

Minutes of a Meeting of
BOARD OF ZONING APPEALS
Held November 5, 2015

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

Excused: Mr. Bruno

Also Present: Law Director Ebert

Audience: Gene Barry, Jeff Fillar, SAFEbuilt, Inc.

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 Taylor, to approve the minutes of the meeting held October 1, 2015 as prepared and distributed. **Motion passed 6-0.**

Clifton L. Bennett
26721 Normandy

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

Mr. Norton advised that the Board has had an opportunity to visit the site and view the application, and the issue has been discussed at the October 1, 2015 meeting. One of the questions that came out of that meeting was an inquiry with the Police Department regarding their procedure for barking dog complaints. A letter has been received from the Chief of Police and is attached to these minutes as if fully incorporated herein. Mr. Norton noted that it is a matter of the degree of violation. If a dog is barking all the time for no reason, it is taken more seriously than if it is an occasional barking.

Mr. Norton stated further that the Board of Zoning Appeals must consider the degree to which this business is conducted, rather than just declaring that it is not a home occupation. Mr. Burke stated that the first issue is if it is determined it is a customary home occupation, nothing further needs to be done by the Board of Zoning Appeals. If the Board of Zoning Appeals finds that it is not a customary home occupation, it becomes an application for a use variance to permit the use.

Law Director Ebert read a fax received from a United Parcel Service Store telephone line, signed as "Residents that wish to remain anonymous, Normandy Road, Bay Village, Ohio," asking several questions as to the legality of conducting such a business in his home, and stating that "Normandy Avenue in Bay Village is not designated business district and the amount of animals we witness and other traffic going in and out of 26721 Normandy, Bay Village, Ohio is questionable and

greatly concerning for the safety of our street and value of our homes.” The fax is attached to these minutes as if fully incorporated herein.

Mr. Ebert stated further that this type of business has never before been conducted within the City of Bay Village. The intent of this code was for business that did not promote a lot of traffic, noise, or impact to the neighbors. Customarily, the law has been used to allow the practice of professionals such as doctors, attorneys, or accounts from their homes. From a legal standpoint the dog hosting business does not fit the description of a customary practice of a business in a home.

Mr. Ebert noted that Mr. Bennett has stated that he has a number of commitments made through December for caring for dogs in his home. Mr. Ebert suggested that Mr. Bennett be permitted to carry on his practice until January 1, 2016 at which time it would no longer be permitted.

Mr. Ebert noted that there is not a limit in the City of Bay Village ordinance on the number of animals that are permitted in a resident’s home as pets. The issue is whether it becomes a public nuisance, and is a violation of the public nuisance ordinance of the City.

Mr. Burke stated that a customary home occupation has been described in his findings through researching the topic and is something that has traditionally been practiced within the City, such as a physician. Secondly, it has to be incidental to the use of the property as a residence. Thirdly, it must not be a business. Case law seems to make a distinction between a business and occupation. Mr. Burke expressed that he thinks when you are operating from the residence on an on-going basis with people coming and going, the issue of whether it is a business or occupation has to be considered.

The question this evening is “Is it a customary home occupation as referenced in the code?” If so, no variance is needed. If it is determined that it is not a customary home occupation, then the Board would consider a use variance.

Mr. Burke continued, stating that the activity fits the definition of “kennel” because it is a place for the keeping of dogs, whether daytime or overnight.

Mr. Norton questioned the use of a home for child-care. Mr. Ebert stated that State licensing is required for child day-care.

Mr. Norton questioned using the quantity or number of dogs being cared for at one time as being part of the reasoning in determining whether this is a business or home occupation. Mr. Burke stated that he thought this would come into consideration when considering a use variance.

Mr. Burke stated further that if the Board of Zoning Appeals qualifies this activity as a customary home occupation, the Board of Zoning Appeals would be legislating, which is the right of only the City Council. If the Board of Zoning Appeals determines it is not a home occupation, then a use variance would be considered by the Board. Restrictions could be placed on that use variance for this application, which could also be applied to similar use variances to address the question of a precedent.

Mr. Tyo expressed his concern about noise from barking dogs, and the Board of Zoning Appeals establishing a precedent in allowing this activity.

Mr. Norton commented that his concern is that the Board of Zoning Appeals be reasonable enough that they let the residents do reasonable things.

Mr. Fillar from SAFEbuilt, Inc., noted that a use variance may be fall under the jurisdiction of the Planning Commission, rather than the Board of Zoning Appeals.

Mr. Burke suggested that the Board of Zoning Appeals first make a determination of fact. Is this, or is this not, a customary home occupation. If the finding of fact is “yeas” that is the end of the discussion. If the finding is “no”, it is not a customary home occupation, the Board would entertain the request for a use variance.

Motion by Burke, second by Dostal, that the Board of Zoning Appeals find as a matter of fact, based on the submissions of the applicant and the evidence presented both at the October 1, 2015 meeting and this evening’s meeting, that the use described by the applicant is a customary home occupation as that term is used in the Codified Ordinances of the City of Bay Village.

Discussion followed as to who would define the word “customary.”

Roll Call Vote: Yeas - None

Nays – Norton, Burke, Campbell, Dostal, Taylor, Tyo.

Motion failed. 0-7.

Mr. Burke stated that the Board of Zoning Appeals would now consider a use variance for this dog hosting activity application by Mr. Bennett. Mr. Burke explained that there are two types of variances. One is an area variance, and this particular request is for a use variance. A use variance must show that it would be economically unfeasible not to permit the variance. It is a more difficult burden of proof. Secondly, the Board must determine if there should be conditions attached to the variance. The variance must stem from a condition that is unique to the property. Secondly a hardship condition is not created by the actions of the applicant. Third, the granting of the variance will not adversely affect the rights of adjacent property owners. Fourth, the granting of the variance will not adversely affect the public health, safety and general welfare. The variance will be consistent with the general spirit and intent of the zoning code. The variance sought is the minimum which will afford relief to the applicant. There is no other economically viable use permitted in the zoning district. Mr. Ebert stated that the use variance, if granted, would be for the applicant, and not for the property. If neighbor complaints escalate, the question remains if the Police Department would be able to request the use variance be revoked.

Further discussion followed.

Motion by Burke, second by Bruno to table the matter of the Dog Hosting Business in the home of Clifton L. Bennet, 26721 Normandy Road, until December 3, 2015, to permit further review by the Director of Law as to the question of the consideration of a use variance for this application.

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

Motion carried 6-0.

**Gene Barry
31418 Lake Road**

**C.O. 1153.02 Front Yard Setback
for Utility Room Addition**

Mr. Norton advised that the Board has had an opportunity to visit the site and view the application. Mr. Barry commented that the front yard setback is for the garage. The Building Department application does indicate “utility room,” however the application does say “garage.”

Mr. Burke stated that this is a request for a 40% setback variance. Law Director Ebert stated that he has had research done regarding the Eagle Cliff Allotment to the rear of the home. Originally the allotment consisted of 41 lots. Mr. Ebert noted that sheds and decks to the rear of homes have been built on this allotment. The allotment does not have a Permanent Parcel Number, which is why there are no taxes being imposed by the county. Theoretically, Mr. Barry could put a garage behind his property.

Considerable review and discussion followed. Mr. Barry presented photographs of adjoining properties with setbacks similar to that which he is seeking.

Comparison to property nearby known as the Ahern property on Lake Road was discussed. Mr. Norton noted that the variance granted in that case was a very minor variance. The Ahern property is unique in that it drops off significantly in the rear toward the lake.

Mr. Barry explained that he needs the variance due to the fact that he cannot completely open the door in the front of his property. Mr. Burke asked if Mr. Barry has consider having a carpenter come in and make that adjustment. Mr. Burke stated that as far as the neighboring homes, he has not seen any evidence that the Board of Zoning Appeals has granted variances to those properties in the substantial amount Mr. Barry is requesting.

Mr. Norton stated that a variance was originally granted for the garage, noting the importance of having a garage and the difficulties in the rear due to the Eagle Cliff Allotment. The Board took this step in spite of the fact that the lot is very over-built. Now, Mr. Barry is requesting a variance on the other side of the home to increase storage and solve a door problem. The Board is concluding that these are not good enough reasons to go against the ordinance and grant another variance.

Further discussion followed.

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Motion by Burke, second by Tyo that the property located at 31418 Lake Road be granted a 20-foot variance from the 50-foot front setback requirements of Codified Ordinance 1153.02 for the construction of an addition to the structure as described in the plans and specifications submitted with the application.

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

Motion failed 2-4.

Mr. Norton asked the Board of Zoning Appeals members to discuss the situation between the Board of Education and Kurt Van Gunten on Dover Center Road. This has come up before the Board in the past, and assistance in the matter is requested from Law Director Ebert. A letter has been received from Mr. Clint Keener, Superintendent of Schools, dated October 14, 2015 regarding measures taken for screening to the neighboring property of Mr. Van Gunten, and is attached to these minutes as if fully incorporated herein.

Law Director Ebert stated that the last time this matter was presented to the Board of Zoning Appeals there was not an application by the Board of Education submitted. In the letter dated October 14, Superintendent Keener advises that the Board of Education is willing to submit the application for a variance to Section 1165.05 and seek approval of a 6 ft. fence, or plant new, larger vegetation that is conforming. Mr. Van Gunten would like an 8 ft. fence.

The matter will be reviewed at the meeting to be held November 19, 2015.

The meeting adjourned at 9:30 p.m.

Jack Norton, Chairman

Joan Kemper, Secretary