Minutes of a Meeting of
Board of Zoning Appeals
held June 1, 2017

Members Present: Bruno, Burke, Gess, Miller, Norton, Tyo

Absent: Young

Also present: Jeff Fillar, Building Official of SAFEbuilt, Inc., and Law Director Ebert.

Audience: Bill Keeney, Dustin Pettrey, Brian & Candra Reese, Mike Pascuzzi and Simon Foote.

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

The May 25, 2017 approval of minutes will not be approved until the next scheduled Board of Zoning Appeals meeting.

Brian & Candra Reese
28405 Osborn Road
Tabled from meeting held
May 25, 2017

C.O. 1163.05(h)(3) Requests a variance to replace an existing 6 foot high fence around the property's built-in swimming pool, the fence will be 400 feet instead of the 32 feet limit.

Mr. Norton stated that the board has researched the property file that belongs to 28405 Osborn Road. In 1998 the Reese’s had a permit issued for an additional 6 foot fence along the side of their garage in which the 6 foot fence matched the rest of backyard fence height. Mr. Norton stated that is probable and no evidence could be found that a permit was ever issued for the 400 feet of 6 foot height fence in the backyard. He explained that there is confusion from the standpoint of the ordinance as it relates to swimming pools. It states that you need to have a protective barrier that can be 4 feet 4 inches or 6 foot 4 inches in height to protect to the swimming pool. Mr. Norton explained that in 2012 an applicant had a similar request to that of the Reese’s. He explained that the way our ordinances was written the intent was not to allow a large amount of 6 foot fence. The ordinance was written poorly and the way it was written could be interpreted as to allowing that amount of fence. Therefore in the 2012 case, a variance was not granted because it was ruled that a variance wasn’t needed because it fit the swimming pool ordinance. Mr. Norton stated that the Reese’s are in that same situation. He stated that your 6 foot fence was never granted a Building Permit however it is old enough that the city cannot do anything about that. He stated that council’s intent was correct however it was poor verbiage in the way the ordinance was written. The intent was not to allow that much of 6 foot height fence. The board needs to accept the ruling despite that it does not meet the intent of the law, but it does meet the verbiage of the law. Therefore, the Reese’s do not need a variance to replace their existing fence.
Mr. Burke verified with Law Director Ebert that the 6 foot fence that’s being proposed as a replacement for the existing 6 foot fence is considered a barrier around the pool and since the ordinance does not state how far out from the pool the barrier must be it doesn’t need a variance. Mr. Ebert agreed. Mr. Ebert stated that the only record we could find was from 1998 and it is for an extension of a 6 foot high fence. He explained if at that point in time when the Building Department came out to the property they did not question the 6 foot fence and it was accepted. In one regards you are grandfathered in because you are replacing the fence you are not starting a new fence. If this was a brand new fence than there would be an issue. Also, in 1998 the Reese’s added on to the fence and the Building Department issued a permit and inspected. Therefore based on these facts Mr. Ebert believes that it’s not necessary for a variance. Mr. Reese asked if he still needed a permit. The board stated yes that you still need a fence permit. Mr. Norton stated that if the pool is removed than the amount of the 6 foot fence must also be removed and cut back to a 4 foot 4 fence.

Michelle Pietron  
73 Eagle Cliff Drive  

C.O. 1163.05(II)(3) Requests a variance for a 6 ft. wood privacy fence on the sides of the backyard and a 6 ft. chain link fence in the rear of backyard, the privacy fence will be exceeding 32 feet.

Mr. Norton explained that the Board of Zoning Appeals consists of 7 members by ordinance and by ordinance you need to have the approval of the majority of the 7 members. Tonight there are 6 members present in which that changes the odds because you have to have 4 positive votes to grant a variance or special permit.

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

Mr. Burke stated that he has a concern with the reasoning of the request. He explained that the BZA needs to find something unique to the property and in this particular case the property itself is a rectangular parcel and a double lot. He explained that in the application one of the reasons for the applicants request is to have the 6 foot fence to protect her pets from coyotes. Mr. Burke explained that the board has seen numerous requests for 6 foot fences due to deer and other animals and does not believe keeping coyotes out is sufficient under the way the ordinance for variance is written. Mr. Bruno seconded and does not find anything unique about the circumstances of the property in order for the board to grant a variance.

Mr. Norton stated that the variance lives with the property not the owner. The applicant explained that he also has children that comes to the property. Mr. Tyo explained that the board understands that but the uniqueness has to be due to the property not the use of the property. Also, Mr. Norton explained that in the application the request is to have a 4 foot fence on the sides of the property and if 4 foot is adequate on part of the backyard then why wouldn’t 4 foot be adequate on the whole yard. Mr. Keeny, Diversified Renovations, explained that the application should read as 6 foot height fence along the sides of the property.
Mr. Pierton stated that when they bought the house there was a 4 foot chain link fence in that rear of the yard and then there was also an additional 2 feet added to it. Mr. Burke stated that he saw that when he visited site and also saw that the additional 2 feet was backed by netting. Mr. Pierton, stated that he doesn't know if the previous owner ever pulled a permit to allow for that extension.

Mr. Burke explained that the board needs to be careful about not setting a precedent. If the board was to grant a 6 foot privacy fence around the backyard for coyotes or deer than everyone would be in here asking for the same thing.

A lengthy discussion continued regarding the presence of coyotes. Mr. Bruno stated that the board appreciates the comments however this is more of a legislative issue that you would need to take up with council.

Mr. Pierton asked if the 6 foot fence in the backyard would be grandfathered in. Mr. Tyo stated if they had a permit for the fence, then it would be taken into consideration. Mr. Pierton said that the fence has been there for 10-15 years. Mr. Buke stated that it is a 4 foot chain link fence then there is about 2 feet above with netting behind and believes that most likely it is not in conformance with the code.

Mr. Gess clarified that since there was some confusion with the drawing that were submitted that the true request is for there to be 6 foot fence along the sides of property. Mr. Kenney agreed and that all of the fence height is proposed at 6 feet.

Mr. Piecron asked what would be allowed in the backyard. Mr. Norton stated that 4 foot 4 inches for the fence heights and 4 foot 6 inches for the post heights for the backyard. In addition to that you can do 32 feet of privacy and that is based on the total perimeter of the lot. He explained that based on your perimeter you could get 43 feet total of 6 foot fence legally and it can't be all in one line but it can be 32 feet in one line.

Mr. Fillar brought up the property file for 73 Eagle Cliff. There was a permit granted from June 7, 1999 for 32 feet of a 6 foot fence but then dropping down to a 4 foot fence.

A lengthy discussion followed on the 6 foot fence and the 6 foot chain link fence.

Mr. Bruno suggested that they table the application. Mr. Norton agreed.

Mr. Tyo stated that when you resubmit the application you need to indicate what changes have been made to the request. Mr. Norton corrected Mr. Tyo and explained that they will not need a new application or a new fee. That we will table the request for the applicant to modify the request based on the conversations from tonight. Mr. Tyo explained to the applicant that the height is the issue.

Motion by Burke, second by Bruno that we table the action on the request of property owner at 73 Eagle Cliff Drive to permit the applicant to redraw the proposal and resubmit changes based on the discussions this evening.
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Motion in favor: 6 ayes  
0 nays

Motion Carried: 6-0

Mike Pascuzzi  
25070 Red Oak Court  
C.O. 1370.00 Requests a variance to install a generator on the right side of house close to back corner by fence in backyard.

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

Mr. Bruno asked how many feet would the generator be from the neighboring house to the east.

Mr. Pettrey, Portman Electric, stated that the generator is 18 inches off the house and 3 1/2 feet from the house to the front of the generator. The generator would not be sticking out past the gates to his backyard. Mr. Bruno stated that it seems like it’s quit a distance away from the house to the east. Mr. Fillar stated that from the scale of the application it looks to be about 19 feet.

Mr. Bruno’s brought up his question because he is comfortable with the placement considering the distance to the other home.

Mr. Tyo asked how often the generator needs to be tested. Mr. Pettrey explained it can be set to test weekly, bi-weekly, or monthly and runs for 5 minutes at half the rpm. He explained that typical operating is 67 decibels.

Mr. Norton stated that often times the board adds a requirement that the generator needs to have yearlong screening.

Motion by Tyo, second by Bruno, to grant a variance to the property at 25070 Red Oak Court per C.O. 1370.00 for the installation of a generator that is 7 feet from the east side of the house for a variance of 3 feet with the understanding that the generator will be located in accordance with the plans submitted in the application with yearlong screening. The testing of the unit be per the manufactures facts but not more frequently than once a week between 9 a.m. and 6 p.m. Monday through Saturday and the installation confirm to all applicable building codes, not closer than 10 feet from the property line but not less than 2 feet.

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

Motion Carried 6-0
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Simon Foote
473 Bradley Road
C.O. 1350.03 Requests a variance to build a 10 x 14 shed which is larger than the standard 10 x 12.

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

Mr. Norton noted that this is about a 16 % increase which is relatively mild and it is also has a fairly large lot.

Mr. Miller asked if he has any consideration to the orientation of the shed on the property. Mr. Norton stated that it is shown 3 feet off the 2 property lines where the shed will be on an angle.

Motion by Bruno, second by Tyo, to grant the property at 473 Bradley Road per C.O. 1350.03 a variance to build a 10 by 14 foot shed larger than the 10 by 12 foot standard in accordance with the drawings as submitted, and the shed is to be located in the position on the lot as submitted per the drawings.

Roll Call Vote:  Yeas—Bruno, Burke, Gess, Miller, Norton, Tyo
Nays—None

Motion Carried 6-0

The meeting adjourned at 8:13 p.m.

Jack Norton, Chairman
Kristine Jones, Secretary