sitting, but might be making firecrackers in their basement or some other type of home business. A precedent is very dangerous to this Board and to the City, and to the codes that Council has set. We have the issue of if it does pass what Mr. Bennet will have to abide by. The problem I have is what about precedent for things such as people that make fudge for Christmas.

Mr. Bruno stated that caring of either children or seniors, or in this case pets, is something extremely unique. The Board of Zoning Appeals is an enforcement board, as opposed to a legislative board, which is why we recommended that Council address the situation. Mr. Bruno stated that he still stands on that position.

Mr. John Cheatham, Chief Building Official of SAFEbuilt, Inc. stated that he has had a formal, verbal application to do the same thing on Wolf Road. Mr. Cheatham advised the person to wait until the issue had been decided before submitting to the process for a variance.

Mr. Tyo stated that he knows that a good deal of people operate cottage businesses under the radar in Bay Village (eBay auction sellers, sewing, motorcycle repair, babysitting, picture framing, etc.) and that allowing one to legally operate could open a Pandora's Box with regard to future Board of Zoning Appeals case types. As it is the Board of Zoning Appeal's obligation to entertain these requests, voting in favor of Mr. Bennett could potentially add scores of similar requests that would land on our docket. Further, the Board of Zoning Appeals meets throughout the year as opposed to an abbreviated eight or nine month schedule. Thus, allowing this request to move forward with

a favorable vote could easily necessitate Board of Zoning Appeals members meet with, and interview, applicants proposing any businesses that would possibly lead to noise, safety issues, traffic, parking and other concerns. Further, Council replied that it would be unlikely this issue could be reviewed and acted upon until later in 2016.

It was **MOVED** BY Burke, second by Dostal that the property at 26721 Normandy Road be granted a use variance for conducting a dog hosting business as described in the application filed by Mr. Clifton Bennet, the owner of the property, upon the following conditions:

1. The applicant, Clifton Bennet, shall remain a full time resident of the property and at all times be the person actually conducting the dog hosting business. Should the applicant no longer reside on and/or own the property or fail to conduct the business continuously for more than 120 days, the use variance shall lapse and shall no longer apply to the property.
2. The applicant shall not have any employees assisting in the conduct of the business.
3. No sales of goods or products shall be conducted on the property.
4. At no time shall the number of dogs on the property, including dogs owned by the applicant, members of the applicant's family or other persons residing at the property, exceed five (5). *(This number was deemed acceptable by the Board and Mr. Bennet after considerable discussion by the Board)*
5. No interior or exterior signage or advertising, whether designating or otherwise describing the business, shall at any time be placed on the property where it shall be visible from the exterior of the house.
6. Except as otherwise granted by this use variance, at all times the applicant shall conduct the business and maintain the property in compliance with all applicable federal, state, county and local statues, ordinances, laws and governmental rules and regulations.
7. The yards of the property shall be cleaned daily and devoid of noxious odors.
8. At all times except when walking or exercising the dog(s), the business shall be conducted inside the house on the property and not in the garage or any other outbuildings.
9. The business shall be limited to boarding dogs. No other services (e.g. grooming, bathing, etc.) shall be provided unless necessary for the health of the dog while it is in the custody of the applicant.
10. In the event of an emergency which necessitate the removal of a dog from the property or any significant absence of the applicant from the property, the applicant shall make immediate arrangements for the removal of the dogs being hosted there.

Roll Call Vote: Yeas –Campbell, Norton
Nays – Bruno, Burke, Dostal, Tyo

Motion failed 2 yeas, 4 nays.

**Chris Nowak
546 Lake Forest Rd.**

**Porch and Sidewalk Issues
Appeal of Adjudication**

Mr. Burke recused himself from consideration of this application.

Mr. Norton advised that the Board has had an opportunity to visit the site and review the application. Based on Findings of Fact regarding workmanship at 546 Lake Forest Drive, John Cheatham, Chief Building Official, has ordered the following:

1. Remove the steps tread and sidewalk.
2. Call for a footing inspection prior to commencing construction of the stoop.
3. Call for a pre-pour inspection of the sidewalk.
4. Construct the entire project to the 2013 RCO applicable codes and ACI 318 standards.

The contractor, Paul Zagaria, dba Paul Zagaria Masonry, is appealing the adjudication order of SAFEbuilt, Inc. Mr. Zagaria's original work order, dated July 29, 2015 was to 1) tear out and replace the face brick on the front porch and steps; 2) tear out and replace the front sidewalk leading from the driveway to the front steps.

Mr. Norton stated that the matter will be broken down into two different areas. One area will be the driveway and the approach steps. The second area is the porch and steps separately.

The Building Commissioner has issued an order to the contractor to replace the steps and porch as well as the sidewalk.

Mr. Norton stated that the difficulty he has with the Building Commissioner's ruling is that the homeowner, Chris Nowak, decided not to replace the porch surface, which is a poured concrete deck because that would add a considerable amount of expense to the project. The homeowner further decided not to replace the steps themselves, the flagstone treads, because it would involve extra expense. To complicate it further, the railing system, rather than simply being bolted on, was poured in place so that the railing system is part and parcel with the porch. Ms. Nowak agreed that the surface, steps, and railing system not be part of the contract.

Ms. Nowak stated that the contractor suggested that, she agreed to it, and thought it would be a wonderful finished product. Mr. Norton stated that because of that, the contractor was forced to work around the fact that the first step is greater than what is normally required, and the second step is less than what is normally required. The normal requirement for steps is that the rise is uniform, and within a certain dimensional relationship, both level and a 3/8 variation in the amount of rise. In this case, those were existing conditions because those were not moved. The Building Commissioner also questioned the workmanship involved in the mortar joints, and the fact that the

cap bricks on the end of the steps were not solid bricks but were bricks with the normal mortar holes in them so they were not aesthetically proper as might be done normally. It would seem that the order to replace the stoop and the steps stands, those things have never even been quoted to the homeowner, and the homeowner would be forced to accept a very substantial additional cost. It must be decided by the Board if the order to replace those is perhaps not reasonable and perhaps should be overturned.

The second issue then becomes the sidewalk. Everyone on the Board has examined this carefully and the details of the walk seem to leave a lot to be desired. The spotting near the driveway, particularly, is very obvious and is not normal to new cement construction, and neither is some of the framing and some of the finishing characteristics.

Mr. Norton called for further discussion. Mr. Bruno stated that he is in agreement with the comments of Mr. Norton.

Mr. Norton stated that the one possibility is to overrule the determination of the Building Commissioner regarding the porch and the steps, but to uphold his order as to the walkway. The contractor and homeowner are both present this evening.

Chris Nowak, the homeowner, stated that it was her understanding that the contractor was going to remove the treads, hopefully not breaking them, and everything would stack up evenly. The contractor never let Ms. Nowak know that he couldn't remove the treads.

Mr. Norton stated that if the treads had been removed to reconfigure them, it appears that might have disturbed the railing support. Ms. Nowak stated this was not discussed.

Further discussion followed. Mr. Tyo discussed at length with Mr. Zagaria, the details of the cement construction at the project site. Mr. Tyo examined the report of the cement truck driver which indicates the mix ratio and the amount of water that was added after the fact. Mr. Norton stated that the white drops all over the cement would normally not been part of a finished concrete project. Mr. Zagaria noted that the city inspector visited the site for a pre-pour inspection. Sealcoat was applied after the construction. He noted that cement in the process of curing will have spotting and different colors.

Mr. Norton noted that he would agree with Mr. Cheatham's ruling in regard to the sidewalk being less than what is required as far as workmanship. Mr. Norton would disagree as far as the steps, noting that Mr. Zagaria made the best he could out of an existing negative condition which he was not paid to remedy. Both the stoop and steps were existing and the railing complicated it. Mr. Norton stated that he can understand the homeowner not wanting to spend a great deal of money to try to get the step risers even. Mr. Bruno expressed agreement with Mr. Norton's comments.

Mr. Cheatham stated that he is faulting the brick work on the steps. He also mentioned the riser heights as a hazard to anyone going up and down, and Mr. Zagaria should have insisted as a contractor that condition be fixed.

Lengthy discussion followed. Mr. Norton asked Ms. Nowak if it would be reasonable for her to pay for a change in the risers to that the steps would become level. Ms. Nowak agreed. Mr. Norton noted that replacing the steps can be done without ruining the railing system.

Mr. Norton stated that if the homeowner is agreeable to get the rise equalized in the steps and get the level of the two steps fixed that is an area where there might be some compromise.

In regard to the sidewalk, Mr. Tyo noted that he has had a concrete company for thirty years which qualifies him to make the following comments. There is one bulge in the third section of the sidewalk that is very common. There is a lot of weight in concrete in water and aggregate and it is up against plywood. Once you form it and pour the concrete in, there is not a whole lot that can be done. The opposite side that should be parallel is very straight. Ms. Nowak stated that she felt that all the streaking and discoloration was nothing she had seen before. The first block off the driveway is a half inch over from the rest of the walk.

MOTION by Tyo, second by Dostal, to uphold the adjudication order of October 16, 2015, of John Cheatham, Chief Building Official of SAFEbuilt, Inc. with the following changes:

1. Move the steps and treads and replace.
2. Call for a footing inspection prior to commencing construction.
3. Construct the entire project to the 2013 RCO applicable codes and ACI 318 standards by the Bay Village Building Department.
4. The owner to pay \$300 for new step treads.
5. The sidewalk be inspected prior to July 31, 2016 and approved by the Building Department.

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

Motion carried 5-0.

Mr. Bruno left the meeting at this time after being excused by the Board.

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. This matter had been tabled from the December 3, 2015 meeting of the Board, at which time, 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. 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.”

The matter was discussed by Mrs. Wank and the Board of Zoning Appeals. Mr. Norton noted that there was previous discussion about moving the steps when building into the backyard setback, and that the railings be a see-through open approach so that the railing system did not present a visual barrier. There was a question about the original presentation having a roof. The question of whether there was a roof or not, can now come off the table. Discussion now is about the fully enclosed wall, and the request before the Board is to leave it fully enclosed, or to leave the bottom half enclosed. That is where the discussion needs to center.

Mr. Schill presented drawings for the Board to review. Further discussion followed. Mr. Schill and Mrs. Wank stated that the motivation to enclose the wall was to hide the view of the rear of the appliances on the deck.

Mr. Burke stated that the resolution that was passed on May 21, 2015, specifically referenced Drawing SB1 dated May 1, 2015, revised May 5, 2015. He asked if Drawing SB1 can be presented to the Board. Mr. Schill stated that he will bring the drawing to the Board on January 7, 2016. Mr. Burke noted that an elevation drawing is required for further study. Mr. Norton noted that the entire thrust of the discussion and the motion on May 21, 2015 was that the Board wanted to keep the view opened. It was clear that that there should not be a wall, and the railing had to be a see-through railing. The whole intention of giving a variance to allow to build into the rear yard setback was predicated on the idea that there not be a visual barrier. Then the contractor built a total visual barrier, in clear violation of the whole premise of the variance. The variance is very clear that what was done was not supposed to be done.

The matter will be tabled until January 7, 2016.

The meeting adjourned at 9:52 p.m.

Jack Norton, Chairman

Joan Kemper, Secretary