

Minutes of a Meeting of  
BOARD OF ZONING APPEALS  
Held July 16, 2015

Members Present: Bruno, Burke, Dostal, Norton, Taylor, Tyo

Also Present: Paul Vincent, Councilman, Ward 2

Absent: Mr. Campbell

Audience: Manny Glynias, Mark Chernisky, John Klembara, Gene Barry, Gus Marzavas, Carol Shockley Kadlubak, James Kadlubak, Mark Reinhold

Mr. Norton called the meeting to order at 7:30 p.m.

A copy of City of Bay Village Codified Ordinance 1127.01 was posted and Mr. Norton advised that the code states that the Board shall consist of seven electors of the City not holding other municipal office or appointment. If all members are not present at a meeting, the applicant may request a delay so that all members may be present. An applicant may delay a decision up to two times.

**Motion** by Dostal, second by Bruno, to approve the minutes of the meeting held July 9, 2015 as prepared and distributed. **Motion passed 5-0.**

**Paul McDonald**  
**27906 Lincoln Road**

**C.O. 1153.02 – Variance of 3 ft.**  
**to front bldg. setback for construction**  
**of covered porch**

Mr. Norton stated that the Board has had an opportunity to visit the site and review the application.

Mark Chernisky, the contractor for the project, was present representing Mr. McDonald. Mr. Chernisky stated that the proposed porch will not be enclosed. Mr. Norton asked if the existing steps will remain and not be cut out any further. Mr. Chernisky stated that the current steps will be removed and new steps and a landing will be constructed, extending out four feet past the setback line.

Mr. Taylor asked if the setback shown on the survey is a Bay Village setback. Mr. Norton stated that it is the setback of the City of Bay Village, which is 45 feet in this area.

**Motion** by Dostal, second by Burke, that a variance of three (3) feet be granted to the property located at 27906 Lincoln Road pertaining to Codified Ordinance 1153.02 for the construction of an open air porch, per the drawings submitted.

**Roll Call Vote: Yeas – Bruno, Burke, Dostal, Norton, Taylor, Tyo**  
**Nays – None.**

**Motion carried 6-0**

**John Balch  
27007 Wolf Road**

**C.O. 1163.05(h) (3) to extend a 6 ft. fence  
by 8 feet**

Mr. Norton advised that the Board has had an opportunity to visit the site and review the application.

Mr. Burke stated that this is a 25% increase in what is allowed by code, which is substantial. Mr. John Balch reviewed the application and photographs submitted to the Board. Mr. Norton suggested that installing 32 feet of fence will shield the entire basketball court area.

Mr. Balch noted that the driveway of the neighbor is very close to the property line. Mr. Norton noted that driveways are permitted to the property line. It is necessary to see something unique to a property in order to grant a variance. The variance granted stays forever with the property. Mr. Norton further noted that 32 feet is the normal amount of privacy fencing considered reasonable by Council. Beyond that amount, Mr. Balch could drop his fence to a height of four feet.

The request of Mr. Balch was modified to allow the 32 feet of 6 ft. high fence, and an 8 ft. section transitioning from 6 ft. to 4 ft.

**Motion** by Burke, second Tyo, that based on the change of the request of the applicant this evening, to grant a variance to the property at 27007 Wolf Road for the construction of a fence graduating from 32 feet of 6 ft. fence down to an additional allowed 4 ft. high fence and the transition length will not exceed 8 feet.

**Roll Call Vote: Yeas – Bruno, Burke, Dostal, Norton, Taylor, Tyo  
Nays – None.**

**Motion carried 6-0**

**Gene Barry  
31418 Lake Road**

**C.O. 1153.02 Addition to Utility Room**

Mr. Norton stated that the Board has had an opportunity to visit the site and review the application.

Mr. Norton stated that he recalls that Mr. Barry has received a variance for the garage. Mr. Barry stated that this is correct, and that the garage is still one foot back from what he is requesting on this application.

Mr. Norton stated that under the circumstances of this lot, with the association in the back, the lot is very tight and a garage is a necessity. The Board felt favorably to allow the garage to extend that far out, even though it is somewhat unique along that area. However, the lot is really over-built. Between the house and the paving, the construction is right up to the street. Mr. Barry stated that the neighbor is out further, and down three doors that property is further out, and the next one

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down is further out. Mr. Burke stated that when he inspected the area this afternoon he looked both ways and the neighboring properties are not out further than Mr. Barry's garage. Mr. Bruno expressed agreement.

Further review and discussion followed. Mr. Norton noted that the setback has been reduced to half because of needing a garage. Granting this request would bring both sides of the house closer to the street. Mr. Taylor noted that the property is all concrete in the front, and there is a requirement that a certain portion of the property be grass. Mr. Norton stated that the properties in the Eagle Cliff allotment basically have no rear yard and are allowed to build up to the allotment line in the rear. The allotment doesn't allow a utility shed in the rear.

Mr. Burke noted that one of the difficulties the Board has in considering a variance is the significance of the size of the variance requested. This request represents a 50% reduction in the front setback, since a 14 foot setback has previously been granted and this request is for an additional 10 feet.

Mr. Barry stressed that the utility room extension is not living area. Mr. Norton stated that the variances granted along the area have been for garages. Mr. Barry is asking to extend the house and storage, and not to accommodate the garage.

**Motion** by Tyo, second by Dostal, to grant a variance to the property at 31418 Lake Road per Codified Ordinance 1153.02 for a 24 feet variance for a front yard setback.

**Roll Call Vote: Yeas – None.**

**Nays – Bruno, Burke, Dostal, Norton, Taylor, Tyo**

**Motion denied 0-6**

**Manny Glynias  
29404 Osborn Road**

**C.O. 1349.07; 1141.05; 1151.01 Accessory  
Building Height and Area; Pool and  
Gazebo Construction; Relief of Fence  
Requirement**

Mr. Norton stated that the Board has had an opportunity to visit the site and review the application. Mr. Glynias noted that the pool is in existence on the property; the request is for a gazebo next to the pool.

Mr. Norton stated that it is his understanding that Mr. Glynias does not want to put a fence around the pool concrete, but would like a perimeter fence on the property. Mr. Norton stated that the height of the fence requested is the same height as the chimney of the fireplace, and pool house. Mr. Norton stated that he is concerned about the lack of a security fence around the pool. The property is very unique. The purpose of a fence in the proximity of the pool is for safety purposes. The perimeter fence does not provide that security.

Mr. Burke expressed agreement noting that the Porter Creek runs through the property and children exploring might wander into the pool area. Mr. Taylor asked if this would comply with the state

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rules for swimming pools. Mr. Norton stated that City of Bay Village rules state that fences cannot enclose driveways, in order to make sure that the property's perimeter fence was treated as a security fence for a pool. Mr. Taylor stated that he is of the opinion that the state has an ordinance that may be more or less restrictive than Bay Village's ordinance. The City of Bay Village ordinance cannot be less restrictive than the state regulation.

Mr. Norton stated that Mr. Glynias' requests include the height and size of the pavilion. Mr. Glynias noted that the pool is in the front yard of the property. To put a fence around a pool in the front yard would be unattractive. The insurance company has notified Mr. Glynias that as long as the yard is fenced it is not necessary to have a second fence around the pool.

Mr. Burke stated that he does have a concern about the lack of a safety fence around the pool. Secondly, as far as the building, it is beyond the size of a footprint that would be allowed for an accessory building. He noted that the further the Board gets away from what the City Council has determined as appropriate, the Board would be infringing on the Council's authority. The size of the lot in this case is not a sufficient issue to extend three-and-one-half times what Council allows. The Board has, at times, allowed a small variance to the size of storage buildings on very large lots. This, however, is more substantial than a storage shed.

Mr. Tyo stated that this large is unique in that it is one of the largest lots in the City. It is heavily wooded. Mr. Norton stated that the dimensions of a utility building on this size of a lot would allow a structure that is customary to the use of a permitted structure. This request is for a cabana type of structure for a swimming pool. This building is open on three sides, and is more of a cabana structure or an entertainment structure similar to others that have been allowed.

Mr. Burke noted that this property is able to be divided, if Mr. Glynias chose to do so. If a variance is granted, it would stay with the property forever. If the property were divided, the variance would allow a much smaller lot with a house, pool and cabana.

Further review and discussion followed.

Carol Shockley Kadlubak, 29235 Cowles Drive, stated that they have a nice view of the property and she is particularly concerned about the fencing. The fencing put around the property is beautiful, and really enhances the property. The 8 ft. breach by her property makes her a little nervous. The little children in the neighborhood could easily walk back there. Mr. Glynias noted that there was a deer stuck in the fence and with the help of his neighbors they had to rip the fence out to save the deer. Mrs. Kadlubak asked that the area around the pool be fenced. She noted that the language states that the pool shall be surrounded by protective barriers. This request of relief from that requirement is not within the spirit of what has been established by the local ordinances.

Mr. Glynias requested to withdraw the request for the fence relief. He noted also, that the 8 ft. breach in fencing due to the deer damage will be replaced.

A member of the audience commented in regard to the definition of an accessory building tying into the main structure. He stated that the accessory building would have to tie into a parcel that

is so far away that it would become non-code compliant and need to be torn down if a lot split ever happens because it would be tied to another property.

Mr. Norton stated that this is request for an accessory structure to a conditional use. The conditional use permitted is a swimming pool. The ordinance reads that the structure would be allowed by a special permit for the conditional use.

**Motion** by Burke, second by Dostal that the property located at 29404 Osborn Road be granted a special permit for the construction of a pavilion according to the specifications and drawings submitted with the application, and secondly that the pavilion structure be allowed a one-foot variance on the maximum height requirement of the code, provided that the structure at all times shall remain as an open structure per the drawing submitted.

**Roll Call Vote: Yeas – Bruno, Burke, Dostal, Norton, Taylor, Tyo**  
**Nays – None.**

**Motion carried 6-0.**

**Richard Rennell, Sr.**  
**30540 Lake Road**

**C.O. 1153.03 – Sideyard Setback to erect Deck**

Mr. Norton stated that the Board has had an opportunity to visit the site and review the application.

Mr. Burke asked if Mr. Rennell has spoken with the neighbors to the west of the property. Mr. Rennell stated that he has spoken with the neighbors to the west and they are in favor of his request.

Mr. Norton asked about the possibility of attaining the same square footage by making the deck a little deeper rather than extending into the sideyard. Mr. Rennell stated that there is a severe drop right at the edge of the house. They are on the lake side of the road. They would like to be able to use a portion of their sideyard for the deck.

Mr. Norton stated that the Building Department has requested that this deck be fireproof construction due to the proximity to the neighboring home.

Mr. Norton noted that the minimum sideyard setback for this property is ten feet. The Building Department has stated that for this request a two foot variance is required. The structure now is 13 feet from the sideline. Mr. Norton stated that the total sideyard is to be 30% or 21 feet, and it is already down to 18 feet. That was grandfathered in when the ordinance was changed from 25% to 30% total sideyard requirement. Mr. Norton stated that there is a fairly generous amount of deck now. The existing deck is on pylons, and this deck would also have to be on pylons. If access to the 13 ft. strip is desired, steps going down can be constructed and those do not count as part of the structure. The square footage of the deck and access to the side can be accomplished without a variance.

Mrs. Rennell noted that they are trying to protect their privacy. One of the intentions is that they have an old dog, and that area has been his dog pen. The three existing decks on the two different

levels serve a different purpose. The main purpose of this request is to have access to the sideyard as a court yard type area. Doing it with steps would not be as appealing or attractive.

Mr. Burke commented on the size of the variance. A two foot variance on the sideyard setback and a two foot variance on the total sideyard requirements is not a large amount. Mr. Bruno stated that he agreed with Mr. Burke, but also he does not see the privacy question for the sideyard being a valid issue. He expressed agreement with the Chairman's suggestion of going to the rear yard with steps as an option. Mr. Burke noted that the uniqueness of the property is the configuration of the drop-off of the cliff. Mr. Bruno noted the existence of the pylons in the area.

**Motion** by Burke, second by Dostal, that the property located at 30540 Lake Road be granted two variances for the construction of an addition to the deck at the rear of the property as per the drawings and specifications submitted. The first variance is a two-foot variance from the 10 ft. sideyard setback on the west side of the property; the second variance is a variance of three feet from the total requirement of a minimum of 30% of total sideyards.

**Roll Call Vote: Yeas – Burke, Dostal, Tyo**  
**Nays – Bruno, Norton, Taylor**

**Vote resulted 3-3.**

**Motion is denied due to a failure to obtain an affirmative majority of the total membership of the Board of Zoning Appeals.**

Mr. Norton advised Mr. Rennell that it is his right to resubmit a different plan, with some substantial change. The Board would be asked to reconsider based on that change. Mr. Norton suggested consideration to minimize the extension going west, enough to get a step coming down into the sideyard, and possibly a little deeper going north.

**Gus Marzavas**  
**27122 Lake Road**

**C.O. 1359.01 to install air conditioning  
unit on the side yard**

Mr. Norton stated that the Board has had an opportunity to visit the site and review the application. He noted that the way it is shown on the drawing it would indicate that the unit will be tucked into that notch that is closest to the garage, furthest south. Mr. Norton stated that this is important because if you go back further the neighboring house has some occupied area. Where it is indicated is the part of their house where there would be the least living area, i.e., the garage.

Mr. Burke stated that as he understands the drawing, the notch referred to by the Chairman is 60 feet from the southeast corner of the garage.

**Motion** by Burke, second by Tyo, that the property located at 27122 Lake Road be granted a variance from the ten-foot sideyard setback requirement for the installation of air conditioning equipment on the east side of the property, approximately 60 feet from the southeast corner of the building within the notch indicated on the drawings submitted with the application.

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**Roll Call Vote: Yeas – Bruno, Burke, Dostal, Norton, Taylor, Tyo**

**Nays – None.**

**Motion carried 6-0.**

Regarding the case of Gene Barry, 31418 Lake Road, Mr. Norton stated that he could not find anything in the ordinances relating to the amount of pavement permitted. Mr. Burke stated that the code is found in the Traffic Section of the Codified Ordinances of the City of Bay Village. Mr. Tyo stated that there was a percentage of the yard that could not be cement in the O'Donnell case on Cliff Drive. Mr. Norton stated that the situation with the Barry request is equally as difficult, and is in violation also. Yet, the Building Department let it go through and there are several homes in the area with the front yards being paved. There needs to be additional research done to determine why these conditions exist. There also needs to be discussion with the Law Director and the Building Department to learn of the status of this as far as the Board of Zoning Appeals is concerned.

There being no further items to review, the meeting adjourned at 8:30 p.m.

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Jack Norton, Chairman

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Joan Kemper, Secretary