

Town of Beverly Shores
BOARD OF ZONING APPEALS
Minutes
February 9, 6:30 p.m.
In-Person and Virtual Meeting

1. Roll Call – Board Members: Present in person: Mary Fulghum, Greg Lyman, Linda Kurtos, and Erik Olson. Present Virtually: David Phelps. Also Present: Town Attorney Connor Nolan, Clerk Treasurer Ellen Hundt and Town Council Liaison Donna Norkus.
2. Title VI Survey Availability - The Title VI Survey was made available.
3. Approval of November 17, 2022 Minutes. Greg Lyman moved to accept the Minutes as written, Mary Fulgham seconded; on a roll call vote, all members voted in favor.
4. BZA Organizational Matters. Officer selection: Mary Fulghum nominated Linda Kurtos for BZA Chair; Greg Lyman seconded. On roll call vote, all members voted in favor, without discussion Greg Lyman nominated Mary Fulghum as Vice-Chair; Eric Olson seconded, and all members voted in favor without further discussion. Eric Olson nominated Ellen Hundt as non-minute taking, recording Secretary, Greg Lyman seconded the nomination and all members voted in approval.

New Meeting Time. Mary Fulghum moved that the Board change its regularly scheduled meeting time from the second Thursday of the month, to the third Thursday of the month. Eric Olson seconded and upon a roll call, all Board members approved the motion.

5. Public Hearing for Daniel Casey, 152 E. Ripplewater, Beverly Shores, IN. Mr. Casey represented himself in the hearing. Linda Kurtos explained the process, including review of the required materials, statement by the Petitioner and statement by any members of the public, and Petitioner rebuttal. In a review of the required materials, the Board found that:

- Mr. Casey completed the application and paid the application fee;
- Written description of the project;
- Deed and Photographs;
- Written rejection from the Building Commissioner
- Site plan
- Publication Notice
- Affidavit of Notice
- Proof of Notification – for list of property holders created by Petitioner

Upon discussion, Linda Kurtos asked about how the property holders list was prepared and asked for the scaled drawing of the 300-foot radius from the lot lines of the property. In her initial review, she identified other properties that appeared to be in the 300-foot radius, but was not included in Petitioner's list of property owners or proof of notification. The Board found that the Petitioner did not meet the burden of showing that every property owner within a 300-foot radius of the property was notified. Greg Lyman moved to continue the public hearing to the

next regularly scheduled meeting to allow the Petitioner to complete the notification and verification process. Erik Olson seconded the motion and it was unanimously approved to continue the hearing to the next regularly scheduled BZA meeting - March 16, 2023 at 6:30 p.m.

6. Preliminary Meeting/Hearing Re: John and Patricia Mackin, 204 Quigley Ave, Beverly Shores, IN. John Mackin appeared on behalf of himself in a preliminary hearing to determine if Mr. Mackin met the requirements for an appeal before the BZA based on a fine issued by the Building Commissioner. The Board reviewed the materials and found the filing to be sufficient. On motion by Greg Lyman and second by Mary Fulghum, and unanimous approval by the Board, public hearing was set for the regularly scheduled April 20, 2023 BZA meeting.
7. New Business: The Board agreed to add pagination to the Application materials.
8. Adjourn. Greg Lyman moved to adjourn; Erik Olson seconded, upon unanimous approval, the meeting was adjourned on unanimous vote on a roll call.

Approved
L.M. P.A.

Chair, Beverly Shores BZA
3/16/2023

Town of Beverly Shores
BOARD OF ZONING APPEALS
Minutes
March 16, 6:30 p.m.
In-Person and Virtual Meeting

Call to Order Roll Call – Board Members Present: Linda Kurtos, Chair; Mary Fulghum, Vice-Chair; and Erik Olson. Not Present: Greg Lyman and David Phelps.

Also present: Town Attorney Connor Nolan and Clerk/Treasurer Ellen Hundt

1. **Title VI Survey Availability.** The Title VI Survey was made available
2. **Approval of February 9, 2023 Minutes.** Mary Fulghum motioned to approve the minutes as drafted with changes to name misspellings, Erik Olson seconded, and all present vote in favor.
3. **Continued Public Hearing for Daniel Casey, 152 E. Ripplewater, Beverly Shores, IN.** The Caseys were present to continue the hearing. The Board reviewed and accepted the new map for notification and proof of service of notification. Gigi McCabe-Miele, AIA, argued the initial case before the Board. Arguments included that the Beverly Shores ordinance does not give guidance on how much variance can be granted. She presented photos, drawings, and arguments in support of the Casey's contention that allowing the elevator housing to extend 4'7" above the current grandfathered height level of 36'8"
 - a. not impact public health and safety,
 - b. not effect property values,
 - c. and that strict compliance would present practical difficulties to the owner.

Public Comment

Residents Mark and Therese Vande Hey, 121 E. Lake Front Drive forwarded a letter to the Board in support of the requested variance and resident Scott Vliek spoke in support of the requested variance.

Dave Wagner, Building Commissioner, clarified that for the last 4-5 years, the Building and Site Committee has been using only the lowest floor level of the building to determine structure height.

There was no public comment against the variance.

Following further discussion and questions, the Board voted unanimously to grant the variance as limited and stated in the below findings of Fact and Decision:

1. That the variance in the limitation on the height of the building would be limited to the area necessary to construct the elevator, which shall be no larger than 6 feet wide by 10 feet long.
2. That the variance in the limitation on the height of the building would be limited exclusively to the construction and maintenance of an elevator in the home. In the event the elevator is removed after it is constructed and not replaced as part of the removal, then this variance shall expire and the owner will be required to remove the structure above the roof line of the building.

Further determining that relief from the requirements of 155.082(A) to allow a variance from the height restriction of 35 feet in 155.082(A) to 41 feet 3 inches, a variance of 6 feet 3 inches (and an increase of 4 feet 7 inches above the existing roof parapet wall), applicable only to a defined area on the roof of the existing building that will be no larger than 6 feet wide by 10 feet long, and for the sole purpose of constructing and maintaining an elevator in the home will not be injurious to the public health, safety, morals, and general welfare because of the facts shown as follows:

As depicted in the drawings, photographs, and other documents included in the record of this variance decision, this existing home at 152 Ripplewater was built in 2004. The existing building height of 36 feet 8 inches was permitted by the then-applicable height limitation of 40 feet. The original plans approved by the town included an elevator shaft, although no elevator was installed. Given its relatively small size in proportion to the entire roof, the portion of the elevator structure subject to this variance is a modest increase above the 35-foot height limitation in the Zoning Ordinance and the existing legal non-conforming height of the building at 36 feet 8 inches. The structure will be 4 feet and 7 inches above the existing parapet wall. The Board received no testimony in opposition to the variance, and received no evidence that the height variance would be injurious to the public health, safety, morals, or general welfare.

That the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner BECAUSE of the facts shown as follows: The petitioner's presentation of photographs, architectural renderings, and maps of surrounding properties, all of which were entered into the record, demonstrated that the addition of the elevator structure onto the roof of the existing home would be minimally noticeable, and will not block the views from any neighboring home. There was no evidence of any negative impact on the values of adjacent properties. The only neighboring property owners who submitted a comment were in favor of the variance, and stated their opinion that there would be no negative impact on their property values.

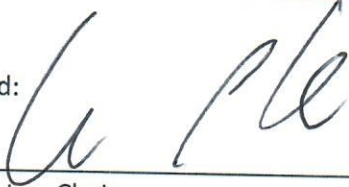
The strict application of the zoning ordinance will create practical difficulties in the use of the property for which the variance is sought BECAUSE of the facts shown as follows: The circumstances of this particular case demonstrate that practical difficulties in this homeowner's use of the existing home would result from strict application of the height limitation, as described in the petition, documents included in the record, and the testimony

during the public hearing. The original design and construction of the house included a shaft for an elevator to be installed in the future. The original construction also included roof top access and a roof top deck, which has been a long-established and permitted use of the property. Installation of the elevator within the elevator shaft will be consistent with this original plan and design, and consistent with the established and permitted use, it will not expand the use of the home or create a new use.

4. **New Business:** There was no new business.

Upon motion and unanimous approval, the meeting was adjourned at 8:03.

Approved:



Linda Kurtos, Chair



Town of Beverly Shores
BOARD OF ZONING APPEALS
Minutes
April 20, 2023, 6:30 p.m.
In-Person and Virtual Meeting

1. Roll Call – The meeting was called to order at 6:30 p.m. Board Members: Present in person: Mary Fulghum, Greg Lyman, Linda Kurtos, Erik Olson, and David Phelps. Also Present: Town Attorney Connor Nolan and Clerk Treasurer Ellen Hundt.
2. Title VI Survey Availability - The Title VI Survey was made available.
3. Approval of March 16, 2023 Minutes. Eric Olson moved to accept the Minutes as written, Mary Fulgham seconded; all members voted in favor and the Minutes were accepted as written.
4. Public Hearing for John and Patricia Mackin, 204 Quigley Ave, Beverly Shores, IN.
John Mackin appeared on behalf of the petitioners and represented them in the hearing on the property located at 392 U.S. Highway 12, Lot 1. The Board reviewed the application materials for completion; including review of the required materials and found that the Petitioner submitted and met the filing requirements.

In addition to the required materials, Mr. Mackin presented some 91 pages of materials that he divided into eleven (11) “chapters” of supporting documentation for his argument in favor of his appeal. Prior to the meeting, BZA Chair Kurtos requested and the Building Commissioner provided, a certified copy of all documents possessed by the Commissioner and the Building and Building Site Committee related to the appeal. All materials were provided to and reviewed by the Board in advance of the meeting and are included in the public file for the appeal.

Mr. Mackin was sworn in and made the initial case for his appeal. Chair Kurtos asked if he could first confirm what he was asking for as relief in the appeal. Mr. Mackin responded with a list of costs he had incurred related to the appeal, including BZA application fees, appeal notification fees, and other related fees. In total, he requested a refund of \$750 dollars for the fees he had paid to date.

During his sworn testimony, Mr. Mackin immediately acknowledged that he had begun demolition activities at the subject property without a lawful permit from the Beverly Shores Building Commissioner or the Beverly Shores Building and Building Site Committee. He explained that, based on his past experience as a member of the Building and Building Site Committee, he assumed he would get a \$500 fine for the permit violation. He further stated that he had determined, prior to beginning the demolition, he was willing to pay a \$500 fine so he could start the demolition on a convenient date -- when his brother was in town to assist him -- rather than wait for the permit to be issued.

Mr. Mackin continued his argument consistent with the documents submitted to the Board and contained in the file, including arguments that:

- The fine amount was excessive;
- The fine was based on the incorrect ordinance;
- The fine amount should have been determined by a majority vote of the Building and Building Site Committee and not the Commissioner acting alone;
- The Building Commissioner should have recused himself; and
- As a member of the community, Petitioner has volunteered time and professional services, both as a member of town Boards and in assistance to the Park Board and Town, for no additional fees and this service should be taken into account when determining whether he should be fined in excess of \$500.

Mr. Mackin asserted that the violation was a minor offense of the town ordinances. Upon question by the Board, Mr. Mackin acknowledged that, as of the date of the hearing, he has not secured a permit for demolition on the subject property.

Public comments in favor of the Petitioners were made and included:

- Written support from resident Candace Bretl, 1622 S. Easton; stating Mr. Mackin is improving the property and the fine amount should be reduced.
- In-person support from residents:
 - Matt Tierney, 1624 S. Eaton, appreciates the work Mr. Mackin is doing and thinks the fine is punitive;
 - Stanley Wyatt, 113 W Oxford, he and Mackin help keep the town clean and is a good neighbor;
 - Hans Lagoni, 520 E. Bellevue, resident and former Building Commissioner. Believes fine is appropriate here, but is too high for this violation;
 - James Pritchett, 327 E. Ripplewater, doesn't understand why the matter was not sent to the Building and Building Site Committee when it became contentious. His experience as an architect who has worked in the Chicago area indicated to him that this was a failure of communication.

Public comments opposed to the Petitioner was made and included:

- A written objection from resident James Ruge, 1621 N. Cambridge, stating the property site has the appearance of being disregarded and in disrepair and additional fines should be issued.
- In-person objections from:
 - Scott Vliek, 21 S. Beach, current Chair of Beverly Shores Building and Building Site Commission. Stated the fine should stand. In the December Building Committee meeting, Mackin told Vliek he knew he would be fined

for the violation, but didn't think it would be so large. Bond has still not been paid for the permit application and permit application is not complete. Vliek did not list the subject property on the Building Committee agenda (in the past or future) because there is no completed application that can be addressed by the Committee. Further, Vliek stated he did not believe Mackin's past volunteer work should be banked for future accommodations. He further noted that Mackin did not provide any evidence that Dave Wagner was acting personally against Mackin or had ill-will toward him in issuing the fine.

- Mark Lies, Secretary of the Beverly Shores Building and Building Site Committee, stated the assessed find should stand. The Committee discussed the violation and Lies was impacted by the fact that it was done by someone with specific knowledge of the ordinances. He also noted that when he voted to originally support the fine, he was not aware of any purported personal conflict between Petitioner and the Building Commissioner, so his decision was not colored by that alleged situation. He stated his decision on the Committee was not punitive.

Building Commissioner David Wagner made comments in opposition to the appeal:

- Commissioner Wagner stated that he has no personal conflict with Petitioner.
- Volunteering for the Town is not a basis for reducing the fine. Wagner noted that the Town runs on volunteers not expecting special treatment.
- Petitioner had specific knowledge of the Code, but still does not have a completed application for the demolition permit.
- The fine is not the highest awarded by the Building and Building Site Commission. However, there was the option for a fine for a continuing, daily fine. The Building Commission has not issued that fine, but if they had, it could exceed the current \$2500 fine since there is no completed permit application.

Mr. Mackin was permitted to make a reply in support of his appeal. Mackin noted that he hasn't completed the permit application because he did not want to incur the bond cost for the permit while his appeal was pending. Mr. Mackin further noted that he believed if there even was "an appearance of prejudice," Commissioner Wagner should have recused himself. Mackin did not provide any statutory support for such a requirement.

Board questions and discussion followed.

Upon question by Board Member Phelps, Petitioner confirmed there was currently no permit and demolition was still being done.

Upon questions by Board Member Lyman, Petitioner confirmed there was no emergency that required the start of the demolition. Rather, the timing was based on his brother traveling to help him with the demolition. Petitioner further replied that he first filed the application for the petition in November, but he and his brother had worked on the demolition at least four long sessions –

until the house had been deconstructed to the ground - prior to that application being filed. Petitioner confirmed he still has not filed the required bond for the application.

Board Chair Kurtos argued that a requirement for a \$10,000 bond in the permit would indicate that the ordinance anticipates the possibility of great damage and not having a permit shouldn't be defined as "minimal." Board Vice Chair Fulghum agreed and added that no one is above the law and that the question before the Board should be whether the fine issued was appropriate.

Board Member Olson added that the purpose of fines is to compel compliance with an ordinance. Since Petitioner acknowledged that he expected to pay a \$500 fine, but still violated the law, Olson suggested that such action would indicate that the Petitioner's requested \$500 fine was not sufficient to get him to comply with the ordinance.

Member Phelps stated that he believes there is some ambiguity in the ordinance and it could be construed that there is a daily continuing fine. Phelps further stated that there is still no permit and the current situation is a continuing eyesore and suggested the Board consider as a motion:

If the demolition permit is secured, following the ordinances, and is taken up by the Building and Building Site Committee by the May 13, 2023 meeting, the BZA consider upon completion of the project, as accepted by the Building Commissioner, the Town will refund \$1500 of the original \$2500 fine.

Board discussion ensued, but Chair Kurtos asked for a second on the pending motion prior to further discussion. Phelps withdrew the motion and presented it as a discussion. There was continued discussion among the Board regarding appropriate actions the Board could take. Fulghum suggested that rather than offer a refund, the Board could enjoin the levying of additional fines by the Building and Building Site Committee, which BZA legal counsel, Connor Nolan, confirmed was within the BZA administrative appeal power to affirm.

Member Lyman made a motion that the appeal be denied, but the fine of \$2,500.00 issued by the Building Commissioner for beginning demolition without a permit is affirmed. Any additional fines for the on-going nature of the ordinance violation for beginning demolition without a permit at 392 U.S. Highway 12 will be waived, subject to the conditions that were detailed in the Board's Order. Upon further conferral with legal counsel, the Board of Zoning issued the following determination and finding of facts:

Board's Findings of Fact:

1. *Petitioners own the subject property at 392 U.S. Highway 12, Lot 1, which is located within the corporate boundaries of Beverly Shores, IN.*
2. *Petitioner, John Mackin, admits that he began demolishing the house on the subject property without a demolition permit issued by the Town, and before applying for a demolition permit.*
3. *Petitioner admits that he knew a demolition permit was required before beginning demolition work, and that he proceeded without a permit because he expected to pay a fine of \$500.*
4. *Petitioner, John Mackin, has 8 years of prior service on the Beverly Shores Building and Building Site Committee, and service as temporary Building Commissioner.*

5. *Petitioner testified that his need to begin demolition without a permit was time sensitive because his brother was driving to Beverly Shores from Pennsylvania to help with the demolition.*
6. *Petitioner began demolishing the house on the subject property in September 2022 and continued demolishing the house with his brother, and together they devoted 400 hours of labor to the demolition.*
7. *Petitioner did not submit an application for a demolition permit until November 16, 2022, approximately 2 months after demolition began, and after a substantial amount of demolition of the structure was performed.*
8. *Petitioner testified he planned to submit the permit application before the September 10, 2022 meeting of the Building and Building Site Committee and did not do so because the meeting was cancelled before he completed the application, but Petitioner also admitted that he did not submit an application before the October 8, 2022 or November 12, 2022.*
9. *The Chair of the Building and Building Site Committee stated that he cancelled the September 10, 2022 meeting due to a lack of business on the agenda.*
10. *Petitioner's permit application of November 16, 2022 was incomplete, in part because Petitioner has delayed posting the bond required by the Zoning Ordinance, which he testified to. Petitioner continued to work on the demolition after he submitted the application.*
11. *As of the hearing date, April 20, 2023, no demolition permit has been issued for the subject property, and the permit application remains incomplete.*

Board's Conclusions:

1. *The Building Commissioner is authorized to enforce the Town's Building Code and Zoning Ordinance.*
2. *The demolition of the house without a demolition permit was not a minor offense.*
3. *There was no excuse or justification for beginning the demolition without a demolition permit.*
4. *The arrival of Petitioner's brother, who was going to assist with the demolition, is not an emergency that justifies demolishing a house before receiving a permit.*
5. *Even if there had been an emergency, the delay of 2 months between the start of demolition and the submission of the incomplete permit application was unreasonable.*
6. *The amount of the fine in this case is reasonable because it appears likely that it will induce compliance with the ordinance, where it appears a lesser fine would not induce compliance.*

ORDER:

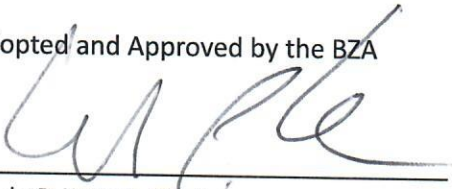
The appeal is denied, and the fine of \$2,500.00 issued by the Building Commissioner for beginning demolition without a permit is affirmed. Any additional fines for the on-going nature of the ordinance violation for beginning demolition without a permit at 392 U.S. Highway 12 will be waived, subject to the following conditions:

- a. Petitioner must pay the \$2,500.00 fine to the Clerk-Treasurer no later than May 12, 2023;
- b. Petitioner must submit to the Town a complete application for a demolition permit for 392 U.S. Highway 12, no later than April 28, 2023, including but not limited to the bond required by the ordinance, which application must be approved by the Building Commissioner and the Building and Building Site Committee; and

c. There must be no further demolition work performed at 392 U.S. Highway 12 before the issuance of a demolition permit.

5. Adjourn. Upon motion and unanimous approval, the meeting was adjourned at 9:00 p.m.

Adopted and Approved by the BZA

A handwritten signature in black ink, appearing to read 'L. Kurtos', written over a horizontal line.

Linda P. Kurtos, Chair

6/15/2023

Town of Beverly Shores
500 S. Broadway, Beverly Shores, IN
BOARD OF ZONING APPEALS
Minutes of September 21, 2023
In-Person and Virtual Meeting

1. **Roll Call** – The meeting was called to order at 6:30 p.m. Board Members all present in person: Mary Fulghum, Linda Kurtos, Greg Lyman, Erik Olson and David Phelps. Also Present: Town Clerk Treasurer Ellen Hundt and Town Attorney Connor Nolan.

2. **Title VI Survey Availability.** The Title VI Survey was made available.

3. **Approval of July 20, 2023 Minutes.** Upon motion by David Phelps and second by Mary Fulghum, the July 20, 2023 Minutes were unanimously approved as written.

4. **Continued Hearing of Variance Application -- Kerros/Kovalan, 205 DeWitt, Beverly Shores, IN.**

Petitioner Edward Kerros was present and represented by attorney Todd Leeth and joined by Duneland Group members Angelica Illanes, in person, and engineer Charlie Ray, on the phone. Attorney Leeth introduced the additional materials required by the BZA and summarized the updated proposed construction and site, especially as it related to the wetland encroachment question. Leeth argued that the encroachment into the wetland protection zone was substantially reduced in the latest proposal.

The Petitioner noted that the parcel was re-surveyed in preparation of the updated drawings and plans. The Duneland Group further explained that the site survey was conducted by a licensed surveyor and as a result of the updated wetland determination, changed the size and location of the wetland and wetland protection zone.

The Board reviewed the new proposed plans, asked additional questions of the Petitioner and Petitioner's representatives, and reviewed the responses. The Chair then entertained motions on the appeal. Upon motion and second, the Board unanimously granted the variance based on the following specific Findings of Fact and Conditions of Variance:

Board's Finding of Facts:

1. That the Development Standard Variance will not be injurious to the public health, safety, morals, and general welfare because of the facts shown as follows:
 - a) The proposed garage, driveway, and reconstructed deck are all residential uses within the Residential District in the Town.

Town of Beverly Shores
500 S. Broadway, Beverly Shores, IN
BOARD OF ZONING APPEALS
Minutes of October 19, 2023
In-Person and Virtual (Audio only) Meeting

1. **Roll Call.** – The meeting was called to order at 6:30 p.m. Board Members present in person: Linda Kurtos, Erik Olson and David Phelps. Monitoring via audio, but therefore lacking voting status: Mary Fulghum. Absent: Greg Lyman. Also Present: Town Clerk Treasurer Ellen Hundt and Town Attorney Connor Nolan.
2. **Title VI Survey Availability.** The Title VI Survey was made available.
3. **Approval of September 21, 2023 Minutes.** Upon motion and second, the September 21, 2023 Minutes were unanimously approved as written.
4. **Preliminary Hearing on Appeal – 16 W. Leewater, Beverly Shores, IN.**

Petitioner Dave Sandrzyk of 16 W. Leewater, applied to the BZA to appeal the determination of a Town Official or Agency. Specifically, Petitioner applied for relief from Notice of Violation and Fine for violation of Town of Beverly Shores Code, Sec. 155.080 B(5)(A). Petitioner was present and represented in the preliminary hearing by attorney Vincent Auricchio.

The Board reviewed the application and asked additional questions of the Petitioner and Petitioner's representative to determine if the appeal could be properly heard. Following Petitioner's presentation and the Board questions, upon motion and second, the Board determined that the petition was complete and the appeal would be set for Public Hearing in the next regularly scheduled BZA meeting, Thursday, November 16, 2023 at 6:30 p.m. In accordance with the Instructions for Filing a Petition before the Beverly Shores Board of Zoning Appeals, the Board requested the following "Other Information" from Petitioner, in document or digital form, be submitted to the Board no later than ten (10) days prior to the date of the BZA Public Hearing on the matter:

Additional Information and Documents Requested by the Board in Advance of the

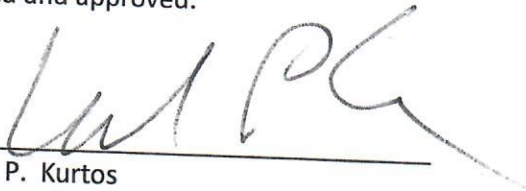
Public Hearing:

- *All documents or materials relied upon by Petitioner for the claim that the 16 W. Leewater property is not bound by Town of Beverly Shores Code, Sec. 155.080 B(5)(A);*

- a. Fail to obtain a construction permit for the work within three (3) years of the date of this decision and complete the construction within the duration of the permit; or
- b. Sell, transfer, or convey the property to any person other than the Petitioners, Edward Kerros, or Amy Kovalan, before completing the construction of the work for which the variances have been granted.

5. Adjourn – Upon motion, second, and unanimous vote, the meeting was adjourned.

Signed and approved:



Linda P. Kurtos
Chair, Beverly Shores Board of Zoning Appeals

Town of Beverly Shores
500 S. Broadway, Beverly Shores, IN
BOARD OF ZONING APPEALS
Minutes of December 21, 2023
In-Person Meeting

1. **Roll Call.** – The meeting was called to order at 6:30 p.m. Board Members were all present in person: Mary Fulghum, Linda Kurtos, Greg Lyman, Erik Olson and David Phelps. Also Present: Town Attorney Connor Nolan.
2. **Title VI Survey Availability.** The Title VI Survey was made available.
3. **Approval of November 16, 2023 Minutes.** Upon motion and second, the November 16, 2023 Minutes were unanimously approved as written.
4. **Continued Public Hearing – 16 W. Leewater, Beverly Shores, IN.**

Petitioners Dave and Margaret Sandrzyk of 16 W. Leewater, applied to the BZA to appeal the determination of a Town Official or Agency. Specifically, Petitioner applied for relief from Notice of Violation and Fine for violation of Town of Beverly Shores Code, Sec. 155.080 B(5)(A). Following earlier continuances, the Public Hearing for 16 W. Leewater, Beverly Shores, IN, was conducted at this time. Petitioner was present and represented in the preliminary hearing by attorney Vincent Auricchio.

The Board confirmed that the required public notice was provided and then asked the Petitioner to present the argument in favor of the requested relief. Petitioners, personally and through their attorney, provided legal argument, documentation, and testimony reliant upon and consistent with the original petition and the supplemental records and exhibits A-U submitted on December 11, 2023, urging relief.

The matter was opened for public comment in support of the relief:
None present or by correspondence.

The matter was opened for public comment in opposition of the relief:
Six residents appeared in person to make opposition to the petition. Additionally, the Board read into the record seven emailed correspondence from residents in opposition to the relief.

The Board reviewed the submitted exhibits, asked additional questions of the Petitioner and Petitioner's representative, and reviewed the responses. The Chair then entertained motions on the appeal. Upon motion and second, the Board unanimously granted in part and denied in part the appeal based on the following specific Findings of Fact and Conditions:

Board's Finding of Facts:

1. Petitioners own the subject property at 16 W. Leewater, Beverly Shores, Indiana, which is located within the corporate boundaries of Beverly Shores, IN.
2. The subject property is located within the Residential District of Beverly Shores.
3. The Beverly Shores Town Marshall issued a Notice of Violation and a Cease and Desist to Petitioners on July 5, 2023 for short-term rentals of the subject property in violation of Town's Zoning Ordinance section 155.080(B). (Petitioners' Exhibit B).
4. The Beverly Shores Building Commissioner issued a Notice of Violation & Fine dated August 16, 2023 for commercial uses of the subject property in violation of the Zoning Ordinance. The Notice of Violation & Fine included fines for twelve (12) violations, with four (4) pre-notice of Cease and Desist violations receiving a \$500 fine each, and eight (8) post-notice Cease and Desist violations receiving a \$2,500 fine each, for fines totaling \$22,000.00. (Petitioners' Exhibit C).
5. The Notice of Violation & Fine was hand delivered to the Petitioners by Chief Deputy Doug Crandall on August 16, 2023.
6. The Petitioners filed their Petition for an Administrative Appeal on September 13, 2023.
7. The Petitioners have submitted with their appeal Exhibit E and F -which purports to be a map of the Town of Beverly Shores to support their claim that they are exempt from the requirements of 155.080(B)(5). (Petitioners' Exhibits E and F). The Board finds that the excerpts of the map are not relevant to the issues because the legend expressly states that "The information contained herein has made available for Public Safety Personnel only. Any other release of this information to other person is prohibited. The Town of Beverly Shores, it's [sic] employees and associates assume no responsibility for the information contained herein." (Exhibit F).
8. The summaries that Petitioners submitted Town Council Reports Exhibit H, and Exhibit I, Plan Commission Report Exhibit J, and Town Council Report Exhibit K, were not found by the Board to be official findings or minutes from the Town entities, and were instead summaries presented by the Association of Beverly Shores Residents of one individual's notes of the meetings that occurred on those dates.
9. Sandtracks is the newsletter published by the Association of Beverly Shores Residents, and as the disclaimer at the top of the page notes, "The report presented is intended only as a summary and should not be interpreted as official minutes of the Town Council." The Board finds that the "note" referencing "grandfathered" rental properties was not a statement made by the Town, and did not specifically identify the subject property.
10. Petitioners presented a lease for the subject property for a 1 year term from November 1, 2016 to November 1, 2017. (Petitioners' Exhibit R).
11. Petitioners presented a lease for the subject property for a 1 year term from May 15, 2017 to May 15, 2018. (Petitioners' Exhibit S).
12. Petitioners presented a lease for the subject property for a 3-month term from January 14, 2023

through April 14, 2023. (Petitioners' Exhibit U).

13. The Town Marshal found a listing on AirBnB.com for a rental in Beverly Shores, Indiana, hosted by Dave and Peggy. When the Marshal saved a print-out from the AirBnB.com listing, there were 3 reviews on the listing dated in June 2023 and July 2023.
14. Petitioners admit that they registered with and started renting through AirBnB.com in 2023, and that those rentals were for less than thirty (30) days. The first time they rented for less than 30 days was in June of 2023.
15. Petitioners did not submit any evidence of continuous short term rental use of less than 30 days, or other commercial use of the property prior to 2023 and certainly not since 1983.
16. Petitioners testified that after receiving the Notice of Violation and Cease and Desist letter they continued to rent the subject property for terms of less than thirty (30) days but that they were only honoring the existing contracts that had already been agreed to through AirBnB.com at the time of the Notice of Violation and Cease and Desist letter, and that the Petitioners quit offering the property for less than 30 days after receiving the Notice of Violation & Fine.
17. Petitioners testified in the hearing that their economic benefit from the rental of the property for less than thirty (30) days was not significant when compared to the expenses related thereto.
18. The Board did not receive any statements from the public in person or in writing that were in support of the Petitioners.
19. The Board did receive seven written statements in opposition to the appeal (Exhibits I through 7, inclusive), and also received comments in person in opposition to the appeal.

Board's Conclusions:

1. The subject property is in the Residential District as defined in the Zoning Ordinance.
2. The legal, conforming uses of property in the Residential District are defined in § 155.080 of the Zoning Ordinance. The only uses permitted in the Residential District include (1) One-family dwellings; (2) Accessory uses as provided in § 155.086; (3) Home occupation as provided in §155.087; (4) Parks and recreational areas owned or operated by governmental agencies; and (5) Rental of a single-family dwelling to a single family if, and only if, certain conditions are met. § 155.080(B). As relevant to this petition, no other use is permitted.
3. Other than those home occupations provided for in § 155.087, which must be conducted by no more than 2 individuals residing in the premises, there are no commercial uses permitted in the Residential District.
4. Rental of a dwelling unit is not a permitted home occupation.
5. Rental of a dwelling unit in a multiple-family dwelling is not a permitted use in the Residential District.
6. A legal, nonconforming use of property in the Residential District is a use that was legally existing

under prior law at the time of the adoption of the Zoning Ordinance or a change in the Zoning Ordinance that rendered the use non-conforming. Any person claiming the existence of a legally nonconforming use bears the burden of demonstrating that such use was legally existing at the time of the adoption of the Zoning Ordinance or change in the Zoning Ordinance. § 155.010(B). The person claiming the existence of a legally nonconforming use bears the burden of establishing that the lawful use has continued and has not been lost. Ind. Code § 36-7-4-1019(c) & Zoning Ordinance § 155.010(B).

7. A nonconforming use may not be enlarged, extended, or increased in nonconformity without obtaining a use variance. § 155.009(A).
8. A nonconforming use may be reduced or lessened in nonconformity, but thereafter cannot be increased. § 155.009(A).
9. A nonconforming use that is discontinued or abandoned for 6 consecutive months during 1 full calendar year, or for 18 months during any 3-year period, may not be resumed after that period, and the property must only be used for a legal conforming use. § 155.011(D).
10. Under Indiana law, a person who rents rooms or lodgings for less than 30 days is a "retail merchant making a retail transaction" subject to the Innkeepers Tax. Ind. Code § 6-2.5-4-4. Therefore, any rentals of less than thirty (30) days in the Residential District are commercial activity and are not a permitted use.
11. Petitioners did not present evidence to establish that rentals of dwelling units on the subject property to multiple families over the course of a month or a year was a legally existing use in 1983, when the relevant provisions of the Zoning Ordinance were enacted.
12. Petitioners did not present evidence to establish that rentals of dwelling units on the subject property to multiple families over the course of a month or a year was continued as a legally nonconforming use from 1983 through 2023.
13. Petitioners have failed to carry their burden that a commercial use of the property for rentals of dwelling units was legally existing at the time the Zoning Ordinance was enacted, and continued as a legally nonconforming use through August 16, 2023.
14. Petitioners' prior rental of a dwelling unit on the subject property to a single family for a term of 1 year is consistent with the character and permitted uses of the Residential District.
15. Petitioners materially changed the use of the premises in 2023, by engaging in rentals of less than thirty (30) days for the first time. Previously, the Petitioners had engaged in rentals of the subject property on a year-to-year basis, or other periods of more than thirty (30) days.
16. Although, the amount of the fines assessed is reasonable and justified by repeated violations especially following the Cease and Desist order from the Town Marshal, the Board concludes that the amount of each of the twelve (12) fines in this case should be modified for the reason that the Petitioners testified that they did not receive a significant economic benefit from the rentals of less than thirty (30) days, and that as a condition of modifying the amount of the fines Petitioners will agree to no longer rent the subject property for any period of less than thirty (30) days. Fines in the amount of \$208.33, for each of eight (8) violations and \$208.34 for each of four (4) violations, which is a total of \$2,500.00 is reasonable and appears likely to induce compliance with the ordinance in the future.

17. Petitioners' rental of a dwelling unit to a single family for a period of at least thirty (30) days is consistent with the characteristics of the Residential District.

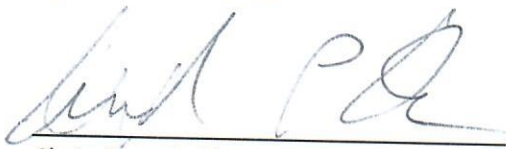
Board's Order:

The appeal is granted in part. The Notice of Violation is affirmed, and the twelve (12) fines totaling \$22,000.00 issued by the Building Commissioner for 12 violations of § 155.080 of the Zoning Ordinance are modified, such that the twelve (12) fines totaling \$22,000.00 are reduced to twelve (12) fines totaling \$2,500.00, subject to the following condition:

a. Petitioners agree that as a condition of the reduced fines, that the Petitioners shall not hereafter lease the subject property for any period of less than 30 days.

5. **Adjourn** – Upon motion, second, and unanimous vote, the meeting was adjourned.

Signed and approved:



Chair, Beverly Shores Board of Zoning Appeals