

City of Bay Village
PLANNING, ZONING, PUBLIC BUILDINGS AND GROUNDS COMMITTEE
March 6, 2023
5:30 p.m.

Members Present: Councilman Peter J. Winzig, Chair
Councilwoman Lydia DeGeorge
Councilman Michael Greco

Also Present: Law Director Mark Barbour
Building Director Eric Tuck-Macalla
Councilman David L. Tadych

Audience: D. Reinker, 317 Saddler Road.

Councilman Peter J. Winzig, Chairman of the Planning, Zoning, Public Buildings and Grounds Committee, called the meeting to order at 5:30 p.m., thanking everyone for their attendance. Mr. Winzig introduced Councilwoman Lydia DeGeorge, and Councilman Michael Greco, members of the Planning, Zoning, Public Buildings and Grounds Committee chaired by Mr. Winzig.

On the agenda this evening are a number of items pertaining to the current ordinance on Accessory Buildings, Structures and Usage. Mr. Winzig noted that he made notes on the ordinance and will walk through the ordinance, with reference to his notes.

(A.1) Air conditioners, as governed by C.O. Chapter 1359. Mr. Winzig stated that this primarily has to do with distance from the home when units are located on the side yard or back yard. The P & Z committee often gets variance requests, as can be seen on the agenda for March 16, 2023 Board of Zoning Appeals requesting that a variance be granted to a distance adjustment.

(A.2.) There is also a mention of swimming pools, and primarily that they are inground, not above ground. It also states that the subsection was repealed by Ordinance No. 73-146, passed December 17, 1973 (See Chapter 1163 for fence regulations.) A newer fence ordinance has been adopted.

(C) Beach house or boat house not used for human habitation and so located that no part of such structure projects above the grade of the lot at the street line. Mr. Winzig clarified with Law Director Barbour that this habitation refers to overnight stays. Mr. Barbour stated that this is described as having living quarters. Building Director Eric Tuck-Macalla stated that a dwelling unit is defined as having a living space, cooking area, and sanitation area. The owners are required to have either a kitchen or bathroom. They always choose to have a bathroom. Mr. Winzig asked if a variance is requested if the owner wants both. Mr. Tuck-Macalla stated that he does not go back into them after the final inspection. There was one this past year that a variance was granted because it originally was a completely separate residence. They redid the whole interior and the building was grandfathered in.

Mr. Reinker, audience member, asked if garages are accessory buildings. He was informed that

a stand-alone garage is an accessory building.

(D) In a dwelling or apartment used by a physician, surgeon or dentist as a private residence: Office of such physician, surgeon or dentist, provided, however, that no window display or sign shall be used to advertise such use other than a sign permitted by C.O. 1179.10(B)(1), Ord. 76-62 Passed 6-7-76).

(E) In a dwelling or apartment occupied as a private residence: A customary home occupation carried on by such person, provided, however, that no person other than members of the household shall be employed in connection therewith, and provided also, however, that no window display or sign shall be used to advertise such occupation. (Ord. 54-42, Passed 4-9-54, Art. V, Section 4.)

Mr. Winzig stated that this is nebulous; it is difficult to define a home occupation recently. This may be an opportunity to change this section. The committee should also review how many members of the household should be employed.

(F) In a dwelling or apartment occupied as a private residence: Rooms may be rented, provided, however, that no window display or sign is used to advertise such use. Not more than two rooms per residence may be so rented and not more than two persons per residence, other than the principal occupant's family, shall be permitted to occupy such premises. (Ord. 61-201, Passed 12-4-61.) Mr. Winzig questioned whether this is a traditional 30-day month, or does it fall more to an Airbnb type rental. It is not clear currently. Mr. Tuck-Macalla stated that there is another section of the code that says you cannot rent or lease a room or a house for less than thirty days. Mr. Winzig suggested referencing that code section if Section (F) is to remain in the ordinance.

(G) On a lot occupied by an apartment house: Community garage.

(H) Off-street parking spaces as required by Chapter 1191. (Ord. 54-42 Passed 4-29-54, Art. V, Section 4)

(I) Signs as governed by C.O. Chapter 1179. (Ord. 76-62. Passed 6-7-76)

Mr. Winzig noted that this is customarily the name, address, designation if there are certain letters after the name, i.e., Ph.D., etc. The City also recently updated the ordinance governing the use of flags and other special signs. (See Chapter 1179)

(J) Any building structure or use customarily accessory or incidental to a permitted use, on special permit.

Law Director Barbour stated that special permits can be for a variety of things. For example, a special permit is the fence at Bethesda on the Bay Church. Instead of giving a variance for a fence, they were granted a special permit for their fence to protect the children in their day care program. A variance lasts forever, whereas a special permit is only for the use of the property. A day care is a use that is consistent with the church.

Mr. Tuck-Macalla noted that there are other reasons for special permits, i.e., items that are not

mentioned in the code such as garden structures, trellis, stone pillars in front of property, etc.

Mr. Winzig stated that the next document is an ordinance on the books in the traditional form. If you turn to Section (J) it was a proposed addition regarding recreational courts. The present Council was not serving at the time this ordinance was considered. The ordinance puts guidelines around the building of a recreational court. It can only be in the rear yard, and can only be the same height as the natural ground. No. 5 states that no floodlights, or lighting of courts is permitted. However, lighting is permitted for swimming pools. Ms. DeGeorge noted that the lighting requirement around pools is most probably for safety purposes.

Law Director Barbour stated that the lighting of courts and rinks is elevated on a pool, whereas a swimming pool is more ground level lights, lights in the pool, and lighting attached to a home.

Mr. Tuck-Macalla stated that occasionally these items go to the Board of Zoning Appeals for a special permit. Mr. Tuck-Macalla called attention to Item No. (6) stating that the total recreational court area plus all other accessory uses on property shall not exceed the maximum percent of lot coverage as permitted in Section 1149.02. He noted that swimming pools are exempt from that requirement.

An informational document is included in the packet provided to the committee, entitled Zoning for Home Occupations. The first paragraph defines what is meant by a home occupation. The second paragraph proposes simple language of reason, which will help the committee in the event that changes are made in the ordinance. They start with a very simple definition of a Home Occupation, stating, "Any occupation for business use full or part time conducted within a dwelling or an accessory structure, or both, by the resident of the property." Just in that recommendation it includes an accessory structure as part of the business. In some of the other communities if you have a shed, that is not part of the business use.

Ms. DeGeorge asked if we are talking about two separate issues when we talk about what one is allowed to do in their home as an occupation, versus a business. Ms. DeGeorge did talk to other members on Council and the thinking is that when thinking of business, we think of something that is transactional. The occupation is the activity of what is being done. Is there a difference between an occupation and a business? Are we calling it a home-based occupation, or home-based business, or does it matter? They use those word interchangeably.

Mr. Barbour stated that, going back in time, home based occupations in an agrarian society were things like baked goods sold out of the home, seamstress, piano lessons, things of that sort where people would come to your home but it might be more one-on-one or a short transactional period. But, when you look at other things that are home based business, it starts with what people used to do in their homes: making clothes, canning, and things associated with agrarian-type pursuits. Occupation and business are interchangeable; they are not really defined anywhere. When you think of occupations you may think of an accountant, a dentist, or things that lean towards a profession as opposed to a store. Our code doesn't define occupation and business and they are used interchangeably.

Mr. Tuck-Macalla stated that a lot of things can go on in someone's home that seem to be an

occupation. It may or may not be an occupation; we don't have any way of finding out if it is or isn't. Is a person building cabinets in his garage to sell them, or is he just building cabinets in his garage because he wants to build cabinets in his garage? I can ask, but they don't have to answer.

Mr. Barbour stated that city employees can't walk into your house or garage, or onto your driveway and ask what the homeowner is doing without a warrant. These code violations are criminal offenses; these residents have the Fifth Amendment protection. You have to keep that in mind when it comes to enforcement.

Mr. Reinker stated that he agrees with the Building Inspector as far as people selling things out of their homes. When you have a business where people are showing up at different times of the day, 6 or 7 people in the morning at 6 a.m., again in the afternoon, three or four days a week, that is not a selling of goods. That is considered a business. That is where this city has to come to a real good point. We have researched seven or nine cities and they all could not believe that was happening in Bay Village, and that it would not happen in their city. There is a problem here.

Mr. Barbour stated that Mr. Reinker has neighbors who have a personal training business to which people come to their house, their garage, and driveway, and the man who lives at the house performs personal training services for these clients. That was brought to the attention of the Building Department 18 months ago, the matter was looked into and the City, though the Building Department determined and issued an order that it was not a customary home occupation. Any orders of the Building Department, by our ordinances are appealable to the Board of Zoning Appeals, including this decision. The neighbors and Mr. Reinker filed an appeal. The matter was in front of the Board of Zoning Appeals at least twice where testimony was given in the form of people coming in and talking about the situation, the Reinkers had some exhibits, the homeowners were heard from, and people in Bay Village voiced their opinions. The Board of Zoning Appeals overruled the Building Director and said it is a customary home occupation.

Mr. Barbour, in response to a question by Mr. Greco, stated that the Board always makes their decisions based on whatever the ordinance is in effect when the matter is before them. However, if the ordinance were to be changed and somehow make the neighbors of Mr. and Mrs. Reinker outlawed, they would be grandfathered in because the determination by the Board of Zoning Appeals is already existing. When the ordinance change is being discussed it would be for future businesses. If the property was sold and someone else wanted to continue the business, they would be able to continue it also for that particular property because it is grandfathered in. The Board of Zoning Appeals made a determination that this personal training enterprise is a customary home occupation in our code. If someone else wanted to do that on a different street, the record has been established that it is a customary home-based business.

Ms. DeGeorge stated that while we are saying we don't want to be super specific, what we are looking to do is legislate the time, possibly the amount of traffic, and all those other parameters. What we don't want to say is that you can't have a gym in your accessory building. We don't want to limit what people can or can't do. Is this correct?

Mr. Barbour stated that it is up to Council to decide what they want to limit or not limit. The Reinker's neighbors are grandfathered in for their current use, and anybody else who wanted to start one.

Mr. Tuck-Macalla stated that anybody else who wants to start a personal training business can do so within the City until such time as that ordinance is changed. Mr. Barbour stated that this would include anyone who would have started this type of business before a change in the ordinance, if the ordinance is changed.

Mr. Winzig noted that the document provided for review states that compliance is meant to be used for reactive enforcement.

Ms. DeGeorge stated that we are looking at not over defining, but in attending those Board of Zoning Appeals' meetings I didn't feel it was their duty to define a home-based business. I want to avoid that going forward, that we allow the Board of Zoning Appeals to define these customary home businesses, so they do have a strong parameter and can back up the Building Department.

Mr. Barbour stated that the Board of Zoning Appeals is always going to be in a position to rule on language that is in the code that is building related. That is their function. You will never be able to take the Board of Zoning Appeals out of the equation. They are the judge of first resort to decide a dispute between the Building Department and residents.

Ms. DeGeorge asked if the Board of Zoning Appeals can overrule specific words in the ordinance.

Mr. Barbour stated that they interpret words and their application.

Mr. Tuck-Macalla stated that it is easier for them when they have a list. The list may include words such as "or anything that is like any one of these businesses." That is when it goes back to the Board of Zoning Appeals.

Mr. Barbour stated that what Council writes is the law. However, things change over time and that is what we see in our code.

Mr. Greco stated that his understanding is that the language is not to over define, but also language that allows the making of a determination. Mr. Greco stated that he believes this could be done in a page or a page and a half.

Mr. Winzig referred to Item B. Activity in the handout stating that "The home occupation shall not cause any odor, dust, smoke, vibration, noise, heat glare or electromagnetic interference, which can be detected at, or beyond, the property line." Mr. Winzig noted that a particular odor or noise may be offensive to one person, but not to another. Mr. Winzig stated that it is difficult to get around those nuances.

Mr. Greco stated that one of the sample ordinances talks about an undesirable condition that is

not conducive to a residential neighborhood situation. Mr. Greco expressed favor with that sentence.

Mr. Barbour stated that the more objective the standards are as opposed to subjective the better off we will all be. What one person may complain about may not adversely affect another. It depends on the quality of the noise. If there is an objective standard, i.e., “you shall not have people come to the home for the occupation between the hours of 9 p.m. and 7 a.m.”, whatever reasonable type standard.

Ms. DeGeorge asked if it is permissible to determine hours of operation.

Mr. Tuck-Macalla stated that for the Building Department that is the best enforcement. If it is a noise ordinance, provide a decibel number, or a range of decibels, or similar specifics with a light ordinance. Mr. Barbour added that saying “the light is too bright” is subjective. Everyone might agree, but there is room for dispute. Hours of operation should be directed to coming and going.

Mr. Barbour commented further that the City does not know, nor can they inquire what someone is doing in their home.

Ms. DeGeorge confirmed with Mr. Tuck-Macalla that the City does not require licenses.

Mr. Winzig noted that the City of Mentor code states that operators of home-based businesses shall file a permit. He stated that he made a note of whether Bay Village should permit, and if so, why. The next item in the Mentor code states that permitted home occupations are subject to periodic, unannounced inspections.”

Mr. Barbour stated that there is a substantial body of case law that says that kind of inspection is unconstitutional.

Mr. Reinker stated that he is living next door to a business. A home occupation, in his eyes, is different than a business. In the county, homeowners are given a deduction for not having a home business. What about if you have a home business and nobody knows about it? You are still getting a deduction for not having a home business from the county. And Bay Village is probably losing taxes. Why do they get a credit for not running a business when they do have a business? That is not right for every resident in this city. Mr. Reinker asked if there is anything where you give somebody the right to run a business out of a detached two-car garage. The Board of Zoning Appeals agreed three to six people. They are getting eight or nine. They are advertising eight people now. Before it was twelve. It was brought to the attention of the Board of Zoning Appeals, and they lowered it to six to match child care. As of the other day, it was back up to eight. Nobody is looking. I am trying to be the right person here. I don’t want to see this happen anywhere else. This has been a nightmare. My wife is livid. Unless language is down to the “t” there are going to be interpretations and sliding through the cracks.

Mr. Barbour addressed Mr. Reinker, stating he knows he is upset, and he understands completely and is well aware of all the complaints. The Building Department and the City sided with you.

The Board of Zoning Appeals overruled.

Mr. Reinker stated that he wasn't born yesterday; he understands how favors work.

Mr. Barbour stated that some kind of language can be put in the ordinance that would dictate the parameters.

Mr. Winzig stated that all of the ordinances he has looked at talk about off-street parking. There is on-street parking and off-street parking. We have all seen when someone has a party and there are twenty to thirty cars on the street for the event. Some of the ordinances define commercial delivery, that it's okay for freight deliveries, or no freight deliveries at all. With the increase in Amazon purchasing and deliveries, for example, there are businesses in town that are getting regular deliveries.

Mr. Greco noted that businesses have changed in recent years, with people ordering from on-line shopping sites and receiving delivery from those sites.

Mr. Winzig asked if there have been complaints about deliveries. Mr. Tuck-Macalla stated that he has not received complaints.

Mr. Tadych asked if there is any reason, once the Board of Zoning Appeals rules there could not be an appeal to Council to overrule that decision.

Mr. Barbour stated that if that were the case the Council would have to take all appeals and decide them yea or nay. You couldn't pick or choose which appeals you wanted to hear.

Mr. Barbour explained further that there is an appeal process – it is the Court of Common Pleas under the Ohio Revised Code, ORC 2506, where any political subdivision administrative's body decision is appealed to the Common Pleas Court. That is the appeal process.

Mr. Tadych stated that he would like the right to refuse to hear the case, or the right to hear the case.

Mr. Barbour stated that if the Council were permitted under the law, they could not pick or choose which appeals they wanted to hear. They would have to hear them all, under due process reasoning.

Mr. Barbour stated that Council has the right, by 2/3 vote to overturn a Planning Commission denial. But, if they grant something, Council doesn't have the right to overturn.

Mr. Winzig continued his discussion of home-based business regulations. Letter (D) addresses the storage of equipment, specifically disallowing explosives or highly flammable or extremely hazardous materials as defined by the U.S. Environmental Protection Agency. Letter (E) states the business must be conducted by a full-time resident of the property. Mr. Winzig stated his question is if he owned the home and rented it there would still be a full-time resident in the home. Mr. Barbour responded affirmatively.

Letter (F) Square Footage Usage. Mr. Winzig stated that he found it interesting that some permits say 20%, some say 30%, and he doesn't understand why it says anything at all. But, if the committee thinks it is important they could include that in their recommendations.

Ms. DeGeorge noted that it would depend on the kind of business. It would have to be determined for different businesses.

Letter (G) Number of occupations. If there is more than one occupation in a home the combined business-related impact of all home occupations shall be considered when evaluating the terms of the ordinance.

Letter (H) Types of Residential Structures. Home occupations are permitted in all types of residential structures. If an occupation is located in a townhouse, condominium, multiplex or apartment dwelling, the zoning administrator may restrict business visitor parking to specific hours. Mr. Winzig commented that he can understand the need to not abuse a parking area.

Mr. Winzig also included material from the cities of Avon Lake, Rocky River, and Mentor as examples.

Mr. Greco stated that the statement in the City of Rocky River material that reads "An undesirable condition may be identified as abnormal traffic, objectionable noise or any other condition not conducive to a residential neighborhood (may be terminated by the Zoning Administrator) is our goal.

Mr. Barbour stated that this is why the Bay Village code is located in the accessory use section. It is supposed to be a use that is accessory to the main use of the residential living quarters.

Mr. Reinker commented further, asking if one person runs a business out of a dwelling, and his wife opens a business and she runs her business out of the same dwelling. Some of the ordinances state one person running one business.

Mr. Winzig stated that some of the examples mention one or two employees.

Mr. Barbour stated that the current ordinance states that no persons other than members of the household shall be employed in connection with the business. It is something that can be discussed further.

Mr. Winzig asked if the code will need to identify devices such as pumps, solar panels, generating equipment, things that are coming to the market to generate electricity for the house. Do we need to be descriptive in making sure that it addresses the future?

Mr. Greco asked if it would be better to write the ordinance by topic, for instance, house, noise, signage, parking.

Mr. Winzig stated that he was thinking of writing a building structures and use section.

Mr. Barbour stated that we need to see how many parts there are and what the format is. His personal feeling is that it should be kept in the accessory use section of the code, because that is where builders and users of the code would access the information. It is an accessory use of a residence, and needs to be addressed that way. Whether it would be restricted to the main building or an accessory structure remains to be determined.

Mr. Winzig asked if there is anything that has come up that the committee wants to talk about, that they wish was in the ordinance.

Mr. Tuck-Macalla stated that the Building Department does a lot of accessory buildings and structures. He gave an example of someone asking for a permit to build a platform, and the difficulties involved in determining the requirements. If something is referred to the Board of Zoning Appeals, there is a delay and the Board of Zoning Appeals might not know what to do with the request either. Another example in this regard, are the racks for solar panels in a person's back yard, which requires another set of regulations. He noted that someone recently put up a structure similar to the Community Garden, with posts on the top and along the sides. This is in front of the Board of Zoning Appeals now, to define the type of structure. If it were an accessory structure, it would have to be three feet off the property line. If it is a fence, it could be right on the property line. This current structure actually goes three feet off the property line.

Mr. Winzig asked the definition of the rear yard for homes that are on Lake Road. Mr. Barbour stated that the rear yard is the water side. Mr. Winzig asked if the rear yard is two lots and the homeowner installs a tennis court next to the home. They do not want it in the rear yard, they would like it in the area they bought next to their home. Mr. Tuck-Macalla stated that this would be a variance. Mr. Barbour noted that there is a home on Queenswood and Lake Road that has a Queenswood address. The Lake Road side is the backyard of the home.

Mr. Greco stated that he noted product, service and food. He had a situation in his ward in the past where someone was selling food out of their home, with many cars pulling in and out.

Ms. DeGeorge stated that she does not think it is necessarily what happens inside as how it affects the outside, i.e., traffic, parking, etc. The example that Mr. Greco stated would create a safety hazard with people pulling in and out of the drive and trying to find parking in a residential neighborhood.

Mr. Greco asked if the goal is to protect the residential environment.

Mr. Barbour noted that the laws need to be applied equally. When writing the laws, you could not say "with the exception of." He noted that when people are informed in Bay Village that they have a home-based business that is not permitted, most people stop.

Ms. DeGeorge stated that through the State of Ohio, a cottage license can be obtained. Do we have any type of rule for that type of thing? If someone is baking in their home and taking their products to sell at fairs, and has a cottage license to do so, we can't say anything about that. Is that correct?

Mr. Barbour stated that a cottage license deals more with Department of Health matters. The City can have a say in those matters, and recently did so with the example noted by Mr. Greco in his ward. They were asked to close down, and they did. A cottage license governs cleanliness, the handling of food, packaging, etc. It has nothing to do with whether you are allowed to have the business in our City, under our code. A cottage license can be obtained, but if the City says no it is not permitted.

Mr. Winzig stated that in the event someone takes their business onto their deck, and it could be a potential annoyance for the neighbor, is that business still considered part of the structure of a home business.

Mr. Barbour stated that he would ask if what they are doing is consistent with what the homeowner would do. Sitting on the deck, talking on the phone, and looking at a computer. Is that consistent with the use of a single-family residence, as opposed to operating a press and making parts in a garage. The way our current ordinance is designed is that it is something that is consistent with the use of a house, i.e., talking on the phone, using a computer, inside or outside. If you did craft something that said you couldn't do that, how would the Building Inspector know it was a business. The more objective standards, the better it is for enforcement.

Mr. Winzig noted the phrase, "not conducive to a residential neighborhood." Mr. Barbour stated that this phrase gives an opportunity to try to correct situations and the people that are being corrected have an opportunity to contest the decision of the city.

Mr. Winzig stated that he will try to structure a document to be used as a guideline and organize thoughts as the sections are discussed.

Mr. Barbour asked if the matter of recreational courts will be discussed. Mr. Winzig stated that he recently read an example of a pickleball court and what had been approved became a nuisance to the neighborhood. It was agreed recreational courts will be discussed.

Ms. DeGeorge stated that a variance stays with the property, and asked about the recent decision of the Board of Zoning Appeals regarding the gym that is a home-based business. Mr. Barbour stated that it was the determination of the Board of Zoning Appeals that it was a home-based business.

Ms. DeGeorge asked if the discretion of the Board of Zoning Appeals can be limited. Mr. Barbour stated that it would be the same in all jurisdictions. The Board of Zoning Appeals is a Quasi-Judicial Body, and is treated differently than any other administrative agency at a municipal level.

Ms. DeGeorge asked about the possibility of a moratorium while the Planning and Zoning Committee is working on the home-based business ordinance.

Mr. Barbour stated that usually moratoriums are placed on something that the city is attempting to enforce, i.e., enforcing a rule against chickens. We cannot pass a moratorium on people doing

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what they have a right to do. There is some question about whether those are even legal. But, they send a message. It can achieve the purpose, even though it is not precise.

Mr. Winzig asked Mr. Tuck-Macalla to let the committee know of any concerns or topics that are of interest or concern to the Building Department.

Mr. Winzig thanked everyone for their comments and attendance and the meeting adjourned at 6:50 p.m.

Peter J. Winzig, Chair

Joan T. Kemper, Clerk of Council