Minutes of a Meeting of
Board of Zoning Appeals
held October 19, 2017

Members Present: Bruno, Burke, Gess, Miller, Norton, Tyo, Young
Excused: Miller
Also present: Law Director Ebert, Jeff Fillar, Building Official of SAFEbuilt, Inc.
Audience: Bela Persanyi, Joe Krall and Rich Russell

Chairman Norton called the meeting to order at 7:40 p.m.

Motion by Bruno, second by Burke, to approve the minutes of the meeting held October 19, 2017 as prepared and distributed. Motion passed 6-0.

Bela Persanyi
30666 Wolf Road

C.O. 1373.01 The applicant is requesting a variance to store their boat on a trailer in their front yard.

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

Mr. Norton explained that Law Director Ebert is here tonight to try and help the board understand this application from a legal standpoint. Mr. Norton also explained that City Council makes the law and the BZA is only allowed to tweak the laws that have been made by City Council.

Mr. Norton explained that the new ordinance of 1373.01 started with a complaint to a City Councilman, from there the Councilman brought the information to City Council and then Council discussed the information over several meetings. Council than passed 1373.01 unanimously. Now, the BZA needs be very careful with the tinkering of the ordinance.

Mr. Ebert explained that the initial complaint started with a commercial issue on Dover Center Road with a boat on the side yard of a business next to a residential home. Council discussed at length commercial setting versus residential setting. The old ordinance from 2005 states that the storage of boats and trailers must be 100 feet back from the right of way. In 2016 Council removed the 100 feet and said you could have a boat stored in your yard as long as it is in the rear yard not closer than 12 feet from the property line and 30 feet off of any street. It could not be stored in the front yard. The ordinance does provide a clause where you can leave your boat
anywhere on your property for 72 hours within a 21 day period. This was complaint driven and there was a lot of discussion of the new ordinance by Council.

Mr. Burke asked Mr. Ebert if this is a property right issue and if this is a property right that has been taken without compensation. Mr. Ebert stated a retroactive property right that has been taken. Mr. Burke explained that to him property rights are when the highway department comes along and takes half your property for an interchange for a highway. Mr. Buku asked Mr. Ebert if he is aware of any cases in which something that was permitted under an existing building or zoning code was considered a property right and if there was litigation when it was changed.

Mr. Ebert explained that normally when you talk about property rights you talk about fixtures something that is permanently attached to the property. That’s why when we talk about substandard lots or cottages there was a lot of discussion should you be able to build a bigger house on a lot and as long as you have a permanent parcel you are allowed to build on that lot even though, now a days you have to have a certain square footage and setbacks those are property rights attached to the property. This is no different than 1141 special permits for recreational facilities. Mr. Ebert explained that you cannot take 1141 and make it retroactive to someone that already has one as far as the property permanent fixture. You can change it as far as operation, lighting, noise but you can’t deem that unlawful to someone that has put the money and built something prior to the ordinance. Mr. Ebert explained that this is no different than when the side yard used to be 5 feet off the property line you can’t go back and make it retroactive so all those structures have to be removed. The question is whether a moveable object is a property right and Mr. Ebert stated that he will have to do additional research on that.

Mr. Gess verified that on the BZA application when a variance is requested the board must find all three A, B, and C to be true in order to grant the variance. Mr. Tyo said that is correct.

Mr. Bruno asked Chairman Norton if we should move to table the request until we hear from the legal department. Mr. Burke seconded the request and would like to know the legal findings before we vote. Mr. Bruno explained that they need guidance on the property rights based on the law department. Mr. Norton noted that he doesn’t know if the board would be comfortable questioning the change in the ordinance that council has made since they are the ones that make the ordinance. He believes this comes down to whether there is a legal issue that a property right has been taken away.

Mr. Persanyi stated that he believes that his property right has been taken away. He stated that if Council passed a change in the ordinance saying you can only have 1 vehicle in your driveway when you have 2 or 3 vehicles aren’t you depriving all those people of property rights that have more than one vehicle in their driveway and essentially this is a similar situation. He explained this is a right he has had for 27 years and Council with their action has taken that right away. It is a use of his property and he has had the right for 27 years.
Mr. Burke asked Mr. Persanyi when he purchased the boat that is in question. Mr. Persanyi explained that he purchased the boat in question in 1989. For the first 9 years the boat was always stored in the front of his property except for when he was out on the lake. In 1998, he purchased a slip at West Harbor Marina and the boat would be there for about 6 months and at the end of October he would bring it back to his property and store it in the same location. Mr. Burke asked the size of his boat. He stated that it is 25 feet and if he could he would store the boat in his garage since it is long enough but it isn’t high enough. He noted that financially he cannot rebuild his garage. He explained that to take the boat around to his backyard he would have to put in a hard surface of about 50 feet by 10 feet wide so he could back the trailer up into the backyard. He stated that he has a lot of room in his backyard but his access is limited because it is soft ground as well as the need to remove a tree and 30 feet of forsythia bushes. He stated that the boat has been in the same spot every fall and winter and believes it has not hurt the neighborhood. He sees this as a property right that he got when he purchased the property and now Council has taken it away with their action and that is why he came to the Board of Zoning and Appeals to restore what he had.

Mr. Bruno asked Mr. Persanyi that based on the dimensions of the rear side of the lot of the home would his boat fit back there. Mr. Persanyi said yes except for the landscaping. Mr. Bruno said he understands about the landscaping but it would fit back there. Mr. Persanyi said yes. Mr. Bruno wanted the record to be noted that his boat could fit. Mr. Bruno also noted that the ordinance states that one moveable structure can be stored in the rear of the lot. Mr. Burke asked for the measurement from the front of the home to the right of way. Mr. Persanyi measured and from the back of the north sidewalk to the front of the boat is 95 feet, to the front of the house is about 100 feet.

Mr. Tyo asked how the application come before the BZA. Mr. Ebert stated from a resident complaint. Mr. Norton, explained that a Councilman received a complaint and brought the complaint to City Council and then they put it on the committee agenda. The committee discussed the ordinance and the 100 feet at several meetings and came to the conclusion to remove the 100 feet. Mr. Norton noted that he is sympathetic but the board must follow Council and the only thing we can look at is the property right issue.

Mrs. Young wanted to clarify Mr. Gess’s previous comment. She sees where the appeal would come here but when you have the three criteria items on the application that the subject has to meet even if one of them is questionable and that’s why we are tabling tonight’s but what about the other two criteria items. Mr. Norton explained that we didn’t discuss that completely. The BZA has not strictly adhered to that. Sometimes it is not necessary that a refusal would deny the property rights because property rights might not be involved in an issue. He explained that the old ordinance used to be a 5 foot side yard setback and Council changed it to 10 foot on certain size lots. Mr. Ebert’s position was that the house was existing so it’s not moveable and that’s why it was grandfathered. However, at the same time someone can argue and say that they own
that property it’s doesn’t have a house but they own it and when they decide to build they want to build the house with 5 feet. The Building Department would say no and then it would come to BZA and we would probably say no. It’s that kind of thing in one case it’s allowed because it was existing. Mr. Ebert explained that in some situations it’s not an exact science that’s why it’s called a variance. Mr. Burke explained that one of the functions of the BZA is not just to grant variances but to hear appeals from owners and issues by the Building Department and in this case there was a removable order issued so this might be considered an appeal of an order. Therefore, he does not believe it has to follow the criteria. Mr. Norton noted that we can’t always literally apply the A, B, C criteria depending on the subject and what it’s asking of the board. Mr. Gess asked if there should be clarification if this is a variance request or a Building Department notice. Mr. Ebert explained that this is a variance request and not a special permit since it’s a request from the actual ordinance as it was adopted in 2016. Mr. Burke asked Mr. Ebert that if it is determined that this is a property right issue Mr. Persanyi would be grandfathered in and then it would not be a variance request. Mr. Ebert said correct

Mr. Persanyi stated that all he is asking is to restore his rights that he had under the old ordinance for the past 27 years. He also noted that he would be happy to store his boat in his backyard but it would cost him a lot of expense to make it possible to access his backyard. Mr. Persanyi stated that when he purchased his boat in 1989 he was legal based on the ordinance at the time.

Mr. Burke asked Law Director Ebert that if it is determined that this not a property rights issue therefore it is a variance request would he be correct if this is a use variance request as opposed to an area variance request. Mr. Ebert stated yes. Mr. Burked asked that isn’t the criteria different and more stringent for a use variance. Mr. Gess asked if a use variance lives with the property. Mr. Ebert explained no it would be the use for the property owner at the time and it doesn’t run with the land. Mr. Burke asked to be provided the criteria for use variance.

Motion by Bruno, second by Burke, to table the request until the following meeting.

Roll Call Vote: Yeas – Bruno, Burke, Gess, Norton, Tyo, Young
Nays - None

Motion Carried 6-0

*After the motion was passed Mr. Norton indicated that Mr. Persanyi will be placed on the agenda for the November 16, 2017 meeting. Mr. Persanyi stated that will not be a problem however his boat is in the water at the marina and it needs to be removed by the end of October. Mr. Ebert stated that this is not a safety issue and he still needs to do his research but if its deemed that it is not a property right and the boat would not be allowed to be stored on his property, he would agree to stay in execution until the spring when the boat will put back in the water. Therefore, there will be no enforcement until the spring.

Mr. Norton explained that Mr. Ebert wanted the board to discuss the change in accessory buildings and structures particular to illumination. Mr. Ebert explained that 1141.04(J) came up due to the ice skating rink and illumination and the councilwoman wanted to change 1141 with
restrictions. There was concern from council with other residents wanting to build and wanting to have input from the boards and commissions, therefore a moratorium was put on 1141.04 specifically (J), that talks about recreational facilities. Mr. Ebert explained that 1141.04 was put on first reading a week ago and it now on the second reading. The moratorium was passed. Mr. Ebert suggested to council and councilwomen Lieske who’s chairwomen of The Planning and Zoning Committee that the Board of Zoning Appeals and Planning Commission submit comments and input. Mr. Tyo verified that the moratorium is to stop building not to stop the use. The moratorium that’s put on for any new applications until 1141.04 is adopted or until December 31, 2017.

Mr. Norton noted that Mr. Krall, 594 Elmwood is here tonight regarding the ice skating rink. Mr. Norton explained that the Board of Zoning granted a special permit for the ice skating rink. Mr. Tyo noted that there were restrictions made when the permit was granted. Mr. Ebert explained that since Council wants to tweak the ordinance he thought it would be important to have BZA’s input because of special permits and the board might want to put restrictions in the ordinance.

Mr. Norton explained that right now the proposed ordinance under item number 5 is: no floodlights, light poles or lighting of courts is permitted. He explained that this can be interpreted as you have a basketball hoop and you add a light to it because it gets dark earlier in the winter. Mr. Norton stated that when the ice skating rink was discussed the board believed it to be reasonable to have the lights because it gets dark early and the board set strict limits on time in the motion. Mr. Bruno suggested that the minutes be pulled from that meeting to be discussed at the next meeting.

Mr. Krall explained that the noise ordinance in Bay Village is 9 p.m. all year around and does not understand how the variance for the ice rink was granted until 10 p.m. on weekends. He noted that his wife and him go to bed early and wake up early for work. Mr. Fillar clarified that the noise is for construction noise, motors and generators. Mr. Krall explained that they push the limits and there have been police reports.

Mr. Gess mentioned that if the ordinance is adjusted and new restrictions are put in place is the rink owner going to be sitting here and saying the ordinance changed and you are depriving me of my property rights/previus variance that was granted. Mr. Tyo explained that it’s part of the structure and it’s not part of the structure any more than Mr. Persanyi’s boat. Mr. Norton noted that they did not need a special permit for the rink it was for the lights. Mr. Bruno explained again that the minutes should be pulled in order to not speculate.

Mr. Fillar stated the problem with the ice rink is it’s not in the zoning definitions. He stated that it “seems” to be an accessory structure and if it were an accessory structures it would be allowed to cover 30% of the rear lot. The problem is its temporary and nowhere in the code can a Building Department official stand up and say that’s what it is. We can’t talk about something that is temporary. The temporary word is a terrible word and takes the whole code and kind of
throws it out of the window and then it puts a burden on the board. Mr. Krall explained that his point was to try and get them to define temporary, is it a week, 2, 6 months a year? Mr. Filler stated that is the problem with the word temporary.

Mr. Tyo asked Chairman Norton what he would like to do in order to move forward. Mr. Norton explained that we will pull the ordinance for the next meeting, discuss 1141.04 and give our recommendations to Council.

The meeting adjourned at 8:34 p.m.

Jack Norton, Chairman

Kristine Jones, Secretary