

**Town of Beverly Shores**  
BOARD OF ZONING APPEALS MEETING MINUTES – March 12, 2020  
Administration Building – 500 S. Broadway

The meeting was called to order at 6:43 p.m

**Roll Call** - Board Members: John Janssen, Mary Fulghum, Donna Norkus were present. Board Member David Phelps was not present. Awaiting Plan Commission BZA appointment to vacant position.

**Organizational Election**

John Janssen moved to elect Donna Norkus as Chairperson, Mary Fulghum seconded. Passed unanimously.

John Janssen moved to elect Mary Fulghum as Vice Chairperson, Donna Norkus seconded. Passed unanimously.

**Approval of Minutes**

No unapproved minutes from past meetings were presented.

**By-Laws Review**

Members were provided with BZA forms and by-laws downloaded from the Town of Beverly Shores website. Discussion ensued as to need for careful review of by-laws, town ordinances and BZA Form packet provided to potential petitioners to ensure consistency .

Suggestion was made as to requiring petitioner to swear to veracity of information provided coupled with appropriate penalties for mistruths as BZA hearings are quasi-judicial proceedings. Town Attorney should weigh in on the issue.

**General Discussion**

Board discussed the need for a recording secretary to attend meetings. The two continuing members expressed strong support.

Board discussed the need for the Town Attorney to attend all proceedings. Input of Town Attorney should be sought. Perhaps requiring attendance at standard preliminary hearings may be decided on a case by case basis but required for all final hearings.

**Other Business**

Second organizational meeting will be scheduled for April 9 at 6:30 to allow for full Board, including Plan Commission appointee, to participate.

Clerk Treasurer Hundt will review dates of 2018-19 meetings to determine and locate prior approved and unapproved minutes.

Board to consider adding Plan Commission or Town Council ordinance review request either as a regular procedure or as issues arise.

**Adjourn:**

Motion to Adjourn by John Janssen

Seconded by Mary Fulghum

Approved by unanimous vote.

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Board of Zoning Appeals Chair: Donna Norkus

Attest:

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John Janssen

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Mary Fulghum

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David Phelps

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## Town of Beverly Shores

### BOARD OF ZONING APPEALS MEETING MINUTES- AUGUST 11, 2020

Administration Building - 500 S Broadway

The meeting was called to order at 6:30pm

**Roll Call** – Donna Norkus, Mary Fulghum, John Janssen, Greg Lyman and David Phelps

**Approval of minutes-** Minutes 3/12/20 meeting were approved unanimously.

**Adam Peterson-Developmental Standard Variance request. 19 S**

**Greatwater.** Requesting a front set back variance in order to install a storage shed. All paperwork was in order. It was requested by the board that setbacks and trees be shown on site plan as that is pertinent to this matter. John Janssen made a motion to move to public hearing on 9/24/20. Greg Lyman seconded. Approved 5 – 0.

**SWC Group-Dawn Huston-Developmental Standard Variance request. 1 W**

**Dunes Highway.** Requesting variance to allow 19 parking spaces on the principal property instead of the 21 spaces required. Variance required to implement the 'alley use agreement' previously approved by the Town Council.

Since there was no formal rejection from Building and Site, it was determined that this variance request could be brought to a public hearing if the BZA would determine that having that hearing was in the public's best interest. After much discussion, John Janssen made a motion that this was in the public's best interest to consider this variance request. Greg Lyman seconded. Formal vote was John Janssen, Greg Lyman, David Phelps in favor. Mary Fulghum opposed. Passed 4-1.

Greg Lyman made a motion to move the application to a public hearing on 9/24/20. David Phelps seconded. Formal vote was Greg Lyman, David Phelps, Mary Fulghum and Donna Norkus in favor. John Janssen recused himself. Passed 4-0.

Donna is going to request that the Town Attorney attend all public hearings. Donna is also getting some additional info regarding hiring a secretary.

There was discussion regarding changes in the BZA bylaws. This will be taken up late 2020 or early 2021.

Motion to adjourn by . Seconded by . Passed unanimously.

**Town of Beverly Shores**  
BOARD OF ZONING APPEALS MEETING MINUTES – September 24, 2020  
Administration Building – 500 S. Broadway and by Microsoft Teams Virtual Meeting

The meeting was called to order at 6:35 p.m followed by Pledge of Allegiance.

**Roll Call** - Board Members: Mary Fulghum, John Janssen, Greg Lyman, David Phelps and Donna Norkus were present. Linda Kurtos, Appointee Board Member, Clerk Treasurer Ellen Hundt, Meeting Facilitator and Connor Nolan, Town Attorney were also present.

**Title VI** Survey availability was mentioned.

**Approval of Minutes**

Minutes from August 11, 2020 meeting were presented and approved unanimously by roll call vote.

**Public Hearing**

Peterson – 19 S Greatwater Variance Request

The public hearing was opened.

Facts and Arguments in support of the case. Petitioner, Adam Peterson, presented facts and arguments in support of the case. Original Bartlett home and existing garage doesn't provide enough storage for modern living. Petitioner desires to erect 14 x 12 foot prefab shed installed with no permanent foundation in area of prior septic field. Variance requested is to allow encroachment into required front yard setback by seven feet. Location is the only site on lot where shed can be placed without disturbing the dune. If no variance is granted, a retaining wall and removal of a tree with three foot diameter would be required and cost of installation would be doubled making the project unfeasible.

One email was received in support of the petition. It was read into the record. No support was offered by attendees.

Remonstrations. No remonstrations were received, therefore no need for rebuttal.

Board discussion: David Phelps ("DP") expressed understanding of storage issues but opined that encroachment requested is approximately 50% of required setback. The town master plan provides that "town government must continue to make the rigorous enforcement of its building regulations and zoning ordinances its highest operating priority." We should take that into consideration and if presented with a similar fact pattern in the future the B.Z.A would have to rule consistently.

Mary Fulghum ("MF") suggested photos submitted seem to show other possible locations on the property, adjacent to the house for example.

Adam Peterson (“AP”) responded that the siting is at the bottom of a dune. The garage is a pre-existing non-conforming use which encroaches nine feet into setback. There is no backyard on which to site a shed because of the steep dune rise and NIPSCO right of way.

MF asked where current septic is located. AP responded to the east of the house., elevation about 6 feet.

MF asked about using space in front of the garage. AP responded the shed would encroach both into the required setback and town right of way.

John Jannsen (“JJ”) suggested that ordinances state no accessory structure should be sited in front yard. AP stipulated to that point but argued that there is no backyard in which to site such structure.

Greg Lyman (“GL”) agreed with all Board comments but thinks the request is reasonable and have done what they could under the circumstances.

Donna Norkus (“DN”) asked why it cannot be sited elsewhere on the property as there is no apparent tree issue to the west of the house. Why is that area not suitable? AP responded that the current septic field is sited to the west so that required encroachment into the setback would be greater if shed sited there.

JJ asked for a description of the structure. AP responded that it is a Amish stick built prefab shed with a plan to stucco to match the house.

MF expressed concern with 50% encroachment, asked whether structure could be moved maybe three feet back. AP stated yes, at most 3 feet due to steep slope of property and lack of backyard. MF asked for explanation of why digging into the dune would be necessary with no foundation. AP responded for flat surface. MF asked why not front edge supported by simple piers. AP stated they would be needed across entire front due to characteristics of sand.

JJ asked which side is parallel to the road. AP responded 12 foot side. JJ asked whether reorientation of the shed so that 14 foot side was parallel to road, reducing variance needed by two feet. Alternatively, would AP consider a 10 x 16 structure? AP stated he would consider such a change as required.

MF asked how much the proposed change would affect the variance request. AP stated it would be reduced to four feet. MF asked whether he would consider making such changes. AP responded yes.

DP asked whether this is the only variance needed. AP responded yes, in accordance with meeting with Building Committee.

MF asked why a smaller building could not be used. AP responded that requested structure is 168 s.f. Smaller shed would not meet their needs.

After discussion, Petitioner agreed to modify his request to reflect only a three foot variance. Attorney Nolan suggested such a change may be accepted by the Board as the modified request is for a lesser variance than the one previously published and noticed.

Board Action. John Janssen moved that we accept the amended request to modify setback request to a three foot encroachment into front setback, accept Petitioner's findings of fact, grant the variance and close the public hearing. Greg Lyman seconded.

Mary Fulghum raised issue of Findings of Fact #2 regarding undeveloped adjacent properties and asked that it be struck. After discussion, Mary Fulghum offered a friendly amendment to the motion to add language to Finding #2 stating that adjacent properties "are separated by a utility easement, and east of the utility easement the property is a steep dune that drops to a wetland and the properties across the street do not have access to Greatwater and the homes are 25 feet above grade." John Janssen accepted the amendment. Greg Lyman seconded. Unanimously approved by roll call vote.

Public hearing is closed.

#### SWC Group, LLC – 1 W Dunes Highway Variance Request

Linda Kurtos ("LK") joined the Board for this hearing to replace the recused John Janssen.

The public hearing was opened.

Documents submitted since preliminary review were introduced and reviewed and found to be satisfactory.

Facts and Arguments in support of the case. Dawn Huston ("DH"), representing SWC Group, LLC, stated "we are asking for a variance. We have had an intent since last year to extend our parking lot. To make it possible we signed an Alley Use Agreement with the Town of Beverly Shores to borrow the alley directly to the south of our building. The new parking lot design will be safer and less contested for our neighbors, police and fire. The total parking will be expanded from 21 parking spaces to 33 parking spaces. However, the new parking plan allows for only 19 parking spaces on our property and currently we are required to have 21 parking spaces on our property. We are asking the BZA to allow a special exception considering the parking line and spaces available will be expanded overall."

Email correspondence (2) received in favor of granting the variance was read into the record as well as a form letter sent by Petitioner to public with signed agreement to support the petition. Adam Peterson, present in the room, also spoke in support. No one online spoke in favor.

Remonstrations. Emails (1) opposing the granting of the variance were read. Alan Piening, present in the room, spoke in opposition to granting the variance. Ann MacDonald, joining online, also spoke in opposition.

Rebuttal: "What we are asking for today is not to discuss the alley because the alley is already been situated with an agreement from the town. What I am asking for is for the parking lot to be

redistributed. As to my prior entry into owning this business, what was discussed earlier was before I even came along so I can't speak to that. Yeah, I do think I was very naïve about the parking lot, which is why I'm presenting this in the first place. I was new to this industry, I was new to this location. And what I've learned is that the parking lot and why I want to keep it at 19 on my property. The parking lot, how it appears on paper and how it functions are different because vehicles are larger than what was ever made prior. People are coming in with Highlanders and big vehicles and nobody ever makes a plan that way here, engineer who I go to doesn't take that into consideration anymore. I did with my new plan. I didn't with my first one. So the movement of these cars because of the proportion of the building is what is stopping the parking lot from working appropriately right now, and what I did in the new one.

Public comment was closed.

Board discussion: DN clarified DH statement that parking lot will expand to 33 new spaces is something not yet decided as it had not been presented to the building committee for approval. There is no authority to expand at this point in time but it is anticipated.

DN asked what is the maximum number of employees that you have on duty at one time? DH responded approximately 12. Looking at the denial from the Building Commissioner and looking at the ordinance, the 21 parking spaces were required for the purpose of obtaining the building permit. That was based on a 60 by 60 building which would require 18 spaces for size and an additional three spaces for the maximum number of employees on duty at any one time as then represented.

But that ordinance is not part of the building code. It's part of the zoning ordinance. It is a general operating requirement so now we are being asked not for a reduction of two required spaces but a much larger number.

Discussion continued as a review of previously granted variance to eliminate required green space. MF stated that representation at that time was that there would be three employees and it would be operated as a coffee shop. DP discussed original review by Building and Site Committee and parking lot configuration based on applicant representation. Application to Dept of Health expanded seating by 25 from what was presented to Building and Site Committee. We have a problem that has to be solved and Petitioner has an alley use agreement with the town. DN expressed that the agreement is contingent on a variance and approval by Building and Site Committee so it is not currently effective to change parking configuration.

LK asked whether the Alley Use Agreement is non-exclusive. Attorney Nolan responded yes. Alley remains a public right of way in the town's control.

GL stated that we are not arriving at this moment with a blank slate. Without the Alley Use Agreement, this is a non-starter but with it the potential is to increase parking.

MF stated concern that we are not following the code. We have a problem but it is of the business owners' making. The business plan was changed and no longer reflects what was represented when permission to build was sought. Concern was expressed that new businesses coming into town may follow the same path.

DP referred to Indiana Dept of Health letter allowing increased size with restrictions for a two year period and Alley Use agreement term expiring simultaneously, Proposed that approval of a variance allowing a reduction in parking spaces required on the lot require strict compliance with IDH requirements and be effective for the same term. He would also require that the variance be non-



transferrable. MF expressed concern that kicking the can down the road does not solve a problem because the increased capacity has created it. LK suggested that granting a variance is more than kicking the can down the road it is exacerbating the problem. DN asks about acquisition of additional property as suggested and whether it would be a solution to the problem as the property is not in Beverly Shores and parking spaces on that lot would not be added to the count of required spaces on the business' lot.

MF stated that one of the findings the Board has to make is that strict application of the zoning ordinance will result in practical difficulties in the use of the property. Practical difficulties shouldn't be self-imposed or based upon perceived reduction or restriction of economic gain and that's what we are looking at here. The property is of a size that can only accommodate a certain size business and they chose to expand their business beyond that size, I am not inclined to find that they have practical difficulties.

GL spoke about current parking practices north of Highway 12 and the need for planning of commercial spaces. But we have an existing problem which we may either ignore or try to address, even if it is a temporary solution.

DH responded that frustrations created by outsiders began a year ago and business plan was completely changed to address them. LK asked when request was made to serve more people in restaurant. DH confirmed that it was subsequent to the frustrations she referred to.

MF stated that the business model could also be revisited. Fewer spaces and fewer cars should result to fit the property.

David Phelps moved to continue the Public Hearing to the next scheduled meeting. Greg Lyman seconded. Roll call vote in favor passed unanimously.

Meeting scheduled for October 8 at 6:30pm

## **New Appeal**

Lapkus – 4 Pleasant Appeal of Building and Site Committee Order and Fine

Review of submitted documents:

- Application fee is paid
- Completed application received
- Site and concept plan received
- Written description of the project received
- Deed copy received
- Photos not required
- Septic approval n/a
- Basis for BZA action received

DP asked for Building Commissioner to address number of stories of the building in advance of the hearing. Reference to Indiana Code cited in application packet being applicable to four story buildings which are not allowable in our residential district. DN responded that request has been made for Building Commissioner to provide full record to the Board prior to the hearing. We can ask him to specifically address the issue.

Greg Lyman moved to advance the matter to public hearing on November 12 at 6:30pm. Mary Fulghum seconded. Approved unanimously by roll call vote.

**Adjourn:**

Motion to Adjourn by Greg Lyman  
Seconded by Mary Fulghum  
Approved by unanimous roll call vote.

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Board of Zoning Appeals Chair: Donna Norkus

**Town of Beverly Shores**  
BOARD OF ZONING APPEALS MEETING MINUTES – October 8, 2020  
Microsoft Teams Virtual Meeting

The meeting was called to order by Mary Fulghum, Vice Chair at 6:31 p.m followed by Pledge of Allegiance.

**Roll Call** - Board Members: Mary Fulghum, Greg Lyman, David Phelps and Donna Norkus were present. Linda Kurtos, Appointee Board Member, Clerk Treasurer Ellen Hundt, Meeting Facilitator and Connor Nolan, Town Attorney were also present.

**Title VI** Survey availability was mentioned.

**Public Hearing**

SWC Group, LLC – 1 W Dunes Highway Variance Request (continued)

Board discussion: Discussion began regarding receipt of additional emails and reopening of public comment period. Attorney Nolan submitted that reopening public comment to include additional emails is at the Board's discretion. David Phelps ("DP") moved to reopen the public comment period. Greg Lyman ("GL") seconded. Passed unanimously by roll call vote.

Additional 69 emails received, including those responding by checkbox on or as attachment to form letter sent by Petitioner, were read into the record.

GL moved to close public comment period. DP seconded. Motion passed by unanimous roll call vote.

Mary Fulghum ("MF") questioned interplay of Alley Use Agreement with town ordinances requiring sufficient parking on same lot as the business. GL responded by recognizing concern and additional inconsistency with directive of Comprehensive Plan but Board approach now should be to determine what is in the public interest, especially since Town Council seemed to address the public interest by entering into the agreement. MF asked GL to address her concern with the self-created hardship by the business model change of property owners. GL and DP acknowledged the concern as legitimate but felt that the existing problem need be addressed. DP added that granting a variance for a limited period, the expiration which would coincide with the Indiana State Department of Health ("ISDOH") requirements and Alley Use Agreement would address the current parking concern as well as addressing precedent-setting concerns.

Donna Norkus ("DN") asked Petitioner to address why the emailed form letter referred to the alley being a "forested woodland" that would bring an additional 14 parking spaces for a total of 33 when at the last meeting we were told there are currently 26 parking spaces. Dawn Huston ("DH") responded that 26 current spaces is correct, she only indicated the required number of spaces in her form letter and forested woodland refers only to area near the entrance.

DP stated that if a variance is granted with expiration to coincide with Indiana Department of Health period that parking on the property would have to revert to the 26 spaces rather than 19. DN indicated that the reason for bringing up the discrepancy was that we have entered the form letter into the public record and the representations contained within it needed clarification.

Linda Kurtos (“LK”) raised issue of possible future expansion of the business if allowed in compliance with ISDOH requirements. DP proposed that any variance granted include specific conditions contained in ISDOH May 15, 2020 letter.

DN asked Petitioner whether reconfiguration of lot to include some spaces for small cars only was considered so that 21 spaces would be maintained on the lot, requiring no variance. DH responded that Town Council required plan for reconfigured parking lot to match drawing submitted in consideration of Alley Use Agreement. DH had considered reduction in size of some spaces to maintain 21, acknowledged that it is possible but would not comply with the use agreement. She also acknowledged that she now understands that this plan works the best because of the large open space in the center of the lot.

DH inquired whether the Board reviewed the submitted amended findings of fact. It had not. She then introduced Richard Riley of Chesterton, Indiana who drafted the submitted amended findings. Mr. Riley read the submitted amended findings into the record. MF acknowledged his extensively quoting the Comprehensive Plan which encourages development of the commercial district but added that the Plan discusses the imperative of encouraging development of businesses to be of proper scale and compatible with the town and surrounding lake shore. Scale is out of whack with size of property and adding parking spaces could result in increased use already exceeding proper scale.

GL acknowledged concerns as legitimate and shares them but opined that issues should be addressed by revision to the Code. Business owner cannot be blamed for ambiguity or conflicts within the Code itself.

MF reiterated the concern that a self-imposed hardship, either in commercial district or residential district, will require future acquiescence on the part of the BZA or Town Council and expresses again there are no practical difficulties in operating a properly sized business on this property. LK adds that she is learning through this hearing about other elements of the revised business plan, activities that don’t require seating which is the focus of ISDOH-imposed constraints (live bands and farmer’s market) and these additional choices add to the problem. DP added that number of seats or business model is irrelevant because number of parking spaces required was not dependent on anything other than size of building and number of employees.

Board Action: David Phelps moved to approve the conditional variance to reduce the number of parking spaces, currently required to be 21, to 19 solely for the purpose of the Goblin and the Grocer to take part in the Alley Use Agreement and that the conditional use would be subject to compliance with the Alley Use Agreement and would terminate on the date of the termination of the Alley Use Agreement irrespective of any continuation or amendments that may be made to the Alley Use Agreement and that, in addition, that it continues to be used for a restaurant in full compliance with the Indiana Department of Health letter dated May 15, 2020 including maximum seating capacity of 50 seats inside the restaurant, 25 seats on the patio, discontinuance of breakfast service and closing the restaurant two days a week. Greg Lyman seconded.

MF questioned Attorney Nolan on how such restrictions would be enforced. LK inquired whether amended proposed findings of fact are incorporated into this motion. Response is that enforcement could be accomplished by BZA or Building Committee or Town Council and that findings of fact will be considered separately and not incorporated into the motion.

Motion passed 4-1 on roll call vote: Donna Norkus, Greg Lyman, David Phelps and Linda Kurtos yes, Mary Fulghum no.

After consideration of amended proposed findings of fact it was decided not to accept them. Review of original proposed findings of fact requesting development standard resulted in striking “and public health” from paragraph 1, striking paragraph 2 in its entirety and adding “The “Alley Use Agreement” is not exclusive and the alley will be available for public use” In its place, and striking paragraph 3 in its entirety and adding “The need for the developmental standards variance arises from the existing parking pattern and the desire to construct a parking lot with an improved parking pattern under the “Alley Use Agreement.” The Alley Use Agreement requires applicant to obtain a building permit to improve the alley at the applicant’s expense. The building permit cannot be obtained without the variance because the number of spaces left on the zoning parcel will be less than the required number. Without this variance, it would leave in place the existing congested and potentially unsafe parking pattern.” In its place.

Donna Norkus moves to adopt the findings of fact drafted by the board at this meeting and to close the public hearing. Greg Lyman seconded. Motion passed 4-1 on roll call vote: Donna Norkus, Greg Lyman, David Phelps and Linda Kurtos yes, Mary Fulghum no.

**Adjourn:**

Motion to Adjourn by Greg Lyman

Seconded by Donna Norkus

Approved by unanimous roll call vote.

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Board of Zoning Appeals Chair: Donna Norkus

**Town of Beverly Shores**  
BOARD OF ZONING APPEALS MEETING MINUTES – November 12, 2020  
Administration Building – 500 S. Broadway and by Microsoft Teams Virtual Meeting

The meeting was called to order at 6:30 p.m followed by Pledge of Allegiance.

**Roll Call** - Board Members: Mary Fulghum, John Janssen, Greg Lyman, David Phelps and Donna Norkus were present. Clerk Treasurer Ellen Hundt, Meeting Facilitator and Connor Nolan, Town Attorney were also present.

**Title VI** Survey availability was mentioned.

Rules applicable to a public hearing were briefly reviewed.

**Public Hearing**

Lapkus – 4 S Pleasant Appeal of Building Committee order and fine

The public hearing was opened.

Facts and Arguments in support of the case. Petitioner, Danas Lapkus, presented facts and arguments in support of the case. Plan changed only moving mechanical equipment from placement on roof to the ground. Building Committee's order is to remove stairs and hatch to roof, allowed for maintenance purposes only because A/C unit was to be installed on the roof. Petitioner contends that there are other maintenance needs requiring roof access and Indiana Code requires hatch access to a roof for buildings four or more stories above grade plane. Further, a fine is not appropriate because moving the A/C unit should not be considered a change in the plans. Mr. Lapkus also stated insurance code requires access due to the need to properly maintain the structure.

Greg Lyman ("GL") asked whether Petitioner has been on the roof. Danas Lapkus ("DL") responded yes. GL asked whether there were other people up there with him. Yes, workmen and one time family members to show the view. Donna Norkus ("DN") asked why that would be necessary as testimony just given was that there is no reason for non-professionals to be on the roof as there are multiple outdoor balconies that offer the same view. DL responded it was just walking through the construction site. DN asked whether there was no concern for safety with no installed railing. DL responded that there was scaffolding.

David Phelps ("DP") asked how many air conditioning condensers or compressors were originally to be installed on the roof. Was special electrical service to be run to the roof to service these units? Relocation would require change in electrical plan, a change in

John Janssen ("JJ") asked whether Building Commissioner or Committee was notified prior to the change. DL responded that the architect is constantly in communication with them.

Mary Fulghum (“MF”) asked about insurance concerns raised in written submission and whether insurance covers liability for personal injury if one falls from the roof. DL responded he doesn’t know.

GL asked whether there are other options for maintaining the roof such as ladders, cranes, etc. DL responded that landscape atop a dune interferes with access from exterior. GL asked about addition of filters and screens to prevent clogging. DN mentioned option of small hydraulic lift to access from exterior by way of driveway.

DP asked whether the construction is of a four story home. DL referred to the Indiana Building Code as referred to in his written submission and states that this code considers the basement as a separate floor.

GL explains that the cited requirements of the Indiana Building Code are applicable to a commercial building, not residential. DL states he wasn’t aware of the distinction

Public comment was invited in support of the petition. None was given.

Dave Wagner (“DW”), Chair of Building and Site Committee introduced to offer rebuttal. This is a 3 story residence, height of 39.5 feet. Location of the A/C unit was critical in approving stairs and roof hatch. Many other homes are of similar height without a hatch to the roof. Safety is of utmost concern. There is no option for guardrails as the maximum height allowed under Building Code limits height to 40 feet. Unreported changes affecting the roof are to HVAC, electrical and drainage. Petitioner had also mentioned installation of flood lights which are not on the submitted plan. Casual access to the roof is plainly dangerous and the town treats it that way.

Remonstrations: Written public comment was received but seems to address a different property. Written comment also received from Mark Weber regarding project intention to add roof access from beginning of design including his conversation with drone operator who was hired to find the building height that was needed to see the lake from the roof, a description of the development of stair case to the roof with operable hatch skylight, project description on architectural firm website describes a four story structure with roof views to the lake and Chicago skyline and personal observation of social gatherings on the roof. Included is a link to the architect’s website and accompanying printout of text found there. Other submitted documents are applicable Indiana residential building code, guardrail requirement and restriction of wood framed residences to three stories. Text of submission cover was read into the record.

Mark Weber spoke in remonstrations, emphasizing the dangerous condition created by allowing roof access.

Susan Zucker spoke in remonstrations, emphasizing the knowledge of the 40 foot height restriction from the beginning of the project. Adds that the lot is seriously undersized, construction allowed for a grandfathered lot which would be unbuildable as not of sufficient size under current ordinances.

John Moynihan spoke in remonstrance. Actions of owner all point to roof being used for social gatherings.

Debbie Kleban spoke in remonstrance agreeing with prior comments and adding that the fine is justified and the opinion that Petitioner's representations suggest more code violations than suggested by the fine.

JJ asked DW whether an occupancy permit has been issued. DW responded no.

DP asked about how violation was discovered. DW accompanied Building Commissioner on inspection and noted no ductwork to roof. Contractor indicated a/c unit had been moved to ground.

JJ asked about discovery of roof drain. Committee member flew drone over property and noted one drain rather than two included on plan.

GL asked about flood lights and prior knowledge. DW responded no knowledge until drone footage viewed.

MF asked for a description of the flood lights. Embedded in the roof and pointing up? DW responded yes as to roof but no indication of where they would point.

DP asked whether flood lights were included in the plans? DW responded no lights on the plans.

GL asked where the lights would point (on roof itself or surrounding property). DW responded too early to tell.

DP asked about additional electrical not on the plan and the possibility it was not inspected. DW responded that is possible. There is also a water spigot on roof.

DP asked whether electrical and plumbing are regulated in Beverly Shores Building Code. DW nodded yes.

Rebuttal: Petitioner stated they are following all the rules and nothing is being done that is not allowed. They have no interest in occupying the roof. The concern with safety is the homeowners' problem, not the town's problem. Two locations for electric on the roof with the idea of adding lighting to reflect downward washing the wall. All changes were small. Petitioner thought architect would have complied with all requirements.

Board discussion: DN expressed concern with this representation that safety concern over access to the roof is not the town's problem. It is a departure from prior representations that there are no safety concerns as there would be no roof access except for maintenance. Petitioner responded that he was referring to professional or inspection access only.

JJ asked DW whether changes were in original approved set of plans. DW responded no.



DN asked whether updated plans had been submitted since inception of the project or still working with original plans. DW said plans to add rooms were just submitted. Also a fireplace was added. The fireplace change was approvable by Building Commissioner without committee action and he so approved. As of now, only one set of plans has been submitted. There was a stop work order for an elevator that was installed. Building Commissioner inspected and approved.

DP read Beverly Shores Building Code §155.059 (F)(1) prohibiting unauthorized changes into the record.

DN read Beverly Shores Building Code §155.055 (H) regarding inspections required to ensure full compliance into the record.

GL expressed that roof access is not mandated and that the Building and Site Committee exercised proper discretion in ordering removal of the stairway, sealing the hatch and imposing a minimal fine.

Board Action.

Greg Lyman moved to dismiss the appeal in all respects for the reasons expressed and the testimony given. John Janssen seconded. Unanimously approved by roll call vote.

Attorney Nolan will draft findings of fact and circulate a draft to the Board for signatures.

Public hearing is closed.

**Adjourn:**

Motion to Adjourn by John Janssen

Seconded by Greg Lyman

Approved by unanimous roll call vote.

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Board of Zoning Appeals Chair: Donna Norkus