

Zoning Board of Appeals
Sheffield Lake, Ohio
November 17, 2016

The meeting of the Zoning Board of Appeals was held Thursday, November 17, 2016. Chairperson Diana Jancura called the meeting to order at 7 PM.

ROLL CALL OF MEMBERS:

Present: Jancura, Tatter, Radeff, Reilly, Harper, Kovach
Attending: Applicants; Sharon Schillero and Cheryl Striker, Law Director
Graves, Building Inspector Jeff Fillar, Building Inspector Assistant
Suzanne Priest

Minutes: Zoning Board of Appeals, September 15, 2016 - *Motion by Reilly/
Second by Tatter to approve the minutes. Yeas All.

CORRESPONDENCE: None.

Chairperson Jancura advised before we go to the specific applicants tonight, I would like to speak to both applicants on the agenda and also as a reminder to our Board that both of you have asked for a variance which is an exception or basically non-compliance with our current housing code. There is a legal standard to which we must not only apply your evidence in the form of your application and your testimony that you will give to the Board but also various factors that we will use in determining whether to grant the variance. The legal standard as set forth by the Ohio Supreme Court is that you must establish an exceptional practical difficulty which must be set forth by a preponderance of the evidence. What that means legally is that the evidence that is given is creditable and convincing to the mind, that is it more likely than not that you do have this exception of practical difficulty. So we will ask you a series of questions, some of which will make you think why are you even asking me that. But many of the questions regarding will the variance impede the delivery of government services or whether you knew about the restrictions are all asked to establish legally whether you do meet the qualifications of the standards for this practical difficulty. So, some of our questions may seem very off but that is why because this Board is quasi-judicial in the regard that if we grant or deny a variance your next cause would be to appeal it to the Court of Common Pleas. So we kind of act as a trial court where we take evidence and testimony. So I do like to do things by the book, so if it seems a little strange of why we are asking these weird questions that is the reason why because we must get it on the record of why you are not going to comply with the law. Or if we deny the variance so you know exactly why and what our reasoning was, not that we

have just got it in for you but that we really do have a legal standard that we apply. So some of our questions seem strange.

PRESENTATIONS:

Sharon Schillero, 5545 E Lake Rd. Chairperson Jancura swore in Sharon Schillero for testimony. ***Chairperson Jancura*** advised the applicant is seeking a variance for compliance with Ordinance 1133.07c regarding front yards. The ordinance states every single building shall have two side yards, the combined width of both to be not less than 30 feet and the lesser of them to be not less than 10 feet in width. The applicant seeks to install an emergency generator which is 2-1/2 feet from the property line which it would be a variance of 7-1/2 foot as minimum side yard is 10 feet. However, before we get to all of the yards, I have asked Law Director Graves to provide the Board with guidance regarding what is a generator, is it a structure or an importance or a playground? While he is here tonight but he has advised me that a generator is considered a structure under the terms of the Sheffield Lake Housing ordinances and must comply with all structure requirements. ***Law Director Graves*** advised there is a number of different code provisions that would be applicable here, section 1151.06 talks about accessory buildings but subsection e also references other accessory structures. Where it says structures such as non-enclosed gazebos, children's playsets, pergolas, etc., they are not considered buildings however they are considered other accessory structures and must be limited to the rear yard and be not less than 3 feet from the property line. So you have to look at the definition of a structure. Another code provision that would be applicable would be 1111.04 of the definitions within the zoning code. Number 67 defines a structure as anything constructed or erected the use of which requires a more or less permanent location on the land or attachment to something having a permit location on the land. Based on those 2 code sections a gas generator tied into the gas line of the house is considered an accessory structure. Therefore, it would be limited to the rear yard not less than 3-feet off of the property line. The applicant proposes to put it in the side yard and encroach on the 10-foot side yard requirement. So, those would be the code provisions that you would be considering in giving this person an area variance. I would also like to add that Sheffield Lake is not unique in this determination, this is also the way that Avon Lake treats them and I believe Bay Village and some of the other communities that this Building Department is familiar with. So, it's the opinion of the Building Department and Law Department that the matter proceed as applied for.

Q&A for 5545 E Lake Rd applicant as follows:

Chairperson Jancura asked is the generator currently installed or will it be installed pending the granting or denying of the variance? Mrs. Schillero answered

it is installed. Chairperson Jancura asked who installed it? Mrs. Schillero answered Lowe's in Avon Lake, a man was there on contract. Chairperson Jancura asked so you had a contractor install it, you did not do this yourself? Mrs. Schillero answered right, Lowe's had a contractor install it. Building Inspector Fillar advised it was installed by JA Kilby. Chairperson Jancura asked prior to them installing the generator, had you ever had dealings with JA Kilby before? Mrs. Schillero answered no. Chairperson Jancura asked is there a specific event that gave rise to the decision to install the emergency generator, so did something occur that you decided that you needed emergency generator? Mrs. Schillero answered well I hear you got a lot of wind out this way, so I figured we would get an emergency generator. We had one in Garfield Heights too but it wasn't as expensive as this one that we got. Chairperson Jancura asked how long have you lived in this current house? Mrs. Schillero answered 3 months August 1st. Chairperson Jancura asked is there a specific reason you feel you need an emergency generator such as medical condition or other resident that has special needs? Mrs. Schillero answered no. Chairperson Jancura asked have you inquired into other sources of backup power; such as solar panels or other generators that can be used to provide power to the house. Building Inspector Fillar advised backup solar panels would have a battery pack and the battery pack would have to be stored some place outside and would cause the same situation. Chairperson Jancura stated sir I was just asking the applicant if she looked into any of that. Did you look into other source? Mrs. Schillero answered no because like I said we had a generator in Garfield and it was a good source to have. Chairperson Jancura asked have you ever owned or operated this particular emergency generator or another gas generator in the past, in reference to your other house? Mrs. Schillero answered yes.

Q&A for meeting practical difficulty standard:

Chairperson Jancura asked do you believe the property will yield a reasonable return or whether they can be a beneficial use of the property without the generator? Law Director Graves advised with all due respect, the issue before the Board is not whether or not she needs a generator, the issue is why she needs to put it in the side yard. She is perfectly allowed to have a generator if she puts it in the rear yard a minimum 3 feet off of the property line. So the variance and the practical difficulty difficulties that she needs to establish is why it has to be in the side yard. Chairperson Jancura asked were you able to put the generator somewhere other than where it is currently situated? Mrs. Schillero answered well like I said I got Lowe's and the contractor, I had a couple of other contractors and they all looked at the side of there and there are pictures too. I guess they felt that was the best place to put it. Chairperson Jancura asked so you relied on the contractor and the contractor's recommendations, correct? Mrs. Schillero answered right. Building Inspector Fillar advise they have an unusual lot, I don't know if you went out and visited the lot. All the way down the east side of their houses is a

shared driveway and you wouldn't want to put the generator there so your neighbor could drive into it. The back of their house is a north facing rear load garage and you can't put it in front of the garage. Then they have a door and deck that they just installed when they moved in and if you put the generator on the other side of the deck it causes real problems with the electrical code for clearances. So the available side, the west side of the property or the front were the 2 places that they could put the generator. This is the lesser of the locations, the easiest and most unobtrusive to the neighborhood. Member Tatter asked how does it affect the electrical connections in the back of the house which would be on the northwest corner. Building Inspector Fillar explained the conductors from the generator have to go all the way around to bypass the meter and then there is a transfer switch there so that when if the power goes down on the utility side the generator kicks in and kills all of the conductors going back to the pole. So that the linemen are safe, and most people that plug-in their generator don't turn off their panel and they are actually feeding the street and when the guy goes up there to fix your damaged pole or transformer and gets shocked because you are trying to save your refrigerator. This unit has the safety built into it that turns off all of the conductors back out to that full so that we are not sub-feeding CEI or Ohio Edison. Member Tatter asked since the unit has the conductors, how is it that the placement of the unit would result in required electrical work? Building Inspector Fillar advised I don't understand that question. Member Tatter explained you said that the unit – the generator has automatic shut-off's to stop the feed to the pole from occurring, so how does the placement of that generator whether it be in the rear yard or the side yard change? Building Inspector Fillar answered there are clearances on the unit itself, it will have a combustion engine in it with exhaust so you wouldn't want to put that near the deck. There are clearances from walking surfaces, decks, windows, vents. Member Tatter stated but that is a whole different story, how does the placement of this generator affect the electrical work that you said would the placement of the generator in the rear would affect electrical code violations. Building Inspector Fillar answered the clearances, it makes the clearances very difficult. Member Tatter asked how big is the deck sticking out from the house, I mean you will have more a clearance in the back yard then you would on the side yard? Building Inspector Fillar answered 7 or 8 but then it is going to be sitting in the middle of the yard and they don't have a very big yard. Member Tatter stated no it won't be sitting in the yard, it would be sitting adjacent to the deck that they constructed. There is a very nice place there for that generator to fit. Building Inspector Fillar asked behind the deck? Member Tatter answered no adjacent to the deck on the west side. Building Inspector Fillar asked north of the deck? Member Tatter answered no west of the deck. Building Inspector Fillar stated west of the deck is where it is going into the side yard on the west of the deck. Member Tatter stated but there is a place in the back of the house in the back yard, west of the

deck that is probably 8 to 10 foot. That deck does not measure the entire rear of the property. Building Inspector Fillar stated no it stops at the house. Member Tatter stated it doesn't stop at the side of the house, it stops about 8 foot short of the west side of the house, I was there this morning. Again, back to the question, how does that affect or how does the placement in the rear yard require or violate electrical code? Building Inspector Fillar asked would it still be 5 feet away from the edge of the deck? Member Tatter answered easily. Building Inspector Fillar answered then there is a possibility that it could have gone there. Member Tatter asked did you visit the site? Building Inspector Fillar answered yes. Member Tatter asked you didn't see that spot next to the deck? Building Inspector Fillar answered I know where the spot is, yes. Member Tatter asked may I ask how this came to be that it is already installed, how did we discover that variance? Member Reilly stated may I offer a guess on that one? Member Tatter answered no, I want it from the Building Inspector Fillar. Chairperson Jancura asked how is it that you came to find out about this? Building Inspector Fillar answered I saw the box in the yard and the next day it was installed by JA Kilby very quickly. Chairperson Jancura asked so they did not have a permit? Building Inspector Fillar answered they do have a permit now. Member Tatter stated but after the fact. Building Inspector Fillar answered they did not when it was installed. Chairperson Jancura asked back to the questions, is the variance substantial? She explained you are asking for 7-1/2 feet of a variance, is that substantial – a large variance in your opinion? Mrs. Schillero answered I don't know, I don't understand what you are saying. Law Director Graves advised one of the factors that they have to consider is the degree of the variance from the code. Are you going 2 inches over into the yard or are you going 20 feet? The more substantial the variance I think the higher standard you would have to meet, so she is asking do you believe that the request that you are making is substantial. Mrs. Schillero answered yes I do, you have the pictures. Chairperson Jancura stated I don't we got your answer on will the property yield a reasonable return or whether there can be beneficial use of the property without granting the variance? So can you use the property without having the generator? Mrs. Schillero answered no if denied. We could use the property but we wanted to get a generator and now with all these problems we just want to be happy in Sheffield Lake with no problems and we need a generator that turns on. Chairperson Jancura continued do you believe the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a substantial detriment by the granting of the variance? In other words, do you believe neighbors would be harmed or the character of the neighborhood would be changed? Mrs. Schillero answered no I don't. Chairperson Jancura asked do you believe the variance would adversely affect delivery of government services such as; EMS, Fire, Garbage, Sewer? Mrs. Schillero answered no. Chairperson Jancura asked did you purchase the property with the knowledge of this zoning restriction

that your generator had to be placed in a certain area, did you buy the house knowing that your generator couldn't be there? Mrs. Schillero answered oh no, I let Lowe's get contractor and it caused this problem for me now, not us. Chairperson Jancura asked can the problem be solved by some other manner other than granting of the variance, such as; relocating the generator to somewhere else? Mrs. Schillero answered well it seems fine over there, there is another one right by it on the side of the house. I don't know what to say – no comment. I mean it is not bothering anybody where it is at, it is in a little cubby hole area there. Chairperson Jancura asked do you believe the variance will preserve the spirit and intent of zoning requirement and whether substantial justice would be done by granting the variance? She explained the spirit and intent of zoning requirements, the whole purpose of granting a variance is to not burden a property owner would having to comply with the housing code and so in these exceptional cases when you present evidence that yes I really do have this practical difficulty, that is why we are granting the variance. So do you believe that the spirit and intent of granting a variance would be done or would be preserved and that we are acting in the spirit of what a variance is all about? Mrs. Schillero answered well I don't know but I know that going through this is a burden, no disrespect or anything. So, I don't know if I answered it right. Member Reilly stated it just seems like the contractor or subcontractor as it were was not aware of this definition of accessory and the requirement for the permit until it was too late and then they quickly tried to get a permit and take care of it that way leaving you standing here. Mrs. Schillero stated I did have a few other ones and I don't know who they are but they are from the neighborhood that when I went out with them they said that that would be the best area and they said it had to be 5 feet from the windows and stuff. So the other ones that I was going to get were a little bit more expensive and also stated about that area. They didn't say anything about a back yard because I don't know to put it. If they would have put it in the front yard I would have said if that is where it goes then that where it goes. Member Reilly stated well Mr. Grave presence here some of us don't know where to put it either. Chairperson Jancura asked where was your prior generator from your other house? Mrs. Schillero answered it was in the back yard. Chairperson Jancura asked did you install that? Mrs. Schillero answered yes it was the kind that was hooked up into the house, the cable wires and stuff. It was where you could roll it around. Chairperson Jancura stated it was more of a mobile one and not a permanent one. Member Tatter asked you entered into a contract with Lowe's? Mrs. Schillero answered yes. Member Tatter asked do you know if that contractual agreement allowed for Lowe's or their designee in this case Kirby Enterprises to apply for permits or was that your responsibility? Mrs. Schillero answered no that was Dan's responsibility, Lowe's got their contractor for this stuff is JA Kilby or whatever and he is supposed to get the permit. Member Tatter asked and Dan is who? Mrs. Schillero answered Dan is the guy that runs this JA

Kilby. Chairperson Jancura acknowledged Assistant Suzanne Priest who advised JA Kilby is a registered contractor and they normally do pull permits. They are a registered contractor in the City of Sheffield Lake and they normally do pull permits. Chairperson Jancura asked is this the first experience that we have had with a gas generator in the city? Law Director Graves answered to my knowledge this is the first time it has been an issue. Member Reilly asked have we had any other issues with similar structures like air conditioning units on cement slabs and stuff like that. Law Director Graves answered not where it has already been installed, not where they are requesting a variance. Normally when they come in they apply for a permit and the Building Department would instruct them where it can properly be built and they follow those guidelines. So, in this case for whatever reason it didn't so that is why we are here. Chairperson Jancura asked to the Building Inspector, in your professional opinion do you believe JA Kilby should have known that they should have at least gotten a permit or come to you to inquire whether they should have gotten a permit. Building Inspector Fillar answered absolutely. Chairperson Jancura asked Mr. Graves in your professional opinion as an Attorney do you believe JA Kilby should have either known to inquire about the permit or known to have gotten a permit. Law Director Graves answered absolutely. Member Radeff asked have you asked them if they would move it if you weren't able to get a variance? Mrs. Schillero answered no. Member Radeff asked so you haven't talked to Lowe's or the contractor? Mrs. Schillero answered no because they were waiting for today to come and go. Member Radeff asked so there is a possibility that they would? Mrs. Schillero answered I really don't know what they are doing, all I know is that it is very frustrating to have to stand here because of somebody's ignorance and not mine. Chairperson Jancura stated you do have a reasonable reliance that you hired a contractor to do what was right. Mrs. Schillero answered right. Chairperson Jancura stated it would be different if you installed it yourself and you just didn't know any better but you hired a professional to do this job and they got it wrong. Mrs. Schillero answered right and I told them to come tonight, that Dan from Kilby and do you see him here? Chairperson Jancura answered no because he knew the questions we were going to have to ask to him. Mrs. Schillero stated I called him a couple of times and called him again yesterday and he said he has to go to Ashland or something. But his Boss Ryan from Lowe's is very upset with him too because he didn't know nothing about this. He didn't know that he didn't get a permit and he is not a happy camper. Member Reilly stated considering the two locations; back yard or where it is at now, which do you think would bring more value to your home, which do you think would be better if you were to sell it would provide any possible detriment by having it out in the back yard or would it be more advantageous to have it where it is? Mrs. Schillero answered well it is nice because it is where the air conditioner is at and you got our generator and there is the other fella's generator and air

conditioner there and we have I think 3 or 4 foot fence so people can't see it on our property I don't know about his.

Fred Schillero, 5545 Lake Rd (sworn in by Chairperson Jancura) stated the thing is we put up a deck and everything as we have 2 dogs and that is why I built the fence around there. I don't know but then I have to change the fence around again to keep the dogs away. Mrs. Schillero stated they would jump on there. Mr. Schillero stated I don't want the dogs jumping on it, I got to change the fence thing around and we did not know where to put it. They asked me one day, the guys' says do you want it here and I told him I don't know, you are the guys that know about it – put it where it is supposed to be. So they put it where it is now and that is why I thought it was okay but what got me mad is no permit. He waited and I even asked him do you want us to get the permit and he said no I will get it. Chairperson Jancura stated so he made representations to you acknowledging that a permit was needed and he said he would get it and then did not do it. Mr. Schillero answered right. Chairperson Jancura stated so lied to you. Mr. Schillero answered right, exactly. Mrs. Schillero stated they also, we purchase a 16 and they sent us a 20. Mr. Schillero stated we dry locked the basement and the outside and when we dry locking the basement this guy was arguing like hell.

Chairperson Jancura advised we do have correspondence that all us have from an opposing neighbor who opposed the placement of the generator. But I would like to point out that he himself has a generator in the side yard right next door.

Member Radeff stated judging by the pictures, how does that generator meet the 10-foot requirement? Law Director Graves answered it does not. Building Inspector Fillar answered we checked every record in this building and there is no permit on that generator. Law Director Graves advised so he will be getting a letter as well. Building Inspector Fillar advised after we have tonight's answer I will be citing them to get permits. Member Tatter stated I would like to say that I were to place a generator based on use of the land and the return and ability to use the land, the rear yard would not be a good place to place that generator. The 2 side adjoining yards already have as was stated a generator and 2 air conditioners and in the way of placement of the garages and the placement of the houses, it is actually the least obtrusive placement for that generator. Member Reilly stated I agree. Chairperson Jancura stated I am particularly disturbed at the negligence of the contractor which is heavily weighing within the meeting of practical difficulty standard. She hired a professional who acknowledged that they were going to get a building permit because she asked should I get one and he said no he would get it. So she reasonably relied on a professional, addressed the issue of the permit and he did not pull it and it was his negligence and her next cause of action if we deny this variance is to then sue him and get a lawyer and spend months in court. If the guy won't even show up for a simple Zoning Board meeting where we would question him, he is probably not going to do anything. Plus then she has to go spend

additional money to get the lawyer and file the complaint and while I believe that should be within our whelm of a factor to weigh out as her resource as she already had to spend the \$100.00 to apply for the variance. So, her recourse is not without complications and additional monetary. Assistant Suzanne Priest stated JA Kilby paid the \$100.00 and they paid double fee's. Member Harper stated did you say there was a complainant? Chairperson Jancura stated yes there was a letter that was in our packet from the adjoining property owner. Member Harper stated from the person that has the generator right next to theirs. Chairperson Jancura answered yes.

*Motion by Reilly/Second by Tatter to approve the variance. ROLL CALL TO APPROVE THE VARIANCE: Yeas All – Tatter, Reilly, Harper, Radeff, Jancura.

Variance Approved.

Building Inspector Fillar advised I applaud anybody who pays \$3000 to \$4000.00 to put in a backup system to backup Ohio Edison, our utility. So they can stay home when there is an emergency and not lose everything in their house or have to move to a hotel. We are not getting younger and I know I wouldn't want to leave and I applaud people that want to spend that kind of money. Mrs. Schillero stated it is double that amount though. Chairperson Jancura advised we greatly appreciate your patience with us in going through the process, we are sorry it was tedious and stressful but again we have a legal standard but you have met it.

Cheryl L. Striker, 945 Lake Breeze (sworn in by Chairperson Jancura).

Chairperson Jancura stated you seek a variance from compliance with Sheffield Lake Zoning Ordinance 1352.05 regarding yards and in particular it is 1352.05e3 which states a chain link fence or other substantially open fence not used as a site barrier privacy screen, windbreak or dog run shall not exceed 4-feet in height. You also seek a variance from compliance with subsection c of 1352.05 which requires that no fence shall be permitted in a front yard. You have made a request to install a 6-foot height fence that will extend past the front of your house 10-feet from the city sidewalk which would place a 6-foot fence in your front yard. Whereas the zoning requirement says not more than 4. Member Harper asked your neighbor, where that fence that you want to put up is that the back of that their house? Mrs. Striker answered no I am a corner lot. Chairperson Jancura asked what evidence gave rise for your decision to install the fence as requested? Mrs. Striker answered they have a huge dog over there and it is more of safety for everybody, from my grand-daughter, me, everybody. I am afraid to go in the front of the house where the dog stays. Chairperson Jancura asked what breed is the dog? Mrs. Striker answered a boxer. Chairperson Jancura asked do you know about old it is, is it a puppy or older? Mrs. Striker answered it is older. Chairperson Jancura asked in your opinion, is it a well-behaved dog? Mrs. Striker answered no. Chairperson Jancura asked for example; what does it do that it is not well-behaved? Mrs. Striker answered very aggressive, very mean, they actually have a chain fence which he

tries to climb. Chairperson Jancura asked have you ever had direct contact with the dog? Mrs. Striker answered my ex-husband has. Chairperson Jancura asked have you ever witnessed the dog attacking someone or otherwise acting aggressively toward someone? Mrs. Striker answered yes. Chairperson Jancura asked has a member of your family or visitor ever been injured by the dog? Mrs. Striker answered no. Chairperson Jancura asked does any member of your family have a medical condition or a special need that would not allow them to know how to properly conduct themselves around a dog/whether it is a child; autistic? Mrs. Striker answered well a child, she would think that the dog would be a nice dog. Chairperson Jancura asked about how often do your Grandchildren visit or live with you? Mrs. Striker answered she visits but I actually care of her, I watch her all the time. Chairperson Jancura asked how often, couple times a week? Mrs. Striker answered at least that, probably a little more. Chairperson Jancura asked have you spoken with the neighbor about limiting the dogs time spent outside, especially when you are outside? Mrs. Striker answered no because actually when I go outside that is when they let the dogs out, it is weird. Chairperson Jancura asked do you believe they are doing this on purpose because you are fearful of the dog? Mrs. Striker stated I don't know to be honest with you. Chairperson Jancura asked have you ever spoken to them about the dog? Mrs. Striker answered no but the neighbor has behind me which I don't know their names because I have only been there a year but that is why you see the one picture, there is a picture of the big tall board between their fence and this neighbors fence because the dog tries to get through there. They also called the Police at that time. Chairperson Jancura asked have you spoken with the neighbor about having them install the fence on their side of the property. Mrs. Striker answered no. Chairperson Jancura asked have you spoken with the neighbor about getting rid of the dog? Mrs. Striker answered no because that is not what I wanted to do, I just want it safe. Chairperson Jancura asked say we grant the variance and you build the fence and 2 weeks later the dog dies, will you keep this fence up? Mrs. Striker answered yes because they would probably get another dog, they have 3 or 4 of them. Chairperson Jancura asked what are the other dogs? Mrs. Striker answered 2 or them are like 5 pounds and then there is another one which like a Husky type dog, there is 2 big dogs over there but the Husky barks but it is not aggressive. To be honest with you I don't know.

Q&A for meeting practical difficulty standards:

Chairperson Jancura asked do you believe the property will yield a reasonable return or whether there could be a beneficial use of the property without granting of the variance? Mrs. Striker answered the beneficial would be if I ever sold the house, they would know that there would be safety. If not, if they would come and if the dog were still living and if kids were there then they would say I am not buying the house with that dog. Chairperson Jancura asked do you believe the variance is substantial, do you believe it is large in relation to for example; the

height restriction is 4-feet and you are asking for a 6-foot, do you believe that is a substantial variance? Mrs. Striker answer yes. Chairperson Jancura asked do you believe the essential character of the neighborhood will be substantially altered or adjoining properties suffer a substantial detriment? Mrs. Striker answered no. Chairperson Jancura asked are there any other fences 6-feet in the front yard on your street? Mrs. Striker answered no. Chairperson Jancura asked do you believe the variance would adversely affect the delivery of government services such as; EMS, Fire, Snow removal or utility service? Mrs. Striker answered no. Chairperson Jancura asked did you purchase the property with the knowledge of the zoning restriction? Mrs. Striker answered no. Chairperson Jancura asked do you think that the problem can be solved in some other manner other than the granting of this variance? Mrs. Striker answered no. Chairperson Jancura asked do you believe the variance preserves the spirit and intent of the zoning requirement and what substantial justice will be done by the granting of the variance? Mrs. Striker answered I just think it would be protection for the kids, my grand-children and I don't want the neighbor to get rid of their dogs. Member Tatter asked you have a Lake Breeze address and you live on the corner and your driveway is on Lake Breeze? Mrs. Striker answered no my driveway is on Brockley. Member Tatter stated you said you were the corner house. Mrs. Striker stated yes but driveway is on Brockley. Member Tatter advised one of the responsibilities of the Board of Zoning Appeals is to consider the least possible variance that may result in the solution to your problem and request. From what I did notice was close and maybe 4-foot further towards Lake Breeze then your house, so why is that you want to go to 10-foot and go beyond his fence which the dog would have no site line into your yard, why do you want to go beyond what might be a 4-foot in a solution to your problem. Mrs. Striker answered I want to go beyond because if I don't go beyond then if for some reason my grand-daughter slips and goes around the other side then I am afraid that because she so loves animals. So even if she turns the corner, kids are so fast so that is more safety because I don't want her to grab something and climb on it to see the dog and see what is going on. Member Tatter asked you indicated a policeman visited your neighbors based on a complaint from your other neighbor, was there a formal police report made? Mrs. Striker answered I don't know, she didn't tell me but she talked to me a couple of days ago and said it was because it scared her husband who goes out back and messes around with his lawn mower and stuff like that. She said we literally had to call the police because the dog was literally going to jump out of the fence. He has his feet on top that chain-link fence and he just pulls up. Member Tatter stated I think this questions was asked but I will ask it again, have you discussed the problem with your neighbor and if so what was the result? Mrs. Striker answered no I haven't. Member Harper asked you want to extend that fence out to meet about where his ends, is that what you want to do or even past that? Mrs. Striker

answered past it. Member Harper asked is that so when your Grand-daughter is in the front yard? Mrs. Striker answered yes because when we are in the front yard is frightens her. Chairperson Jancura asked does she often play in the front yard? Mrs. Striker answered well she doesn't because if you see my yard I don't even rake it. We don't go out front because of the dog. Chairperson Jancura stated so once the fence is granted? Mrs. Striker answered she can play outside, yes. Chairperson Jancura stated so you are not concerned about traffic on Lake Breeze? Mrs. Striker answered no she would be with me, we both don't go outside as we stay in our back yard because it is fenced. Chairperson Jancura asked so what is the difference between you are going to be with her on a busy street with a fence and you will be with her on a busy street without a fence and a dog? I don't see the "I can protect her from a busy street and getting hit by a car possibly but I can't protect her from staying away from this dog." Mrs. Striker stated to me it is just more safety, I can catch her before getting hit by a car, it is really not that busy of a street but I would be up front with her all the time and it doesn't matter if the fence was there or not.

Brian Striker, ex-husband to Cheryl Striker (sworn in by Chairperson Jancura) stated I guess the statement you said about her being in the front yard with the baby on a busy road. She could stop the baby from going in the road but is she going to be able to stop the dog from attacking her or the baby? The fence going down further would make that harder. Member Harper stated so what you are saying is you want it there mostly to protect her from the dog jumping over the fence. Mr. Striker stated yes if it jumped over their fence to get around it could come in the front yard, she isn't going to be able to protect herself or the baby. Chairperson Jancura asked how old is your grandchild? Mr. Striker answered 4. Member Reilly stated I don't understand how your fence is going to prevent their dog from jumping over his fence and going around and coming at you? Mr. Striker stated that is why she wants the fence further down to eliminate the dog even wanting to try to come around into her yard. Chairperson Jancura stated but the dog could easily if he wants to get to your grand-daughter, the dog is going to go around the fence unless you completely enclose your yard. The dog is going to come around the fence and so your going forward 10 or 20 feet unless you completely enclose your front yard, that encroachment into your front yard even it is a 10-foot fence is not going to matter. This is a band aid but it doesn't fix the problem. Member Harper stated I think what they are thinking is out of sight, out of mind. The dog doesn't see them, the dog is not going to want to jump the fence. Member Reilly asked did that work with the neighbor? Mr. Striker stated they are renters. Member Reilly stated no I mean the one that filed the police complaint, wasn't the dog trying to get to them even though he was out of site. Chairperson Jancura asked do you know the landlord of the property? Mrs. Striker answered no. Chairperson Jancura asked do you speak with your neighbors at all? Mrs. Striker

answered no. Chairperson Jancura asked because? Mrs. Striker answered well Pam and Kim I do. Chairperson Jancura asked the neighbor who owns the dogs? Mrs. Striker answered no. Chairperson Jancura asked any reason why? Mrs. Striker answered no. Mr. Striker stated they do all kind of stuff, they put their garbage cans on her lawn and they got a stone on her lawn. Chairperson Jancura asked so when the police came what happened, how was that resolved? Mrs. Striker answered it happened while I was at work, so she was driving by and I was out on my sidewalk and she pulled over to talk to me. She said because she got a letter for your fence and then you were talking so I told the reason why I wanted the fence. She told me that they had to call the police officers because the dog almost got to her husband. Mr. Striker advised I was in between the house and the fence the one time and the dog was trying to get over to get to me. Member Radeff asked do you know if it has actually ever gotten over before? Mrs. Striker answered no. Mr. Striker stated it is always by the fence barking and wanting to jump. Chairperson Jancura asked has it ever jumped it? Mr. Striker stated I don't know. Mrs. Striker stated there is a lot of children around there. Chairperson Jancura asked do you know for sure, have you seen it bite or attack or jump up? Mr. Striker stated it jumps up to the top of the fence. Chairperson Jancura asked did it jump on a person, did it get over the fence and jump on somebody? Mr. Striker answered no. Member Reilly asked do you judge it to be aggressive or actually dangerous. Mr. Striker answered it is aggressive. Chairperson Jancura asked how are you judging the aggressiveness? Mr. Striker answered growling and barking at you and jumping up to get over the fence. Chairperson Jancura asked have you seen it being destructive of other things in a yard, garbage cans? Mr. Striker answered I try not to watch it. Chairperson Jancura asked how long have they lived there? Mrs. Striker answered I have only lived here a year so I don't know. Chairperson Jancura asked was the dog here when you moved in? Mrs. Striker answered yes. Assistant Suzanne Priest stated you can look at the picture and you can tell by the stance of the dog that is aggressive. Chairperson Jancura stated I take issue to this because no offense but you haven't gone to either actual dog owners to say this is an issue so they may not even know it is a problem. You could go to the landlord and you can look up who owns this house and find them and say this is an issue. Maybe they are an absentee landlord and they may not even know that there is dogs on the property and that this dog is creating a potential risk to you and liability. While you are fearful of the dog, there has not been an actual attack or witnessing of an attack. While the dog you believe it is aggressive, there are many people who think big dogs are unsafe. A german shepherd is just protective of its owners and property and barks all the time would be aggressive, so you don't have firsthand. Mrs. Striker stated so you have to get bit. Mr. Striker stated the problem is they don't even watch them, they let them out and they go back and the dogs are running the yard. Chairperson Jancura stated here the problem with us granting this

variance, as I was kind of hinting in my questioning. So we grant the variance and variances run with the land so if we give you the permission to have a 6-foot fence in your yard and now everybody who lives in this house can have this fence here. What if the dog dies or these people move toward, you now have this 6-foot fence that you have indicated that we are not taking it down because whoever lives in this house is probably going to have dogs which are just suppositions. Member Harper stated we would be sitting precedence. Chairperson Jancura advised we would be sitting precedence well if I am afraid of my neighbor's dog I could put a fence in my yard. If these people were in front of me saying we know that our dog is aggressive and we want to put up a 6-foot fence that extends into our front yard I would much more likely to grant that variance because they own a dog and this is their dog. But having you ask for this variance without having the experience of yes this dog really is aggressive. If your grand-daughter was somehow diminished or autistic or didn't know better I would be more likely to grant it but she is 4 and she will be getting older, she could move and now you are not her caretaker. Mrs. Striker stated so I am not supposed to be able to clean my yard, I have to go over there and tell the neighbor to keep the dog in your house? That is my whole question too, keep your dog inside the house. Member Reilly stated well I think what we would like to see first is that you contact the landlord and see if you can find a resolution that way, it is his fence and he can cover it up with an opaque covering so the dog can't see and you could ask to see if he could make it slightly larger. He is the one who has the liability, he is the one that is going to be getting sued if anything happens so that should be some leverage. Then if you fail in that it will be failed from having the authorities trying to control the dog then we would be much more open towards you doing something like that. But there are also other options. Chairperson Jancura advised again going to the landlord. Mr. Striker asked how do we find out who owns it. Chairperson Jancura answered loraincountyauditor.com, you just stick in the address and they will probably have a phone number for him because usually for taxes they will have a phone number to contact him. Otherwise google the name. As renter's, they are more likely to move any time. Mrs. Striker stated no they have been there forever. Chairperson Jancura stated our concern is not for public safety, that is not what we are here for. Law Director Graves stated if the dog is barking then call the police, they can be sited for unreasonable animal noise. If the dog ever does get out they can be sited for dog-at-large, as long as the dog is confined and not becoming a nuisance as far as the barking they are doing what they are supposed to do which is keep their dog enclosed on their property. Chairperson Jancura stated while we realize it is unfortunate but we aren't here to solve this problem.

*Motion by Tatter/Second by Reilly to deny the variance. ROLL CALL TO DENY: Yeas All – Reilly, Harper, Tatter, Radeff, Jancura.

Variance Denied

Chairperson Jancura advised you do what you do to be safe, if you believe that dog is a threat you have a hose on the side of your house and hose him (no-lethal). Mrs. Striker asked but I can do the 6-foot up to the house right? Member Tatter answered you would have to check with the Building Inspector. Law Director Graves stated don't spray your neighbor's dog, just saying. Member Tatter advised another simple solution could be just to contact the owner and continue your fence to the front of the house and ask the property owner if you could just make a right hand turn with your fence and you would pay for it for and attach to his garage or whatever that is there. There were some suggestions given to applicant. Building Inspector Fillar advised we just checked the records and the neighbor does not have a rental license. We will be checking into that tomorrow and after a couple of days we will have your owner's information for you.

OLD BUSINESS: None.

NEW BUSINESS: BZA Training – Chairperson Jancura advised is anyone opposed to having and it would probably be a month where there isn't an applicant and we would just meet and it wouldn't be a formal meeting, maybe kind of a Worksession that we would have a little bit of training. Such as this preponderance of the evidence and how to establish that and how to interpret things. It would not be mandatory, it would be optional but maybe Mr. Tatter and I could pop at things and do a little presentation. Mr. Radeff will be one of the attorneys soon from Law School so we could give him a little assignment and maybe Mr. Graves could use him as a bit of an intern. Member Harper asked where would it be? Chairperson Jancura answered it would be here and we would know long in advance, it would be a Worksession of Zoning Board off the record. Law Director Graves advised what you are talking about is a public meeting so it is going to have to be properly noticed and it should be here. It is still subject to public meeting law.

CITIZENS COMMENTARY: None.

MEETING ADJOURNED: With no further business before this board, *Motion by Harper/Second by Tatter to adjourn at 8:08 pm. Yeas All.

CLERK OF COMMITTEE AFFIRMATION: This Meeting Of The City Committee Of The City of Sheffield Lake, Ohio Was Held and Conducted Under All Rules and Regulations Governing The Sunshine Laws Of The State Of Ohio As They May Apply. All meetings are recorded and available in council's office.

CLERK OF COUNCIL
Kay Fantauzzi

CHAIRMAN OF COMMITTEE
Diana Jancura

| *Zoning of Appeals 11172016*

I, Kay Fantauzzi, duly appointed Clerk of Committee
Of Sheffield Lake DO HEREBY CERTIFY that this
Is a true and exact copy of the Minutes of the
Zoning Board of Appeals meeting of November 17, 2016.

PRESIDENT OF COUNCIL

Rick Rosso