

City of Bay Village
PLANNING, ZONING, PUBLIC BUILDINGS AND GROUNDS COMMITTEE
June 13, 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

Audience: There were no audience members present, either in person or by Zoom.

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. Also present were Planning and Zoning Committee members Councilwoman Lydia DeGeorge, and Councilman Michael Greco. The purpose of tonight's meeting is to review the draft recommendation of the committee of content that could be included in both C.O. Section 1149 and C.O. Section 1141. The Law Director and Building Director have reviewed the draft recommendation and draft ordinance language has been presented for review this evening. Also included is a recommendation to change C.O. Section 1123 with regard to the title of Building Commissioner and Building Director.

C.O. Section 1149

There are two ordinances in the code, C.O. Section 1141.04 and C.O. Section 1149. They almost have the same title and the same purpose in their intention to guide residents. There may be an opportunity to take what is in Section 1141.04 and include it in Section 1149, which is primarily the full description of accessory use in a residential district.

The change in 1141.04 is the mention of letter (D) mentioned physician, surgeon or dentist. The committee decided that the designation is not needed and will be removed. Letter (E) is home business and will also be removed and will be addressed in the new 1149.

Definitions in Section 1149 that are elsewhere in the codified ordinances will be removed to avoid duplicity.

Guidelines on the location of accessory buildings (garages, carports, sheds, walls, and fences) are in the current Chapter 1149. Building Director Tuck-Macalla has recommended that the definition of a structure, including garden structures, area of limitations and location, be left to the discretion of the Building Department.

Mr. Tuck Macalla requested a change in the size of utility buildings to 199 square feet in a different ordinance Section 1350.03 (Utility Buildings, Installation and Location), increasing the allowance from 120 square feet. At 200 square feet a permanent foundation is required. The area in-between 120 and 199 square feet left a bit of a hole in the code. The size at 199 square feet will

accommodate the hole. Residents must still be within the 30% limitation on the area of the rear yard for accessory use.

The addition of Recreation Courts, Section 1149.07, addresses the size, fencing, lighting, noise factor and specifics to guide as an accessory structure.

Discussion followed concerning the need for a specific definition of 1149.07 (d) stating that the courts shall not be used for any propelled or motorized vehicles of any kind. The Law Director advised that the word “propelled” will include skateboards. Mr. Tuck-Macalla noted that anyone wishing to build a ramp in their backyard must obtain permission from the Board of Zoning Appeals. The word “device” will be added after the word “vehicles” for clarity.

The recommendations for lighting are satisfactory.

Mr. Tuck-Macalla noted that anything regarding noise parameters/limitations during the use of recreational courts will be set by the Board of Zoning Appeals, with an opportunity for neighbors to share their thoughts and concerns. The Police Department enforces noise control, in the same manner as when called to a home using a swimming pool in such a way to disturb neighbors.

Section 1149.08 Permitted Accessory Uses/Home Occupations- Discussion followed concerning the removal of the words “the use shall be conducted entirely within the confines of the dwelling unit.” Mr. Winzig explained that the reason for removal was to avoid the possibility of a neighbor objecting to a person conducting their home occupation on the deck of a home.

Further discussion followed as to whether the “dwelling unit” includes the garage. Should the activity be conducted inside the home? Mr. Barbour suggested thinking in three areas: inside only (including garage), in the house only, on the lot.

Mr. Greco asked if the main question is whether outside activities should be allowed. He noted the wording previously which stated “when any home occupation results in an undesirable condition interfering with the general welfare of the surrounding residential area such home occupation may be terminated by the zoning administrator.” “An undesirable condition may be identified as abnormal traffic, objectionable noise, or any other condition.” The Director of Building has the ultimate authority to stop a business or occupation under those conditions and refer the matter to the Board of Zoning Appeals.

Mr. Barbour noted that one of the goals is to not be able to recognize that a business is being run out of the home when driving down the street. Mr. Greco suggested the wording of “any business, full or part time, conducting their primary services within the dwelling.” Mr. Barbour noted that many times it is not the specific complaint a neighbor is calling about, it is a series of things over time that has built up, and then there is an alleged violation the neighbor is reporting. For any violation, the burden is on the City to prove beyond a reasonable doubt. It must be proven that the activity that is being questioned is a business matter. If the business owner is on the phone outside, the neighbor complaining that the business activity is being conducted outside, that must be proven by the prosecutor that the telephone call was part of the business activity.

Ms. DeGeorge stated that the City does not know if a person is running a business out of their

home because there is not a requirement to register that business with the City.

Mr. Barbour stated that if the committee wants to confine the business within the structure that will be included in the code and the City will deal with it as best they can.

Section 1149.08 (b) will read “Any home occupation, full or part time, shall be permitted as an accessory use in a residential district, subject to the following conditions:

(2) Must be located within the dwelling, accessory structure, or both, and on the same lot.

All were in agreement. Mr. Winzig noted that keeping the business within the dwelling or residential structure is in keeping with the first paragraph of the ordinance which states that the home occupied business shall not in any way disrupt the residential character of the neighborhood.

In regard to the noise level in this section, Mr. Tuck-Macalla clarified that the noise level reference to above 70 decibels at night time between the hours of 9 p.m. and 8 a.m. is not permitted.

Section 1148.08 (b) (11) was discussed regarding that no wholesale jobbing or retail business shall be permitted unless it is conducted entirely by mail, telephone, or electronically, and does not involve the receipt, delivery, sale or storage of merchandise on or from the premises. Mr. Greco stated that limiting the transactions in this manner should not disrupt the residential character of the neighborhood. The Building Director would respond to any complaints.

Mr. Greco stated that he would like to be certain that the home business is conducted within the dwelling and the power of enforcement lies with the Building Director.

Mr. Winzig stated that the remaining two documents to be reviewed are the definition of the Building Commissioner and the Building Director.

Law Director Barbour stated that the Charter states that we shall have a Building Director and the Building Commissioner functions as the Building Inspector. In Chapter 11, the Zoning Code, in many places, and in Chapter 13, the Building Code, it refers to the Building Commissioner. To save the time and effort of amending all those many sections, the proposed ordinance states that the Building Director and Building Commissioner, or their designees, shall have the same duties.

Mr. Winzig noted that the proposed ordinance amending Section 1301.02 states that the Department of Building Engineering and Inspection shall consist of the Director of the Department, the Commissioner of Building and such other employees as necessary. The amendment is to add (C) which states that the duties of the position of Commissioner of Building set forth in the ordinances of the City may also be performed by the Director of the Building Department, or their designee.

Mr. Winzig that the new reading of Chapter 1141 could be combined into Chapter 1149, which lists swimming pools, air conditioners and other items.

Mr. Tuck-Macalla stated that swimming pools does not need to be carried forward, because it has its own section. Swimming pools are exempt from the 30% rule which is accessory use. He noted

that the swimming pool chapter, Chapter 1359 is a fairly large chapter.

Mr. Barbour will further review Mr. Winzig's and Mr. Tuck-Macalla's suggestion regarding items under accessory use that may not need to be included.

Mr. Winzig advised that he would like to have the Planning and Zoning Committee review the most recent draft and make a recommendation to Council to review with possible first reading, with discussions and comments at a special committee meeting to be held as needed over the summer break period.

Mr. Tuck-Macalla referred to Section 1141.04 (D) regarding the rental of rooms. He noted that most people look in the rental ordinance for this reference. Also, there may be a better place for the beach and boat house in section (C).

Mr. Barbour will make the changes discussed in Sections 1149.07 and 1149.08, look at the current Section 1141.04 to determine if some of the accessory uses are not necessary now and can be moved into Section 1149. Ms. DeGeorge suggested the wording regarding the conducting of home businesses to be "their existence is not detectable in any manner outside of the dwelling except if using an electronic communication device."

Mr. Winzig thanked everyone for their comments and attendance and the meeting adjourned at 6:40 p.m.

Peter J. Winzig, Chair

Joan T. Kemper, Clerk of Council