

Minutes of a Meeting of  
BOARD OF ZONING APPEALS  
Held July 21, 2016

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

Excused: Mr. Bruno

Also Present: Jeff Grassi, SAFEbuilt, Inc., John Cheatham, SAFEbuilt, Inc.  
Law Director Ebert, Councilman Dave Tadych, Councilman Marty Mace

Audience: Dick Majewski, Daniel J. Klonk, Chris Hartzell, Matt Saal, Richard McLendon Douglas and Joni Norris, Jane Miller, Kit Newell, Mark Chernisky, Ken Balazs, Paul and Cindy Moffat, Eric and Barb Fuist, Dominic Vannucci, Ed Pavicic, Steve Wank, Lydia DeGeorge, Kevin Moriarity, Greg and Sue Goray, Terese and Mark Galinas, Mike Fawcett, Paul Sutherland, John and Kris Meaux, Sean and Rachel Meany, Jim and Laura Gerace, Kristin Duprey, Gordon and Marie Hess.

Chairman Norton called the meeting to order at 7:30 p.m.

**Motion** by Dostal, second by Tyo, to approve the minutes of the meeting of the Board of Zoning Appeals held July 7, 2016 as prepared and distributed. **Motion passed 6-0.**

**Matt and Erin Francati**  
**24157 Lake Road**

**C.O. 1153.02 (2) and 1153.04**  
**Front and Back Setback Variances**

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

Mr. Burke asked if the front setback requirement of 50 feet has been confirmed. Mr. Norton stated that the 50-ft. setback for the property has been confirmed with the Building Department. He noted that the setback requirement along Lake Road varies. In some places the setback is as far back as 70 feet; in this case it is 50 feet on both sides of the street.

Mr. Norton stated that it might be noted that the request is for two tiny corners of the lot. The setback for the garage is for just one corner of the garage, and the same for the house. The request is quite small, and the way the lot is on an angle, the house was straightened out to work with the sideyard lines. Just a small corner of the garage and a tiny corner of the back crept over the allowed footprint.

**Motion** by Burke, second by Dostal that the property at 24157 Lake Road be granted a variance from the front setback requirements and the rear setback requirements of Codified Ordinances 1153.02 and 1153.04, but only to the extent as needed for the triangle shown at the southwest corner of the proposed building and the northeast corner of the proposed building; it be strictly understood that a variance for the front and the back is not intended to be granted for the entire width of the property.

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

**Motion carried 6-0.**

**Cynthia Moffat**  
**31452 Roberta Drive**

**C.O. 1149.02 – Shed Construction**  
**12 ft. x 14 ft. in rear yard**

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

Mr. Burke commented that the request seems minimal in that it is only asking for an additional two feet in each direction, but when you look at the square footage of the footprint proposed it is actually a 40% increase in what is allowable. Mr. Burke expressed concern because the request is more than minimal, and the farther the Board of Zoning Appeals gets away from minimal the more they are moving into the authority that belongs to the legislative authority of City Council.

There is also a concern of Mr. Burke on setting precedent with granting a request of an increase of 40 percent of footprint, even though the shed is in the back corner of the property. Mr. Tyo asked the reason for requesting two feet additional to the allowed size in each direction. Ms. Moffat stated that the purpose of the shed is to store yard equipment, deck furniture, and bicycles.

Further review and discussion followed. Mr. Taylor asked about the easement in the rear of the property. He was informed that it is a ten-foot easement for drainage. Mr. Taylor noted that one must be careful about building over the easement. Mr. Ebert noted that there are no footers on the building to be constructed.

Mr. Norton asked the Moffats if a two-foot variance in one direction only would satisfy their storage requirements. Mr. and Mrs. Moffat agreed to the compromise suggested.

**Motion** by Tyo, second by Burke that a two-foot variance be granted to the property at 31452 Robert Drive pertaining to Codified Ordinance 1149.02 to construct a shed with the dimensions of either 10 ft. by 14 ft. or 12 ft. by 12 ft.

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

**Motion carried 6-0.**

**Gregory Goray**  
**566 Humiston**

**C.O. 1303.06 Objection to Build**  
**at 574 and 584 Humiston**

Mr. Norton stated that the objection this evening also includes an objection to the following item on the agenda, the request of Edward Pavicic for a sideyard setback for the property at 580 Humiston.

Mr. Norton related that this has been an issue that has been addressed by the City Council. Mr. Norton stated that the residents present this evening will be given an opportunity to state their objections.

Law Director Ebert stated that the original objection by Mr. Goray was filed on the original intent to build. That was withdrawn and new plans were submitted. For procedural purposes, they were asked to refile their objections after the application for a variance for 580 Humiston was submitted to the City.

Mr. Norton noted that the members of the Board of Zoning Appeals have had an opportunity to read a great deal of information concerning this request. The Board is faced with the situation that the house at 580 Humiston exists, and the sideyard 30% requirement has not been met. The builder could make the case that the City approved the plans and the plans showed the deficit in the 30% requirement. On the other hand, the architect and the engineer involved know of the 30% requirement, so they are under an obligation also not to submit plans for something not permitted without first asking for a variance.

The Board will not get into the elevation question for the home at 580 Humiston this evening. They will address the request for a sideyard variance in order to grant an occupancy permit for the home that is already constructed.

Mr. Burke asked if the Board will address both items on the agenda at the same time. Mr. Norton stated that there is overlap.

Dominic Vannucci, attorney for the builder, Ed Pavicic, stated that it is his understanding that the two agenda items are separate items. One is a request by the neighbor; the second is a request by Mr. Pavicic, Mr. Vannucci's client. Mr. Vannucci feels they should be treated separately since there is a movement in both situations which is different.

Mr. Norton stated that if the Board answers the objection they have, in effect, answered Mr. Pavicic's request. The objection is that the Board would object to giving a variance to the property at 580 Humiston for the sideyard. If the Board votes to say they accept that objection, and will not grant a variance to the property, then the next request for a variance to the property has been answered.

Mr. Ebert stated that the residents have filed an objection with additional documentation concerning new plans that were submitted. Those plans do include a sideyard variance. It does affect Mr. Pavicic's request for a variance, the second item on the agenda. The objections to the houses to be built affect the 580 Humiston home that is already built.

Mr. Greg Goray pointed out that it is because of their collective action as residents that they brought to the attention of the Building Department that the variance would be required. It was at that point there was a request for variance.

Mr. Norton stated that the objections include Mr. Pavicic's request for a variance on the sideyard.

Mr. Vannucci stated that procedurally the objection is to the issuance of two building permits on the two side lots. Mr. Ebert stated that the residents have expanded their objection.

Mr. Vannucci stated that the building permit for 580 Humiston was granted, approved, and the home was built. Mr. Ebert stated that when the new plans for the two houses on the side that is when it became known that 580 is deficient on the sideyard. The two items will overlap.

Mr. Pavicic stated that for the two side lots they are not asking for anything that is not in the current ordinance.

Mr. Vannucci stated that for the middle subplot, 580 Humiston, the permit was granted, the ten-day period expired, and that overrides the residents' ability to address that issue. They did not file an objection at the time that building permit was granted and issued. As a result, the only issue on that particular subplot is whether or not a variance is appropriate for that particular subplot. He has a right to object to that publicly, but that is Mr. Pavicic's motion, not his (Mr. Goray) motion.

Mr. Norton stated that the Board of Zoning Appeals is here for a variance and an objection. We are hearing an objection and are asked to rule on that objection, in accordance with the bylaws of the City. The fact that this was caught afterwards...the Building Department missed catching the 30% rule. There is plenty of blame to go around. The builder built in the City of Bay Village, knowing the rules, and violated the 30% rule. Now, in hindsight, they are asking for a variance.

Mr. Ebert stated that they are two separate issues as far as the two lots that are not built on yet. Before this Board is the objection to the intent to build posted for those two lots. The time to object to the house that has been built (580 Humiston) is past, however, the residents' objection notes the request for a sideyard variance at 580 Humiston. Even though there was a building permit issued for the 580 Humiston to be built, it was built improperly as far as the code is concerned, on the sideyard. That is where the overlap comes in. There is an encroachment on the sideyard that violates our ordinance.

Mr. Goray stated that in regard to having the building permit issued for 580 Humiston, a statement was made that during that ten-day period of review there was no indication of two more houses so side setbacks was a non-issue for anyone to review.

Mr. Cheatham of SAFEbuilt, Inc. stated that he would refute that statement because he had numerous calls from many residents asking if they could build on those three lots before they were even sold. During the portion of time that Ed was buying it, before he closed, several residents called and asked if there could be three houses there. Mr. Goray asked Mr. Cheatham why he did not enforce the 30% rule.

Mr. Burke read from the Codified Ordinances of the City of Bay Village relative to the objections of an issuance of permits as follows:

1303.06 POSTED NOTICE OF APPLICATION; COMPLAINTS; BOARD HEARING.

(a) In all other cases, in order to determine if there is compliance with subsection C.O. 1303.04(4), except permit applications for roofing, siding, and interior renovation

(to which this Section does not apply), the applicant for a permit shall post a notice furnished to him by the Building Director which, before posting, shall be attached to a flat solid backing of a size equal to said notice, in a conspicuous place, but in all events within twenty (20) feet of the dedicated street, on the premises upon which said construction, alteration, addition, conversion or repair is proposed. The notice shall state that an application for a building permit has been filed, the date of the application, that the application is open to inspection at the City Hall and that unless complaint in writing is filed within ten (10) days with the Building Director alleging that the proposed construction, alteration, addition, conversion or repair is so located or of such character that it will substantially injure the appropriate or existing use or value of the neighboring property, a permit shall be issued.

(b) If a complaint is not filed with the Building Director within the ten (10) day period as above provided, it shall be deemed that a determination has been made that the proposed construction, alteration, addition, conversion or repair complies with C.O. 1303.04(4).

**(c) If one or more complaints in writing are filed with the Building Director within the ten day period, thereupon the application for a building permit and complaint shall be referred to the Board of Zoning Appeals at the next regular meeting of the Board following after a period of one week from the last day of the ten day period, for determination by the Board as to whether the proposed construction, alteration, addition, conversion or repair will, if completed, be so located on the land or be of such a character that it will substantially injure the appropriate or existing use or value of the neighboring property, which determination shall be made by a majority of the Board present at any meeting at which a quorum is present and whose determination shall be final. The meeting shall be open to the public and any interested person or party may be heard and present any evidence the Board may deem relevant. No further notice of the meeting shall be required. (Ord. 10-27. Passed 4-5-10.)**

Mr. Burke stated that based on the wording of Codified Ordinance 1303.06 (c) that “determination by the Board as to whether the proposed construction, alteration, addition, conversion or repair will, if completed, be so located on the land or be of such a character that it will substantially injure the appropriate or existing use or value of the neighboring property” it is required that the Board hear the objection of the residents to the permits. That will probably overlap the issue of Mr. Pavicic’s request for a variance.

Mr. Norton noted that when the neighbors filed the amendment to their objection, they included, by adding 580 Humiston (the center house), the objection to any variance or non-conforming use of this property. They have specifically included in their objection not just the other two lots, but they have specifically included the center lot. As part of their objection they are saying they object to the variance request of 580 Humiston.

Mr. Burke stated that the reason he thinks it is two different issues is that if the objection to the issuance of permits for the north and south lots, whether it is denied or whether it is granted, does not change the issue with the middle lot needing a variance.

Mr. Ebert stated that the only way it could be is by doing a subdivision of the property and adding on to the center lot for compliance. When you do that, the lot you take the property off becomes non-

conforming under Codified Ordinance 1125. That is not what was submitted in the second plans submitted by the builder. He left the north and south lots as is, downsized the houses, but the lot lines were the same. His application is for a variance on the home for 580 Humiston that is already built for a variance of the sideyard. Mr. Ebert expressed agreement that the objections overlap.

Mr. Burke stated that it is appropriate to hear all of the objections to the neighbors, and to hear what the builder has to say, and then give the Board of Zoning Appeals time for consideration, looking to the following meeting for consideration.

Mr. Goray stated that he would add to the objection the requirement for the variance for both 574 Humiston and 584 Humiston, according to the latest drawings, cantilevered assemblies that are approaching beyond the permissible two-foot allowance. Mr. Burke stated that there are no requests for variances at this time.

Mr. Jim Gerace, 507 Humiston, stated that he has lived here since 1988, and asked the residents from Humiston to stand up. He said that a majority of the people that are here have a problem with the elevation, with the setback and with 574 and 584 because of the problems that occurred with 580. Whether it is the City or the builder, or both, he does not care, but they are trying to preserve a street that a number of these people have lived on for years and they need some help.

Mr. Greg Goray stated that the variance issue becomes the crux of everything. There are other issues as potential problems both for 574 and 584 Humiston, which is, are they indeed grandfathered lots. Mr. Goray stated that he has seen the codified ordinance that goes to that one section that says that things of this date are grandfathered in or permissible. Is it truly a grandfathered issue? Mr. Goray would appeal to the Codified Ordinance of 1119. The previous owners of 580 Humiston were the Nyerges family. They were amongst the original residents of Humiston Road. "Ted Nyerges and I would often compare and complain about our tax bills and proposed tax increases. Ted would show me a single statement, single assessment that he would have for tax purposes. That was for all three of his lots. According to Codified Ordinance 1119.01, in obtaining a single tax statement, those lots have been conjoined and in order to undo that you have to go through the process of a minor subdivision." Mr. Goray stated that he would argue that with these three lots we may have a minor subdivision. And, in doing a minor subdivision, it has to meet the codes.

Mr. Pavicic stated that he owns a lot of land in Bay Village, pays a lot of taxes in Bay Village and is a resident of Bay Village. He has three tax bills for those parcels; it has never been consolidated.

Mr. Ebert stated that they have gone through this from a legal standpoint; it is not a minor subdivision. Originally it was going to be considered a lot split, if you are going to take properties from the side. The existing lots that exist, pre-1954, under our code, Section 1155.04, allow them to be grandfathered in. There were separate parcels numbers and they were not consolidated. They stayed individual lots. It is not part of Section 1119.

Mr. Goray stated that one of the other issues he has is the City's lack of using their power of Codified Ordinance 1303.03 to control any authorized deviation from plans. That refers to going off plans time and time again with the structure raised 16 or 17 inches above the approved elevation

for 580 Humiston. This created the environment of raising the physical grade, creating slopes that were non-contiguous with the rest of Humiston, a driveway that is extremely sloped, potential run-off into other properties, including the property to the west and their French drain, and overloading potentially that French drain. Mr. Goray stated that he wonders if soil percolation tests were included into this whole issue. The water running off across the Goray driveway is muddy water. He asked if the addition of two more structures, 574 and 584 Humiston, with the impact of foundation, roof line, and paved surfaces of driveways and patios, create a whole drainage issue for the entire Humiston Drive. If this were Florida you would have impact fees; builders have impact fees. The impact fees are going to go to every single resident on Humiston when the system fails. We need to give a lot of concern to that, not only the storm sewer, but even the sanitary infrastructure. If you have two four-bedroom houses there will be a lot more people living in there. We have unauthorized deviation from plans as issued. Mr. Goray stated he would like to get a written statement for their files saying that these lots are grandfathered in. This also goes to whether these are buildable lots, being 45 feet wide. It also goes to square footage. The current square footage is 14,700 square feet and these have deviated from that.

Mr. Norton noted that the buildable lot requirement is 7,500 square feet. Mr. Goray stated that is for Residence District 3; they are in Residence District 1, at 14,700. Mr. Cheatham stated that is for new lots; these lots are grandfathered.

Mr. Goray stated that the character of these houses is causing injury to Humiston. Everyone that comes by is incredulous that two more houses are going to be put into these lots, including the policeman that pulled into Mr. Goray's driveway questioning the RV that was in the driveway. He questioned how two more houses are going to fit in the area.

Mr. Goray referred to Codified Ordinance No. 1303.04, regarding injury by non-conforming. The street is 1,426 feet long. There are exactly 50 houses on the street. The west side of the street has 24 houses. The average lot size is 59.41 feet. They are talking about putting in a 45 ft. wide lot. He stated, "It is not going against our character in building these structures up on a hill?"

Mr. Norton stated that he did notice that Humiston has many styles of homes. The home across the street looks to be a similar size as this one. It is a street of variety. Mr. Norton also noticed that there are quite a few sideyards that look fairly wide. Research on this would be helpful to the Board of Zoning Appeals to learn from the Cuyahoga County records how many of these sideyards are separate parcels that are undersized that would be grandfathered in. The Board must also be careful of taking property rights away from someone without compensation.

Mr. Goray asked what William and Charles Humiston would say in 1924 when the street was first incorporated. "I don't think he would see these McMansions going up that are 3,000 square feet. It was somewhat of a cottage street at that time. It wasn't intended to have a 45-foot lot."

Mr. Norton stated that whenever the decision was made to draw lines and say that is a buildable lot somebody was comfortable with saying that at least some of these lots were plotted as buildable.

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A resident stated that some of the homes built on the street during the last 15 years have blended in with the neighborhood and the size of the home was built appropriately to the lot it was built on. No one objected, and everyone welcomed that kind of progress.

Mr. Norton stated that the Board is trying to evaluate this from the question of harm to the neighborhood. If other big houses on the street have been built on smaller, sub-standard lots, then history has set some precedence to take into consideration.

A resident stated that she has lived in Bay Village for 49 years, and on Humiston for 39 years. The house in question was advertised as a single family home on a one-acre lot. They looked at the lot and thought what a relief; there will be just one house there. When she went to Mr. Cheatham and looked at the plans he said he didn't know if the builder was going to build one, two or three homes. They originally advertised that house as a single family on that entire three parcel lot. She asked that the citizens not be blamed for not objecting in a timely fashion.

The resident further stated that if you look at the requirements for a cluster home here in Bay for the amount of land between a cluster home, it is enormously bigger than what is being proposed. There won't even be the setbacks of a cluster home and they will have a high rise home looking at them from across the street. That will be a wall of three homes without even half the amount of side setback. What is being proposed here is not right.

A resident invited the Board to sit on their back patio and look at this wall. It has encroached into the area that they live. Their enjoyment is at stake. Their enjoyment in their kitchen is at stake, looking at this wall. It is incredible. That is why everyone from Humiston is here.

Mr. Burke stated that the issue is whether granting the permits will injure the appropriate or existing use or value of the neighboring properties. The run-off issue is something to be considered one way or another as an effect on values. The visual effects were mentioned. Mr. Burke asked if there are any other issues that Mr. Goray or his neighbors could present to that question.

Mr. Goray stated that they have actually thought about selling. They are that frustrated with this. But, they do not think they will get the money that they would have gotten one year ago. The one house on the lot is being shown at \$550,000. Anyone can ask any amount of money for anything. It doesn't make it worth that much. There are other houses built by the same gentleman that have been vacant for two years. It is detrimental to the neighbors to have a vacant house. Mr. Goray stated that he believes that it will have a huge impact on the actual value of their homes, and the perceived value of enjoyment.

Judy Miller, Humiston resident, stated that she lives further down the street. Their lot is about 48 feet wide. The thing that is different in the case of smaller houses and a smaller lot is the fact that their garage and driveway are next to their house and that allows a certain amount of distance between neighbors to the north and neighbors to the south. The house that has been built has a big garage in the front. That allows for a space to put something in there real close. It is also not attractive, and the people who purchase the house for over \$500,000 would be looking out the side at someone else's house. It would be so close.

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Mr. Norton stated that not terribly long ago the City Council was concerned about this issue. At that point the minimum distance between homes was five feet. The percent of total sideyard was 25%. Some examples of houses came up and Council proposed a 30% sideyard, and instead of a five feet minimum sideyard for small lots, they changed it to six feet. As the lot got bigger, it went all the way up to a minimum of ten feet. Prior to that, you could have two houses on a lot five feet apart.

Mr. Goray stated that the perspective of the house built at 580 Humiston is massively huge and not appropriate to a six-foot setback. In considering the ratio of a 30% required setback goes to the point of complete loss of confidence in the Building Department. It has been one fiasco after another.

Christopher Newell, 573 Humiston, said that he has had the pleasure of watching the lot across the street flood. He has had the pleasure of having his sewer back up. At the beginning of the meeting, Mr. Norton acknowledged that mistakes were made by the developer, intentionally or unintentionally. Mistakes were made by the City, intentionally or unintentionally. If this variance is granted, the will of the citizens of this community is being ignored.

Mr. Burke suggested that Mr. Newell's comments would be more appropriately addressed to the next agenda issue, that is, whether or not the variance should be granted, and whether or not the permits, if granted, for the two side lots would injure the appropriate or existing use of the neighborhood property.

Mr. Goray stated that the complete incompetence of the Building Department injured them.

A resident stated that she doesn't see how building a house 17 inches higher than the approved plans wasn't made to be knocked down right then and there. This guy has done this before, and he just keeps doing it and he keeps getting away with it.

Mr. Burke stated that he is focusing in on the permits for the two side lots. The resident asked if the Board has seen the picture of the family that lived there in the rowboat. Mr. Burke stated that they did see the picture. He asked if anyone has checked to see if that is on the Federal wetlands list.

A resident stated that he is paying a rider on his insurance because where they live is considered a flood plain.

Mr. Burke stated that there has been discussion about the runoff on side property. If correct, that is something that would affect the value and usage of adjacent property. Are there other reasons why the residents believe the neighboring properties would be adversely affected if the permit was granted?

A resident stated that the homes are too large for the lot size and they will lose property value.

Kevin Moriarity, 569 Humiston, stated that there are parking issues. You can only park on the east side of the street. These homes will bring more residents with additional cars, and that could be an issue.

A resident stated that part of what she is hearing is that the Board of Zoning Appeals is here to uphold the laws of the City. That is what you should do.

Mr. Burke stated that at the end of this discussion of the objections to the issuance of the permits, he is going to propose that the matter be tabled until the next meeting so the Board can consider everything that has been said. The builder will also have an opportunity to express his concerns. The same proposal will be made for the next issue as to whether a variance should be granted to the property at 580 Humiston.

Mr. Burke asked if there are any other reasons to be expressed that have not been expressed already. Why it is believed that the issuance of permits for the two side properties would be detrimental to the use and value of neighboring property.

Mr. Goray stated that procedurally, if a permit is granted for the two houses, doesn't that ride on the contingency of needing a variance for the central issue.

Mr. Burke stated that no matter how they rule on the objection to granting the two permits, whether they agree or deny the objection, either way the builder still has to show they have good reason for those permits on 580 Humiston. Two separate issues.

A resident stated that if the variance is not approved, does that mean he cannot build on the two side lots.

Mr. Burke stated it means that he cannot build that which was requested in the application for the permits. It wouldn't preclude him from submitting other plans for a different permit.

Mr. Ebert explained that there is a City ordinance that grandfathers in those lots that had permanent parcel numbers prior to 1954. Bay Village had many cottages years ago. These lots then become buildable. . The Council is now studying the possibility of dictating the square footage of a home that can be built on the smaller, grandfathered-in lots. The issue mentioned by Mr. Norton about changes in sideyard requirements came about because of properties on Lake Road, two houses specifically.

Mr. Ebert stated that if property is taken from the adjoining lot to change the lot size for the 580 Humiston lot to make that home in compliance with the sideyard requirements, a non-buildable lot would be created on the lot from which the property was taken. That all blends together when you discuss these ordinances.

Mr. Burke stated that unless there aren't any new comments on the effects of the neighboring properties if permits are issued...Mr. Goray stated that Codified Ordinance 1153.03 (3) (b) goes to cantilevered assemblies. Mr. Burke noted that this was mentioned previously. If they are not in conformance with the building code, a variance would have to be requested.

Chris Hartzell, 577 Humiston Road, stated that he is in the business of mortgage lending and he does not think that these houses are going to sell for anywhere near the amount that is being stated. The value is based on square footage and that value will affect the value of the neighboring homes on the street. If the home is not sold for \$550,000 and the value is decreased, based on the square footage that value will be used as a barometer for all of the other homes on Humiston.

Mr. Dominic Vannucci, attorney for Mr. Pavicic, stated that his client purchased the property in November of 2015. The trustee and the real estate agent stated that the neighbors were given an opportunity to purchase the property. The neighbors present objected to that comment, stating that this was untrue. It is clear that there are three parcels. Mr. Pavicic has tax bills for three parcels. In January of 2016, he applied for a permit for the middle lot and proceeded to build at 580 Humiston. The objection was placed on these two side lots. The only mistake that was made was an engineering mistake of 14 inches. My client followed the procedures and the permit was granted. These folks have rights. But, my client has rights as a property owner. Many lots on this street are 45 feet or less. Five out of the ten surrounding lots are 45 feet or less. With that in mind, the character of the neighborhood is not being diminished. The neighbors talked about how this is going to affect property values. They talked about the fact that these homes are going to sit vacant. There is no evidence of that. Why would the builder put all of this money into lots that he thought would be unsaleable? If anything, this is going to enhance this street. The houses are going to go for much more than many of the homes on the street and will increase their property values. The Law Department has researched the area. There is no evidence that these lots weren't grandfathered. They talked about the drainage issue. The engineer is here and he will offer insight as to what the situation is there. They talked about the way the home is built. The builder has an obligation to follow the building code. If he doesn't the City certainly has a right to come down on him. They talked about parking. There are parking ordinances that will have to be enforced. These two lots are buildable lots. He has followed all of the ordinances and by following all of the ordinances he has certain property rights which he chooses to enforce.

Mr. Ed Pavicic introduced his engineer and explained that when they built the home at 580 Humiston they had no idea of the depth of the sewer. When they submitted their plans they took an estimated guess as to the depth of the sewer. Mr. Greytak, the city engineer, as well as Mr. Greytak's engineer both agreed on the allowable grade on a driveway. They found that the sanitary lines had the ability to be gravity wells. They raised the property by 14 inches for the gravity. What is deceiving about the property is that it is on a hill. When the final grade and the landscaping is done for the home it will look very nice.

Mr. Pavicic stated that his family has been here for seven years, and he does not like to be attacked personally and doesn't like to attack people personally either. There is a lot of anger and resentment being expressed in this room. There are a lot of good people in this room. Mr. Pavicic stated that he understands these feelings and apologized for the residents going through these frustrations. Mr. Pavicic invited the residents to call him and discuss this with him, noting that he is transparent. He stated that he thinks there is a lot more to this whole situation than just building houses. He is here to talk to the residents as another resident.

A resident asked if Mr. Pavicic could just see it in his heart to leave the other two properties green, stating that this would really help their street.

Mr. Pavicic stated that he does not believe he can come to those terms. He is open, if the residents are that adamant to maintain those properties, buy them. Buy the lots. Use it as your community park for Humiston. Those lots are probably worth \$110,000; buy them. I don't want to sit here and cause you this much misery; it is not worth my time either. I have a family to go back to tonight.

The resident asked if it would be possible if Mr. Pavicic is intending to build on the other two lots if he could make them smaller homes so that they don't overwhelm the space. It would be to your advantage to do that, as well as aesthetically for the street. What would it take to make you think about making this construction smaller homes on these two lots? Not necessarily, small, but smaller, so that there are not three the same size.

Mr. Pavicic stated that today he heard that there would be a lot of people here. He went on the county website to pull a few properties. There are houses there that are 3600 square feet; there is another house that is 3200 square feet, and they are all within four parcels of mine. We have parcels across the street that are smaller than mine. I don't know if I can make a commitment like that because ultimately if I don't build and someone else comes and builds a home there, they are going to want that. Most people that move to Bay Village are families; you are going to have great families that are going to move into this....you are going to have little kids that are going to grow up and share the same experiences you are. I can't make a promise as to what the sizes of those homes are going to be.

The resident stated that she is just saying as a good neighbor and considering how upset everyone is on Humiston, it would be a great gesture if he would consider making the houses built on the side smaller in size.

Mr. Pavicic stated that he has a few investors. He cannot make that decision by himself.

Mr. Ebert asked Mr. Cheatham about the original drawings submitted with incorrect elevations. There was also the sideyard issue.

Mr. Cheatham stated that the original topo was approved and as it was being excavated, Ed and his excavator made a decision without informing him that they were going to hold it up out of the ground so that they could do the gravity that he was talking about. The code does not require that. You are allowed to have grinder pumps or lift stations. Mr. Cheatham stated that he found out first after the foundation was totally in and his inspector came back reporting that the foundation was way out of the ground. We went through this with all of the City Council meetings, and the Council was informed that Mr. Cheatham had no authority under his certifications to make Mr. Pavicic take out the foundation. That is a bone of contention but he had no authority because the State of Ohio says he has to look at the economic feasibility and the technical feasibility and if you can submit something that works that is cheaper than tearing out a \$25,000 foundation he has to accept it. That is why he did not make them bulldoze the house as everyone wanted him to.

The second issue is that this has gone on for 17 years because the City ordinance only speaks to the drainage of that property staying within the property. It says nothing about how high a house can be out of the ground. You can go all over town and see. They are all over the place. Nothing in our ordinance prohibits you holding it out. What was wrong was that he did not come in and ask for permission and get a new topo first; he just did it. That is why we are in a situation today where we have one house that is way out of the ground.

On the sideyard setback, Mr. Cheatham called Mr. Pavicic's employee and told her to get ahold of Ed and inform him that the sideyard was incorrect. He had already addressed that before he was informed of that. The problem is that it changed on the topo; I don't know how that changed, when it changed. I admitted in Council that I never caught that; that was one of my failures. Originally it was correct and then it seemed to change. I don't know when that happened but I caught it and I told Ed's secretary that we had to get that fixed immediately. He was going to have to apply for a variance. The same day I caught that I also heard from residents that they had been in and saw that as well. Mr. Cheatham stated that the new topos that came through showed that the new houses on Sublots Nos. 9 and 11 were also showing the same width and the same setbacks and immediately emailed him that they had to make the houses smaller to meet the 30% rule.

Mr. Ebert stated that he received an email on July 13 from City consulting engineer Bob Greytak when the last plans were submitted and he indicated that the plans were approved. He noted that the retaining wall along the northern property on Sublot 11 has been deleted from the earlier submissions. This will create more exposure to the north elevation of the proposed house on Sublot No. 11. Notes have been added to the drawings regarding options for addressing the exposed foundation.

Mr. Goray commented on the elevation of the existing home at 580 Humiston. Part of the requirements on the topo or site plan is giving invert depths. There was a comment that it is tough to tell what a sewer depth is; it is all guess work. I would argue that all you have to do is go out to the test-tee at the sidewalk and give a measurement and you have an invert depth. In addition, you go to the basement clean out. There is an invert depth there. You know before the former home is even demolished what the basics are.

Kevin Hoffman of Polaris Engineering stated that they can be located but they might be buried, or there might not be any test-tees. In an older part of a City it is tough to get the actual sewer elevations.

Mr. Goray stated that he knows that Mr. Nyerges had a clean-out in his basement as well. Going towards the side lot issue, Mr. Cheatham did state that the engineering firm was notified back in May of the side lot issue and it is required to have a 13 ½-foot setback. It seems that would trigger an automatic consult with the architect, because the architect is now going to have to decrease the width and essentially do some redrawing of a house on the lot.

Mr. Norton stated that the drawings for the two lots have been corrected.

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Mr. Norton asked Kevin Hoffman from Polaris Engineering when the drawings for the center house that is built were completed, and were the sideyard numbers ever changed. Kevin Hoffman stated that they were not. The width of the house has always been 32.67 feet.

Mr. Norton stated that at the point that you knew the other two lots needed to go to a total of 13 ½ feet, did you have discussion as to the fact that you already built the center house that was not 13 ½ feet. Kevin Hoffman stated that the first knowledge he had of that was at a later point and resulted in the request for a variance to allow that non-conforming sideyard.

Mr. Burke stated that it seems the Board has moved into the second issue of the sideyard variance and away from the issue of whether or not permits should be denied or granted. Mr. Burke stated that unless there is something new on that issue, he would propose that the Board of Zoning Appeals table the agenda item of the objection to the issuance of permits of the two side lots to the next meeting of the Board of Zoning Appeals and move on to the discussion of the next agenda item.

A resident asked that since the builder did something against the City code, is there any penalty to the builder when he does that. It seems like there ought to be some monetary penalty that sends a message not to do that again.

Mr. Norton stated that this comes to a question of scale and proportionality, etc. If this ends up in Common Pleas Court, the judge is going to look at the situation and say they asked for two inches and you are telling them to tear down. We had this issue on the “hotel” on Lake Road. There were a series of errors on that house and it ended up that the roof was four feet higher than allowed. There was a slate roof on the house. If it had gone to the Court of Common Pleas the judge would question telling them to take off a \$200,000 roof that is in scale with the building for a four-foot infraction, and would not have enforced that.

The resident asked again if the City ordinances allow the builder to be fined \$5,000 for not following direction.

Mr. Pavicic stated that they redid the topo and put it on the site within three hours of knowing they were going to set the elevation. The inspectors all knew. They had it on site and it was resubmitted a week later before the footers were in. They were delayed three-and-one half weeks because there was a frost warning on the ground. They were actually denied at one of the inspections to do the footers. They did what they normally do. Mr. Pavicic stated he can bring up thirty other incidents in Bay Village where they have built houses exactly the same way. The only reason they are deviating here is because people are upset that they are building houses there. We are talking about normal engineering and building practices. If you call another builder who builds volume homes they will tell you exactly the same thing.

Mr. Norton stated that he does not think Bay Village has anything in their ordinances where there is a fine schedule.

Mr. Burke **MOVED**, second by Tyo, to table Agenda Item No. 4, the Objection of Neighbors to build at 574 and 584 Humiston until the next meeting of the Board of Zoning Appeals, in order to consider all comments made by both sides of the issue this evening.

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

**Edward Pavicic**  
**580 Humiston**

**C.O. 1153.03 2.6% Sideyard Setback**  
**Variance**

Mr. Burke suggested that the builder express why he feels they are entitled to the variance, followed by comments from the residents.

Mr. Pavicic stated that the variance request is 2.6% of the 30% rule, or 14 inches for the width of the home abutting into the sideyards. One of the things that he did in order to keep the appearance exactly the same is shrink the other homes. By shrinking the other homes the sideyard setbacks will still be the same in between the houses. It only affects the 580 Humiston parcel; it does not affect any of the neighboring parcels. It doesn't affect the view of what is required of the ordinances; the distances will still all be the same. We are making 7 inches basically on each side of the other houses.

Mr. Vannucci stated that an important point is the fact that the sideyard restriction is affecting his lot, not the neighboring lots.

Mr. Burke asked Mr. Pavicic if he is suggesting that if he or his engineer or architect made a mistake on the drawings that were submitted that was missed by the Building Department, that he has no responsibility from that point forward.

Mr. Vannucci stated that they are trying to impress upon the Board that it was an innocent mistake that eventually was caught. It dealt with the percentage; it wasn't an actual measurement, it was a percentage and apparently the engineering department missed that. It is our error; there is no question about that. However, it was approved by the engineering department for the City, and it was never caught until the house was already gone up.

Kevin Hoffman of Polaris Engineering stated that the minimum sideyard setbacks are six feet. They do meet the minimum sideyard setback. Mr. Burke noted that the total percentage of required sideyard is in violation. Mr. Miller asked who the architect is for the builder; Mr. Pavicic stated that his name is Kevin Duke.

Mr. Norton stated that the amount of the variance request is 14 inches which is over 9% of what is allowed.

Mr. Goray added that the cantilever assembly does encroach by an additional foot. If a gutter is added to the bay window of the cantilever assembly it will be another foot and five inches. Mr. Hoffman stated that he believes it can encroach four feet. Mr. Goray stated that this is not the way he reads Codified Ordinance 1153.03. Mr. Hoffman referred to Codified Ordinance 1187.08.

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Mr. Norton stated that as far as the overhangs are concerned, we are not dealing with that this evening. The Building Department has to determine, as far as the plans are concerned, if that is in violation. If so, they would have to request a separate variance.

Mr. Vannucci stated that he cannot emphasize enough that the sideyard restriction violates the sideyard of a lot that Mr. Pavicic owns.

Mr. Burke stated that in all due respect it violates the code. Mr. Norton added that it is like saying it's ok if my neighbor doesn't object. It doesn't matter if your neighbor doesn't object.

Mr. Vannucci stated that part of the basis upon which the Board acts is the ordinance and they have to consider those things.

Mr. Burke addressed Mr. Vannucci stating that Mr. Vannucci believes they should be granted a variance because it was an honest mistake, it was a small amount, and it was passed by the Building Department. Mr. Pavicic stated that they adjusted their mistake with the other two parcels that he owns.

Mr. Goray stated that if you add up the total of three times 13.5 inches and then add up what is proposed on those plans it is still shy of that number. It is not a zero sum fact. There was a mistake made. The Building Department missed it. If you grant the variance you are ignoring the objection.

A resident stated that it was the citizens that found the error time and time and time again. So the fact that the Building Department passed it and gave its approval is meaningless.

A resident asked what assurance they have moving forward that the builder will go by any plan or make some more mistakes to the detriment of the residents.

Mr. Burke stated that in view of all the discussion over the recent mistakes when it comes to the side parcels the Building Department will be quite strict.

A resident stated that you can't have it both ways. They are arguing that the developer owns the lots, knows what he is doing, is successful, and you people don't know what you are doing. When making a mistake he says it was an innocent mistake, they didn't know that happened.

After considerable back and forth between the audience and Mr. Pavicic, Mr. Norton stated that the Board of Zoning Appeals is not here to say whether the engineering department saw something and changed the grade to deliberately avoid something, or it was accidental, or deliberate or timing. We are not in a position and we're not here tonight to make those kinds of determinations. This is fact finding.

Kevin Hoffman stated that if they knew it was going to come to this they would have put a grinder pump in. Mr. Pavicic asked us and I said the grades would work and we made a new site plan. The architect drew the plans up, he missed it, we missed it, and the building department missed it.

Doug Norris, 510 Humiston, stated that in his view to grant a variance is a privilege. If a builder has violated code and made costly mistakes that disqualifies him from being granted this privilege. The question came up if we could fine him \$5,000 or something, that seems to be a done deal. But, there should be consequences for future things they want to do. I think, because of their behavior in the past, they should not be granted a variance. I don't even think they should be allowed to build in Bay Village again.

Robert Haller, a Bay Village resident, stated that this is a back and forth. You have inspectors. Does any building project go off without a hitch? There's probably some back and forth. Somebody misses something, the building department is supposed to catch it; you adjust it. There are probably mistakes that occur all the way along.

A resident stated that when he makes mistakes at his job there are consequences.

Mr. Norton stated that this is something that Council will have to approach. He noted that the Board has heard cases regarding fences built by contractors that were not allowed. The homeowner gets cited and is legally responsible for it. The Board of Zoning Appeals has chastised the fence companies for getting the citizens in trouble. The Council would have to consider whether the builder should be permitted to continue; the Board of Zoning Appeals can't deal with that tonight. The job of the Board of Zoning Appeals is designed by ordinance and it is kept very narrow. They keep a fence around the Board so that they don't get out of control and start doing things that Council has to do.

Mark Chernisky stated that the Board of Zoning Appeals can set an example as a Board to say no to the variance. He noted that the variance for the property stays with the property.

Mr. Norton expressed agreement, stating that once a variance is issued it has nothing to do with the property owner. It has only to do with the property. It stays forever. You can't take a variance back later on.

Lydia DeGeorge, resident, asked about procedure. Whether the City missed the application for variance or not, the hardship has resulted from the builder's own action. Representation said that the builder is obligated to follow all the codes, which I interpret, as they should have applied for the variance when they submitted plans or were in the process of building. Because they didn't, now we're saying that we can go back and allow a variance. Is there a separate ordinance that allows you to do something and then apply for it, and it's okay?

Mr. Norton stated that an example would be a homeowner builds an addition onto his house. He is probably unfamiliar with all the rules and regulations. He does something that is over the line. The Building Department doesn't go out and look for this, but if it comes to their attention there is a violation they will direct him to the Board of Zoning Appeals for a variance. That comes up to the Board occasionally. It is considered on how large the variance is, and it comes down to proportionality.

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Ms. DeGeorge asked what is the point to have an ordinance that mandates that you apply for something and whether it is an honest mistake or purposeful, it doesn't matter, you can go back and get it later.

Mr. Tyo stated that it has to do with magnitude as well. It isn't just whether they made a mistake, it is all relative and is taken under consideration by the Board whether they will get a variance or they have to make changes. The Board did find in the past that changes had to be made.

Mr. Goray stated that Codified Ordinance Section 1303 establishing the requirements for a permit is stated on the application for a building permit in very clean language, and we need to address that.

Mr. Norton stated that the Board of Zoning Appeals does not have the ability to determine if violations were intentional and it is not approached from that standpoint. In that type of case they might point out what the violation is, and we will issue a variance on that but make sure the correction is made as appropriate, e.g., to install firewall if required to insure safety of the residents.

Mr. Ebert stated that if the builder would take a portion of one of the lots and add it to his current lot to meet the code on the 30% issue that would make one lot buildable and one lot not buildable.

A resident stated that she would think it would be part of the mission of the Board of Zoning Appeals that they would want to encourage on the part of all builders in the community that they ask for permission first rather than asking for forgiveness afterward.

Mr. Norton noted that the Board of Zoning Appeals rulings with fence companies who have violated the fencing code has been very effective in deterring these types of violations.

Mr. Vannucci stated that they wish the City would have caught the error because then they could have made an adjustment. It was an innocent mistake.

A resident suggested that a compromise would be not to approve the variance, force him to take some land off the other lot, he only gets to build one other house, he has a penalty for his mistake, the City has one less house on their tax rolls, they pay the penalty for their mistake, and the neighborhood still has to deal with two houses on their street, but not three.

**Motion** by Burke, second by Dostal, that Item No. 5 on this evening's agenda, namely the request for a sideyard setback variance on the property at 580 Humiston be tabled until the next meeting of the Board of Zoning Appeals to allow the Board to consider all the comments raised this evening.

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

**Motion passed 6-0.**

The meeting adjourned at 9:55 p.m.

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Jack Norton, Chairman

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Joan Kemper, Secretary