

Minutes of a Meeting of  
BOARD OF ZONING APPEALS  
Held May 1, 2014

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

Absent: Mr. Campbell

Also Present: Mr. John Cheatham, SAFEbuilt, Inc.

Audience: JoEllen Walker, 24654 Lake Road, Barb Hemsath, 24636 Lake Road,  
Edward Pavicic, 24612 Lake Road, George V. Sprogis, 4176 W. 229<sup>th</sup>,  
Fairview Park, Ohio, Becky Olson and Jim Violette, 24624 Lake Road.

Chairman 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 Taylor, second by Burke, to approve the minutes of the meeting held April 3, 2014, as prepared and distributed. **Motion passed 6-0.**

**Becky Olson  
24624 Lake Road**

**C.O. 1125.02 (b) Request variance to  
rebuild non-conforming structure  
with larger structure**

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

The Secretary presented the following email sent to her on May 1, 2014:

“Please forward this email to any interested parties in regards to Board of Zoning Appeals Meeting tonight at City Hall at 7:30pm.

In regards to Becky Olson's request variance to rebuild non-conforming structure with larger structure, we do not have any objections to her request of rebuilding instead of remodeling and therefore will not be attending the meeting tonight.

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Regards,  
Daryl & Maryanne Boehringer  
24566 Lake Road  
(Property adjoining on the east side)”

The Secretary also noted receipt of a letter dated April 17, 2013 to the Board of Zoning Appeals from John H. Hemsath, 24636 Lake Road, Bay Village, Ohio stating that Mr. Hemsath and his wife have no objection to the rebuilding of the cottage owned by their next door neighbors, Becky and Jim Violette.

Architect for Becky Olson and Jim Violette, Mr. Steve Schill, made the following presentation to the Board of Zoning Appeals.

“Good evening, my name is Steve Schill, I am an architect, and I am representing Becky Olson and Jim Violette this evening in their request to rebuild an existing beach house that was severely damaged by Hurricane Sandy in 2012. I see that you have my drawing that I presented. We are asking for an increase of the existing structure, under roof is 655 square feet, we are asking for an increase to 672 square feet. The existing structure has a height of 10 feet, 10 inches, and we are asking for a height of 21 feet. The structure that I am proposing is one that is going to more replicate the....”

Mr. Taylor asked if it is planned to build this structure right where it is, or in the front yard.

Mr. Schill: “We are going to build right where it is but we are going to move it back about eight to ten feet. This structure is going to more closely resemble the house that is on the property and it’s going to increase our roof pitch. If you were there you saw that the older structure has a flatter roof which is not an ideal situation for a structure like this with the microclimate of Lake Erie. I’ve drawn 58 houses up and down the lake from here to the islands and I know not to have almost flat roofs like this existing structure currently has.”

Mr. Tyo: Is the Boehringers’ property directly to – there was a house to the east and in front, Cahill, is that where these people are or are they directly east?”

Becky Olson: “There is nobody living in that house right now. We own the property behind there. There is a 10 ft. strip between Mimi and Daryl’s (the Boehringers’) house and our house.”

Mr. Tyo: “I remember years ago that your house, you showed me the tunnel that was there, this doesn’t affect the tunnel at all, right?”

Becky Olson: “No.”

Mr. Burke: "Have you attached to your application a site drawing showing the precise location of the proposed new building?"

Mr. Schill: "No."

Mr. Burke: "That seems to be something that should be part of the submittal."

Mr. Schill: "This was actually given to us by the engineer after the deadline."

Mr. Burke: "It is not good when we get into the details of it because we usually make any resolutions subject to the specifications as well as the location shown on the drawing."

Further discussion followed regarding the location of the property in question. Becky Olson noted the letter filed by Mr. John Hemsath, and the presence of JoEllen Walker, 24654 Lake Road at this meeting.

Mr. Burke: "You gave us some numbers on the existing structure under roof. That has substantial overhangs. How does the actual footprint of the foundation of the house compare?"

Mr. Schill: "The overhangs on the existing structure are about three feet. They vary because it was built. Right now they are 12 inches."

Mr. Burke: "On the old, and 12 inches on the new?"

Mr. Schill: "Correct."

Mr. Burke: "Okay. So that the actual footprint..."

Mr. Schill: "Has grown."

Mr. Burke: "Percentage wise, much more in comparison to the area under roof."

Mr. Schill: "Yes. When I design a new house I always build to the edges of the overhang whether it is a porch, or..."

Mr. Burke: "So your foundation will be increasing?"

Mr. Schill: "About two feet."

Mr. Burke: "All the way around."

Mr. Schill: "Correct."

Mr. Burke: "When we look at variances we're not looking at substantial changes from the code. We're looking for minimal type things. My question is whether or not we are really talking about a substantial change to the size of the structure or a different size change."

Mr. Schill: "The existing footprint right now is about 592 square feet, enclosed by walls."

Mr. Burke: "And the new one?"

Mr. Schill: "That would be about 628."

Mr. Burke: "On the new one?"

Mr. Schill: "On the new one. And 592 on the old one."

Further review of the submittal followed.

Mr. Schill: "This is showing the property from behind but actually there are two separate parcels here now."

Mr. Tyo: "And this one, the current structure straddles both. The new one- is it going to straddle both or is it going to be southeast and just be in this....?"

Mr. Schill: "The new plan is to combine it to several properties. This is showing a consolidation."

Mr. Burke: "The height of the existing structure. You show it as 10 feet, 10 inches. Is that the peak or the chimney?"

Mr. Schill: "That is the ridge line. The ridge of the roof." The 21 feet that I show on here is also the ridge line."

Mr. Burke: "Is there a chimney in the new one?"

Mr. Schill: "No, there is no chimney; there is no fireplace."

Mr. Burke: “Now, they’re really talking about almost doubling the height. Correct? I am a little concerned about the height – almost doubling. If the foundation were the same size foundation, I’m talking about roof overhang that would permit you to have a roof that would not be as high up, correct?”

Mr. Schill: “Yes, it would drop about two feet.”

Mr. Burke: “Have you considered that?”

Mr. Schill: “Well, we worked extensively through their planning needs for the inside of this structure. I guess we’re open to...there are some things we can’t change in the structure, obviously it is very tight, but we can pull some things back.”

Mr. Burke: “It is one thing to replace the structure that you say is beyond repair in a similar fashion as to size and so forth, but I do have a concern about going that much higher. I understand your concerns about the roof now being such a low pitch.”

The following comments were made while the Board reviewed a plan of the property. Some of the comments are references made to locations on the document.

Mr. Norton: “There is a sewer line that serves the houses from the east and west that runs along behind here that would serve this structure too?”

Ms. Olson: “We already have a full bath and a full kitchen. We already had the city dye test it.”

Law Director Ebert: “That was actually tied into the existing.”

Ms. Olson: “This is tied to the main sanitary sewer. We already have new lines going out and they already have been dye tested by the city.”

(At this point, the discussion turned to the new house being built to the south of the Olson/Violette property. Questions were raised on the sanitary sewer connection for this new home.

Mr. Burke: “Have there been any issues with any of the neighbors regarding the configuration of the sanitary sewers?”

Mr. Ebert: “There is an issue with this house to the south of the Olson property.

Mr. Norton: “So this is the house that was torn down. And it was tied into that?”

Mr. Tyo: “So the new one just probably just follows the same line?”

Ms. Olson: “There are some issues with that right now.”

Mr. Burke: “I would like to talk about the issues if I can. The new house, here, you are saying has a sewer line that goes back and ties into this main here?”

Ms. Olson: “Currently it is going across our property without an easement to a plugged line and then they had a plumber come out and it is actually coming into our lateral which is right here but there is not an easement for it.”

Mr. Norton: “Was this parcel originally part of this?”

Ms. Olson: “In 1920 this was used for Rum running. So, these people had agreed to sell it to them although the deed was not drawn up until 1948. But in 1920 there was a verbal agreement. They paid the money for it. And then in 1948 – we have all the paper work we can show you – they actually deeded it over.”

Mr. Tyo: “Deeded it over to your property.”

Ms. Olson: “Yes, but it was actually paid for. They paid them for the property in 1920.”

Mr. Norton: “This house and the sewer existed then.”

Mr. Ebert: “The existing house before they tore it down.”

Ms. Olson: “There was actually a septic tank here. Way-back-when all of these came out to this lake, I hate to say. At some point the septic tank was put in by these people. They had a lot more money than these people. And both tied into the same septic tank.”

Mr. Burke: “And now the septic tank is not used because this ties into the lateral from this which in-turn ties into the main. I’ve got concerns about allowing any kind of reconstruction on the property unless the sewer thing is worked out here and with the City.”

Mr. Norton: “The City has an easement for this, right?” (In reference to the city main sanitary line running through the Olson/Violette backyard.)

Ms. Olson: “Yes.” (In reference to the city main sanitary line running though the Olson/Violette backyard) (The city does not have an easement east to west across the Olson/Volette property)

Mr. Ebert: “There is a city easement on the books. As everybody knows years ago there were cottages in the front and in the back. In 1964 when this was actually put in. We don’t show a city easement from this here on the parcel here. It is not recorded. Which you were talking about before. When this parcel became a separate parcel, deeded over, or whatever to this house. This is a separate parcel right now. Part of the consideration that we talked about was a consolidation of the two lots. But, we don’t show a recorded easement for the sewer going on to this property. Although the City has taken the position that there is an easement by prescription because it was necessary at the time and the house was tied in and nothing has changed when this house was being built. But that is a whole different issue. It does come into play as far as the sewer itself. We did have the sewer crew go out. My understanding there is no problem tying into the sewer whether it is this house or the cottage.”

Ms. Olson: “So, this actually, they tie in. They don’t have their own line to the sanitary sewer. We did not know they were tying into it because way-back-when it was all plugged. We have a line that runs here that we’ve done extensive work on and we just found out that this line is actually not coming to the sanitary main, it is coming to our lateral.”

Mr. Burke: “Has there been any discussion between the owner of this property, you folks, and the City regarding this issue of this line going here and tying in?”

Mr. Tyo: “Is the owner here?”

Mr. Ebert: “He’s the builder of the house.”

Mr. Pavicic: “Yeah, I am a resident of Bay as well. I develop lots. I have about nine projects going on in Bay right now. This is one of my spec homes. This is the first time I’ve seen the site plan; I’ve not seen any of this. I have no idea where the structure is going yet.”

Mr. Norton (to Mr. Ebert): “With this lot – at some point it’s not joined – it was owned separately.”

Mr. Ebert: “Owned separately – it has a separate Permanent Parcel Number.”

Ms. Olson: “Well it’s always been owned by the same person, but there are two parcel numbers.”

Mr. Ebert: “I don’t know if at one point in time there was a house on it or not.”

Mr. Norton: “Is it legal to have this as a separate parcel with no access?”

Mr. Ebert: “Well, that brings up the issue. Prior to the ordinance that was changed, the frontage issue became an issue because we had one on Bradley that actually had a driveway, that’s all it was, it wasn’t frontage, and it’s behind a house. And because of that City Council actually changed the ordinance. This house, the only way this could exist as a separate parcel with a house you would have to have a common driveway going back and they would have to come for a variance concerning that. There would have to be a common driveway going here. Which you had, I believe there are a couple of them. Because, remember, these used to be cottages. There was one in the front. But when the City Council changed this ordinance, it did not look as far as how many houses that would affect with separate Permanent Parcel Numbers without a house on it.”

Mr. Norton: “So, the only way this can exist as a separate parcel is if there is an easement from this parcel through this parcel for access to Lake Road.”

Mr. Ebert: “That’s correct. A common drive. That’s what brings into whole play, this versus that versus what could be done with a variance. “

Mr. Norton: “So right now this house has been served in the past via tying into the sewer. So the old house that was here had some place in the history had tied into a common lateral. We don’t know who owned that lateral.”

Ms. Olson: “We have redone this lateral. We have two stacks in house, cause our house used to be a double years ago. One stack goes out this way to this lateral, and one stack goes out this way to this lateral. We redid all of our laterals and I guarantee nothing is going into the lake now.”

Mr. Norton: “If the city does not have an easement for this connection, the only other way would be for this house to go down this ten foot and tie in wherever that is.”

Mr. Ebert: ‘Well there are two issues on this. We had our consulting engineer look at that. In order to do that there is not enough room. We did look at Lake Road; you can’t go there without a pump station. He (Bob Greytak, CT Consultants) actually sent an email to the city to that effect.

That’s why we have taken, the City’s position on this is it existed by prescription, by necessity back years ago and we believe the connection is valid, and that will be for future discussion. Mr. Ebert read Mr. Greytak’s email of April 10, stating, “Research of sewers on Lake Road regarding the subject property found there is no local sewer available. The closest local sewer is to the west of the south side and is less than 5 feet deep. The sewer is not an option for the subject property. There are two other sewers on Lake Road in front of subject property: the 36 inch

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relief sewer and the old egg-shaped sewer. Both are rather deep, 12 and 25 feet respectively, but both are interceptor sewers and should not have local sewer connections tapped into them.”

Ms. Olson: “Well there is another option. I know that right now the city is saying that’s the best option. We’re working with a lawyer because we don’t really feel that we should be giving out an easement on our land for no money. It changes things to have that easement there. The sewer might have been there a long time. We do know it was not working. We do know that these people did not think they were tied into that. We thought the only reason this property was here – and they will come and testify – Sue Cahill is still alive – and she will come and testify that they believed, we believed, everybody believed the whole reason for the 10 feet was for the sanitary sewer. The first I ever heard of it was in an email that is public record and Mr. Pavicic referred to an easement. We have no easement. We have all of our titles.”

Mr. Ebert: “The ordinance right now, Section 912.03, states that when the opinion of the director is necessary to connect a house connection to a public sewer and a plug when no connection facility has been provided, application for the public sewer tap shall be submitted in a separate tap. So we believe he had the authority, whoever was the Service Director at this time, to tie into that because it was an easement by necessity at that point in time because there wasn’t another sewer around.”

Mr. Norton: “The way it is tied in now, is there anything negative to this property by having these tied together? The city is going to end up having liability here if an easement is not granted, not only for this, but for this.”

Mr. Cheatham of SAFEbuilt and Ms. Olson spent additional time looking at the maps of the area.

Mr. Tyo: “What we (Board of Zoning Appeals) were provided basically was, tear that down, put another one up and move it 10 or 20 feet. Without the parcels, and the laterals, and the mains. There is a lot more underground. I don’t feel comfortable to vote right now.”

Mr. Norton: “Because of the nature of this lot, which is right now not buildable, unless this owner allows a legal access easement.”

Ms. Olson: “Gary (Ebert) had an agreement that if this is approved we will combine these two lots so this will never be a problem again. This will all be one lot.”

Ms. Olson: “We could build behind the sewer. The Hemsath house is behind the sewer. The houses go back and forth.”

Mr. Ebert: “The consolidation of the lots would have to happen.”

Mrs. Olson: “We’ve already had the survey work done. But we are not saying we are going to do it unless this passes conditionally. The survey work has already been done; we already have the plat plan to combine these two because we understood that was the condition of this being built.”

Mr. Norton: “We need to have more research done as far as the sewer system is concerned. As far as the proposed structure and the approximate propose location, we have to have the location more precise.”

Mr. Burke: “We have to have a site plan that shows the exact location of the proposed structure, the easements, both the one that the City has, and the prescriptive easement here. I need some more information. I do have concern over doubling of the height, and I don’t know what they can do about that other than going to the same size as the existing foundation.”

Mr. Norton: “Let’s hear from some other folks that have come tonight.”

Mr. Pavicic: “I am the builder and owner, resident here. It sounds like you have a lot of questions that need to be answered. I think a site plan would be appropriate for the placement. I think the sewer questions you have need to be addressed. I have a development going in in Westlake right now and I know based on our ordinance in Westlake the sewers all have to have a maintenance of 16 feet in order to have access to those. I haven’t looked at the Bay Village ordinances yet to know what the access has to be, but I really have nothing to say at this time. It doesn’t sound like it is going to go to vote. I would like to have a copy of the site plan when it’s done. This is the first time I’ve seen this as well, too.”

Mr. Burke: “When you purchased the property did you get a title report?”

Mr. Pavicic: “Before I purchased the property, my procedure on everything is to hire an insurance firm, an attorney, as well as my title company to do the diligence. Everything that was stated here I knew already. I knew exactly where my rights were at.”

Mr. Burke: “Did any of those, or through other means, inform you of where you were tied into this main?”

Mr. Pavicic: “Yes, I knew exactly where it was.”

Mr. Burke: “Did anyone question whether or not you had an easement there?”

Mr. Pavicic: “I knew of the prescription easement when I bought the property. I have over a half million dollars cash on that property myself. I have a group of people that do all of my due diligence.”

Mr. Burke: “When you titled the insurance policy did they list the easement issue?”

Mr. Pavicic: “That’s something I will have to ask my attorneys all about. I turn it all over to them and tell them to make sure there are no loopholes.”

Mr. Norton: (to Mr. Cheatham) “John, you mentioned that 10 ft. is the sewer easement.”

Mr. Cheatham: “A lot of the easements from the rear line are 10 feet roughly in Bay.”

Mr. Norton: “This is deep enough that you couldn’t, in that ten foot ribbon that goes down that is part of this, it’s too deep?”

Mr. Cheatham: “There is a storm sewer going out there now. It would be impossible to put a sanitary line in that 10-foot without working on Becky’s property. It would be logistically impossible.”

Mr. Norton: “And the storm and sanitary – you have to have a separation.”

Mr. Norton: “We are dealing with an historical situation here that we really have to wrestle with. We need more information.”

JoEllen Walker: I live two houses west of Becky. My house sits back so when I look out all the windows I see the cottage. I took some pictures for you to get an understanding of what I see. I have two concerns. One is the height and the impact on my view when I look out the windows. By doubling the height I think it’s going to impact my view, my personal enjoyment, and also the re-sale value down the road of my property. My second concern is kind of lookability. Right now, when I look out I see this cute little cottage, but I think when I see the plans I am not sure it is going to have that same look and feel. To me, it is going to be a two-story structure that’s going to have a whole different presence. I am not an expert at looking at plans and visualizing but I am just feeling a little uneasy.”

Mr. Norton: “When I first thought about the height I was thinking that from a ground level it doesn’t make too much difference from the neighboring view. And because from the ground level it doesn’t because for the top part of the house your view is going up so you are missing some sky which doesn’t seem to be all that negative. But, from these pictures the height is going

to be more detrimental from your view because your house must be a little elevated, so you are looking from a higher platform. Part of what we do is how it affects the neighborhood.”

Mr. Burke: “Moving the house back south 8 to 10 ft., would that give you a better view of the shoreline looking east?”

JoEllen Walker: “Yes.”

Mr. Norton: “In principle I don’t have an objection to taking an historical structure, moving it somewhat, because that seems to be a necessity as the cliff recedes, and to repair or rebuild, bringing it up to date as far as the nature of the design. We do need to know precisely the location and the easement to the city.”

Mr. Burke: “This is not a similar rebuild to the existing structure; it’s a whole different structure in size, area, and height.”

Mr. Taylor: “The view stops at the property line. So, I am not worried about that.”

Mr. Bruno: “Agreed.”

Mr. Schill: “Mr. Violette stated he would be willing to concede on the height. We could redesign so it would help.”

Mr. Norton: “Even the nature of the material. Metal roofing is more stable, and lower pitches. We are at a point where we need to recess this case.”

Barb Hemsath: “I live directly west of Becky and Jim. My husband did send a letter saying we had no objections to the plans. We still don’t.”

Mr. Burke: “In view of the discussion I think it would be appropriate to table this matter until the next meeting for several reasons. To give all parties a chance to try to look through the easement issue because I am concerned about granting a variance for any new changes on the property while that is still hanging around. Secondly, we need a more detailed site drawing showing the exact location of the proposed structure along with what is our best information from Mr. Cheatham’s office where the easements are shown on both the east-west sewer that does have the easement as well as the prescriptive easement coming from Mr. Pavicic’s property. The other consideration is height. I propose that the Chairman table this until the next meeting and hopefully the parties will discuss this in the meantime.”

Mr. Ebert will be out of town on the date of the next meeting, May 15.

Ms. Olson: “Mr. Pavicic complained to the City about the condition of the cottage. If he continues to complain about it we are in a rush to get it done.”

Mr. Norton: “The cottage’s condition is not an issue.”

Mr. Pavicic: “It is an issue with me from a marketing standpoint.”

Mr. Norton: “The city would condemn it if it not rebuilt because it is hanging over the cliff and one side is torn open. The cottage as it exists is not going to exist, so you can tell the people that. And they can look around the neighborhood and see that it is an eyesore that is not going to remain”

**Motion** by Burke, second by Tyo, to table the matter presented this evening by Becky Olson and Jim Violette concerning their property at 24624 Lake Road, until the June 5, 2014 meeting of the Board of Zoning Appeals.

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

**Motion passed 6-0.**

There being no further discussion, the meeting adjourned at 8:16 p.m.

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Jack Norton, Chairman

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Joan Kemper, Secretary