

Minutes of a Meeting of
BOARD OF ZONING APPEALS
Held October 4, 2012

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

Absent: Mr. Taylor

Also Present: Bob Lyons, Building Inspector, City of Bay Village

The following persons signed in this evening: Vance Behrinjer, Carol Kucia, Judith Schuster, Dean Schuster

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 Dostal, second by Bruno, to approve the minutes of the meeting held September 6, 2012 as prepared and distributed. **Motion carried 6-0.**

Dean Schuster
29040 Northfield Rd.

**C.O. 1359.01 (a) location of air
conditioning unit in side yard**

Mr. Norton advised that the Board has had an opportunity to review the application and visit the site. He commented that the property east of the Schuster home is the back yard of the home that sits on that property to the east, since the Schuster home is the corner house. Mr. Norton noted that the request of a 2' variance is very minor. Mr. Campbell stated that a sound blanket for the air conditioning unit should be added to the unit.

Motion by Tyo, second by Burke, to grant a variance in the amount of two feet to the property at 29040 Northfield Road per Codified Ordinance 1359.01 (a) for an air conditioning unit in the side yard, with the requirement of a sound blanket.

Roll Call Vote: Yeas – Bruno, Burke, Campbell, Dostal, Norton, Tyo
Nays – None

Motion passed 6-0.

**Vance Behrinjer on behalf of
Matt & Jen Kennedy
30109 Applewood**

**C.O. 1141.04 (J) Special Permit
for exterior fireplace**

Mr. Norton advised of an email communication from Richard Kucia, 30101 Applewood, dated October 1, 2012, stating that he is in opposition to the request for the special permit for the exterior fireplace, and forwarding sources of information about the pollution and health dangers from fireplaces and fire pits. Mr. Kucia's email is included further in these minutes for reference purposes.

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

Mr. and Mrs. Richard Kucia were present to present their opposition to this application for a special permit. Mr. Kucia stated that they are the next door neighbors of the property owners on whose property the fireplace is intended to be built. They object to the fireplace on health grounds. He stated that this fireplace seems to be very large. Vance Behrinjer, speaking on behalf of Matt & Jen Kennedy, stated that the fireplace is 6 feet wide, and the two fire boxes on the side have been crossed off the drawing. Those fireboxes will not be included in the construction.

Mr. Kucia stated that this is a serious construction project. The research he did about the effects of wood smoke is included as part of his email communication dated October 1, 2012. Mr. Kucia reviewed the information attached regarding the dangers of wood smoke for the benefit of the Board, noting that he is seriously concerned about the health issues. Mrs. Kucia added comments about pollution to the lake from particulate matter coming from these outdoor fireplaces, noting that in addition to the health hazard presented by this smoke, there is an environmental hazard.

Mr. Tyo asked how this outdoor fireplace differs from the indoor fireplaces that many residents in Bay Village have in their homes. Mrs. Kucia stated that they do not recommend use of indoor fireplaces, adding that the amount of carcinogens is doubled by having a fireplace inside the home, and having one outside. Mr. Kucia commented that the chimney from an inside fireplace is opening 40 feet in the area. The outdoor fireplace is opening at essentially ground level. Mr. Kucia stated that the wind blowing from west to east will cause smoke to be blown to their property.

Mrs. Kucia commented further about the dangers of poor air quality and the contribution of these fireplaces to air pollution.

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Mr. Bruno addressed Mr. and Mrs. Kucia, stated that he commends their comments about their passion for this subject, noting that some of these comments need to be directed toward the emission of automobiles. Mr. Bruno stated that the City of Bay Village does not have a law against these fireplaces. Mr. Norton noted that the only reason the fireplace is before the Board of Zoning Appeals is because it is an item not listed as definitely approved or disapproved. Because of that, a special permit is required for installation.

Mr. Bob Lyons, Exterior Maintenance Office of the Bay Village Building Department, commented that any property owner is allowed to have a portable fire pit or wood burner in their back yard without any permit whatsoever. That would be the other option for the applicant.

Mr. Norton advised that the property has its own rights. The Board of Zoning Appeals cannot take normal rights that are assigned to a property away arbitrarily.

Mr. Burke commented that even if everyone on the Board of Zoning Appeals were experts in environmental sciences, the objection is being brought in the wrong place. If this is a matter of serious health issues it should be brought before federal, state, or local legislative bodies, and not a non-legislative agency such as the Board of Zoning Appeals. The Board of Zoning Appeals is dealing with a zoning issue, and has certainly granted these types of fireplaces a number of times in Bay Village. The project presented seems to be similar to others that have been granted. It would be a deprivation of the property owner's rights to deny this application, and would be arbitrary and capricious if the Board were to deny the issuance of a permit for this fireplace.

Mr. Tyo reiterated the previous comment of Mr. Bruno relative to the fact that the City of Bay Village does not have a law against these fireplaces. Mr. Bruno added that the Board is merely here to grant a special permit because the code does not specifically address this type of structure.

Mr. Norton advised that the Kennedy property has rights unto itself, and the Board cannot arbitrarily deny those rights and say that everyone else in the city that has a fireplace is allowed to have a fireplace, but because there was an objection to this particular fireplace it is not permitted. If the Kucia's are concerned, they have the right to approach City Council and ask for research with an eye toward legislation in the future.

Mr. Tyo explained the process of the Board of Zoning Appeals which includes notification to immediate neighbors and their right to express their objections to the Board. Neighbors are informed to keep them apprised of construction in their immediate vicinity. Mr. Tyo advised Mr. and Mrs. Kucia that their complaint is recognized by the Board, but the Board is not the Environmental Protection Agency or an authority that can do anything about the complaint.

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Mr. Kucia asked for a suspension of the application for a period of time that would allow him to go to City Council for legislation. Mr. Tyo stated that this could be a lengthy process.

Mr. Lyons stated that this Board has had requests before it that have been very close to a property line. The Board can control where the fireplace may sit if it seems like it would be a potential health hazard, or a hazard in general being closer to someone's property. That is why it comes to the Board for review. The guideline is ten feet from the property line. The yards in this case are very wide, and they are installing the fireplace in the middle of the yard, slightly offset toward the other neighbor's property to the west.

Further discussion and review of plans followed. It was determined that the installation is approximately 60 feet from the Kucia's property line.

Mr. Burke commented that there are some communities that do have ordinances in place that say that if the pollution level is above a certain number, you cannot, for example, mow your grass with a power mower during certain hours. That restriction comes from the legislative branch of government. If a family wants to build a patio in their backyard next to the Kucia property, it would not be a sufficient objection for Mr. Kucia to come in and object to the building permit, because the neighbor smokes a cigar in the backyard every two hours and the smoke comes over. Or, if he wanted to have a garage built, and Mr. Kucia objected to the building permit because he drives a 48 Dodge truck that does nothing but spew smoke everytime he pulls in and out. The Board of Zoning Appeals would not be the place to raise those kinds of objections. Mr. Burke advised that the Board of Zoning Appeals is not saying that they disagree with the information presented by the Kucia's, but that it is not something that they can deal with here.

Mrs. Kucia stated that they misunderstood the process when they received the notice. She expressed concern about the installation of these fireplaces in the community. She asked if leaf burning is permitted in the city and was informed that it is not permitted. Mr. Burke stated that he grew up in Bay Village, and remembers that on a typical Saturday in October, everyone would be raking their leaves to the curb and burning them, resulting in a fog settling in over the whole city. The Council passed legislation prohibiting leaf burning. He noted that to compare a backyard fire pit with the smoke that lay all over Bay Village on a Saturday afternoon in the fall is not even close.

Motion by Tyo, second by Dostal, to grant a special permit to the property at 30109 Applewood, per Codified Ordinance 1149.04 for the construction of an exterior fireplace, per the plans and drawings submitted.

Roll Call Vote: Yeas – Bruno, Burke, Campbell, Dostal, Norton, Tyo
Nays - None

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Motion passed 6-0

Email from Richard Kucia on October 1, 2012:

I spoke with you on Monday 10/01 about the Board of Zoning Appeals meeting this Thursday. I plan to be there to oppose the request for a Special Permit for an exterior fireplace at 30109 Applewood.

Here are some good sources of information about the pollution and health dangers from fireplaces and firepots. I've included a few excerpts from the articles, too. I would deeply appreciate it if you could see that this material is sent to the appeals board members prior to the meeting, so that they have a chance to review it.

Of the 3 homes closest to the property, 2 of the homeowners have indicated their opposition to the request for the Special Permit.

Sincerely,
Richard Kucia
30101 Applewood Drive
rjkucia@att.net
216-702-5008

Scientific American October 3, 2008

<http://www.scientificamerican.com/article.cfm?id=fire-pit-environmental-dangers>

The Environmental Dangers of Backyard Fire Pits

“Fine particles also aggravate chronic heart and lung diseases, and have been linked to premature deaths in those already suffering from such afflictions. As such, the EPA advises that anyone with congestive heart failure, angina, chronic obstructive pulmonary disease, emphysema or asthma should steer clear of wood smoke in general. Children’s exposure to wood smoke should also be limited, as their respiratory systems are still developing and they breathe more air (and air pollution) per pound of body weight than adults.”

“The Washington State Department of Ecology reports that about 10 percent of the wintertime air pollution statewide can be attributed to fine particles from wood smoke coming out of wood burning stoves. While a wood stove may be a necessary evil as a source of interior heat, there is no excuse for lighting up a backyard fire pit during times when you could be creating health issues for your neighbors.”

NOACA

The Northeast Ohio Areawide Coordinating Agency (NOACA) is the metropolitan planning organization for Cuyahoga, Geauga, Lake, Lorain and Medina Counties in Ohio.

<http://www.noaca.org/fp3.html>

NOACA's Fine Particle Pollution Program.

"Currently, Northeast Ohio is not meeting the fine particle pollution health standards (National Ambient Air Quality Standards) of the federal Clean Air Act."

<http://www.noaca.org/fp3factsheet.pdf>

NOACA fact sheet on the program.

"The fine particles that are emitted directly into the air come from a variety of sources such as cars, trucks, buses, industrial facilities, power plants, construction sites, tilled fields, trash burning, and wood-burning stoves, fireplaces and backyard fire pits." [emphasis added]

"The size of particles is directly linked to their potential to cause health problems. Small particles of 2.5 micrometers or less in diameter (PM2.5) pose the greatest problems because they can bypass respiratory defenses and get imbedded deep into lungs, and some may even get into the bloodstream. Exposure to such particles can affect both lung and heart functions."

"Environmental damage: Fine particles can be carried over long distances by wind and then settle on ground or water. The effects of this settling include making lakes and streams acidic; changing the nutrient balance in coastal waters and large river basins; depleting the nutrients in soil; damaging sensitive forests and farm crops; and affecting the diversity of ecosystems."

American Lung Association

http://www.stateoftheair.org/2012/msas/Cleveland-Akron-Elyria-OH.html#annual_pm

Ranked 14th worst for annual particle pollution out of 277 metropolitan areas

EPA

<http://www.epa.gov/oar/particlepollution/fastfacts.html>

Fact sheet listing dangers of particle pollution

- Fine particles are easily inhaled deep into the lungs where they may accumulate, react, be cleared or absorbed.
- Scientific studies have linked particle pollution, especially fine particles, with a series of significant health problems, including:
 - premature death in people with heart or lung disease,
 - nonfatal heart attacks,

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- irregular heartbeat,
- aggravated asthma,
- decreased lung function, and
- increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing.

Burning Issues / Clean Air Revival Inc.

<http://burningissues.org/car-www/science/outdoor-firepit-page.html>

“What we know about the dangers of tobacco smoke well applies to wood smoke. Wood smoke is chemically active in the body 40 times longer than tobacco smoke (Pryor). It is 12 times more carcinogenic than tobacco smoke (Lewtas) and lowers the body's defense mechanisms for fighting off infections. Just one hour of exposure can lower immune defense 25 to 40 percent (Zelikoff).”

“There is no safe place or time of year that vulnerable people can avoid this deadly pollution. These open fire pits expose the owners and their guests to even more pollution than a fireplace or tobacco smoke. (Each fire will emit close to one pound of smoke pollution, with 90% being in the deadly smaller than one micron range.)”

Ronald and Barbara Kryc
319 Glen Park

Adjudication Order
Review of case heard September 6, 2012

Mr. Norton commented that it appears that there has been straightening of the wall and there were three skids of block sitting on the property, which are now gone. The wall does not appear to have gotten any higher.

Mr. Lyons stated that there has been no straightening of the wall. There has been no work done at the property. The deadline for the adjudication order is October 6, 2012. Mr. Lyons stated that the Building Director has been informed that the Kryc's are presently negotiating sale of the property. The fence at the site has been altered to keep it more secure. The Building Department will have to see a copy of a purchase agreement to indicate that the property has been sold. Mr. Burke noted that since notification has been received from the city a section of the Ohio Code may be applicable to the sale.

There being no further business to come before the Board, the meeting adjourned at 8:17 p.m.

Jack Norton, Chairman

Joan Kemper, Secretary