Minutes of a Meeting of
Board of Zoning Appeals
Held April 5, 2018

Members Present: Bruno, Burke, Miller, Norton,

Excused: Gess, Tyo, Young

Also present: Law Director Gary Ebert, Steve Vogel, Chief Building Official, Lydia DeGeorge and Dave Tadych

Audience: Ed Pavicic, Chris Demkow, Zaki Touma

*Full recording of the meeting is permanently available on the City of Bay Village website under City Government/Board of Zoning Appeals.

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

Motion by Burke, second by Bruno, to approve the minutes of the meeting held March 8, 2018, as prepared and distributed. Motion passed 4-0.

Caprice Mercer  
615 Debbington Drive  
(Continued from January 18, 2018)  
C.O 1163.05 (e) The applicant is requesting a variance for a fence in the rear yard to be 5 feet tall in height instead of the required 4 feet.

Mr. Norton advised that the code states that the Board consists 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.

Mr. Norton stated that this is a continued request from the Board of Zoning Appeals meeting of January 18, 2018, and the Board has had an opportunity to visit the site and review the application.

Ms. Mercer stated that the proposed fence will be about 4 foot 7 inches, aluminum, with vertical openings for visibility and the fence will go to the ground so there will be no openings. She also noted that her home is on a cul-de-sac.

Mr. Ebert explained that the fence ordinance has been referred to the Planning and Zoning Committee for consideration. The discussion within the Planning and Zoning Committee could go on for 3 to 4 months.

Mr. Bruno explained that the Board of Zoning sets the precedent by granting the variance and that variance lives with the property. If, for example, a new owner comes in and removes the
fence and puts in a different fence, at that granted height, with a fence that restricts the sight line then that is not in the spirit of the ordinance that was passed by council.

Ms. Mercer asked how the Board chooses to grant variances. Mr. Norton explained that one of the conditions in granting a variance is that the Board needs to find something unique about the property, not how someone uses the land.

Mr. Miller noted that there was decision about the proximity to the railroad tracks and said that Ms. Mercer is 3 properties away from the railroad tracks.

After considerable discussion, the matter was tabled.

**Motion** by Burke, **second** by Bruno that the request for a fence height variance for the property at 615 Debbington Drive be tabled for 3 months in order to give City Council an opportunity to consider a possible change to the fence ordinance.

**Roll Call Vote:**  
Yeas – Bruno, Burke, Miller, Norton  
Nays – None

**Motion Carried 4-0**

Edward Pavicic  
550 Red Oak Lane  

C.O. 1306.04(d)(4) Applicant is requesting a variance to construct a basement within a 100 year flood plain.

Kevin Hoffman, Polaris Engineering and Surveying, presented a drawing from Cuyahoga County GIS related to FEMA and the Flood Plain. It is his understanding that the homes next to the applicant’s lot have basements and are in the flood plain. He believes this was overlooked by the plan reviewer at the time. He stated that once they construct the house the finish grades around the house will be out of the flood plain.

Mr. Norton asked who established the flood plain. Mr. Ebert stated that it is a Federal Flood Plain. However, the issue came up with whether the original two homes were addressed at the time concerning the flood plain. Therefore, Chris Howard with Bramhall Engineering will review the matter. He added that you can still build in the flood plain as long as all requirements are met with City Ordinances. Mr. Vogel stated that the code reads for Zone A “the structure shall have the lowest floor, including the basement, elevated at least 2 feet above the highest natural grade”. Therefore, this will need to be built on stilts unless an appeal is granted, which is why Mr. Pavicic is here tonight.

Mr. Burke asked Mr. Pavicic if he knows anything about the house immediately to the right. Mr. Pavicic stated that he is trying to buy that property from Ms. Bradac. Mr. Ebert discussed that specific lot and the ongoing litigation with various courts. Mr. Burke asked if there were any variances granted to the home to left. Mr. Vogel and Mr. Ebert stated no.

Mr. Norton suggested that there needs to be research in regards to the flood plain. Mr. Ebert stated that he will have Chris Howard with Bramhall Engineering review the property, the prior
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history of the homes in the development and any recent changes to the development and Flood Plain. Then the Board will be able to make an educated decision based on 1306.05 as far as the requirements of the Flood Plain.

Ms. DeGeorge asked if the city as a whole need an exception from FEMA to allow basements to be built below base flood elevation. Mr. Vogel stated that they can appeal.

After considerable discussion the matter was tabled.

Motion by Bruno, second by Burke, to table the variance request at the property of 550 Red Oak Lane until the next scheduled Board of Zoning Appeals meeting.

Roll Call Vote: Yeas – Bruno, Burke, Miller, Norton
Nays – None

Motion Carried 4-0

Zaki Touma
23609 Lake Road

C.O. 1155.01 Applicant is requesting a variance for a lot spilt.

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

Mr. Norton asked the applicant why he feels that this lot is unique and asked him to justify why he feels the need to make the size of this lot smaller.

Mr. Touma, explained that he has been living at this property for 30 years. He has experienced continuous water damage to the foundation of his home due to water not draining properly from Clague to Lake Road. A discussion was had regarding new homes at the south east corner of Clague and Wolf Road.

Mr. Norton stated that Mr. Touma is asking the city to reduce the minimum required area of buildable lot by 25% in order to divide the lot. He explained that the homes in the First Residence District meet the minimal requirements of 14,700 square feet and he will only have 75% of what is required in the amount of land. Therefore, if granted the spilt the lot will only be three quarters of the size that the city wants lots in that area to be.

Mr. Norton commented that he understands why Mr. Touma would want the lot spilt however, it is not a hardship to the property itself. Mr. Bruno, commented that a 25% variance is a significant percentage variance compared to what is required in First Resident Zone District for minimal square footage lots.

Mr. Touma questioned the water issues. Mr. Bruno commented that it is not in the Board of Zoning Appeals jurisdiction to cover water issues and suggested that Mr. Touma talk to the Building Department.

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**Motion** by Burke, **second** by Bruno to table the request for a lot split at 23609 Lake Road until the next scheduled Board of Zoning Appeals meeting.

**Roll Call Vote:**
- **Yea**s – Bruno, Burke, Miller, Norton
- **Nays** – None

**Motion Carried 4-0**

Britta Demkow  
585 Oakmoor Ave  
C.O. 1153.04 & 1149.01 Applicant is requesting a variance from the rear yard requirement.

Mr. Norton advised that the Board has had an opportunity to visit the site and review the application. The variance request that the applicant is asking for is separation between building and structure and a reduction in the depth of the structure due to the lot size of the property.

Mr. Norton verified with Mr. Demkow that in the design plans it was noted that the structure will be closer than 10 feet to the neighbor’s garage and the walls would be constructed with a fire wall rating between the structure and that garage. Mr. Demkow stated that the wall would be constructed with a fire wall rating in which he would follow all appropriate fire ratings required by the Building Department or Fire Department.

Mr. Bruno stated that the proximity of the owners garage to the deck is very close and the distance between needs to be 10 feet. He explained that the proposed addition and deck is separated by 4 feet 5 ¼ inches and there needs to be fire rating on the primary residence and the garage. Mr. Demkow asked if he could pull the deck back? Mr. Bruno said he can pull the deck back to 10 feet or fire rate the garage. Mr. Bruno suggested to clip the corners off the deck in order to maintain the 10 foot separation between the deck and the garage.

Mr. Vogel stated that if Mr. Demkow can cut the corners off the deck to make it 5 feet than it complies with the Building Code. However, the Zoning Code says that an accessory structure has to be 10 feet behind the main structure. He explained that if Mr. Demkow can clip the corners of the deck to be 5 feet that he does not have to worry about fire ratings on the deck. Mr. Demkow stated that he can modify the deck, what is important is the addition.

Mr. Norton stated that the applicant is asking for a 4 feet 1 inch reduction from the rear setback requirement and a variance of 2 feet 4 inches from the neighbor’s garage.

**Motion** by Burke, **second** by Bruno that the property located at 585 Oakmoor Avenue be granted two variances. The first variance is in the amount of 4 feet 1 inch from the rear setback requirements. The second variance is in the amount of 2 feet 4 inches from the required distance between the proposed structure and the neighbors garage to the southeast for the construction of an addition to the property, per the plans submitted provided that the construction of the deck at the northeast corner must comply with requirements of the Building Department and further that the wall of the new addition along the south side and east side corner be constructed with fire rated materials per the drawings that were submitted with the application.
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Roll Call Vote: Yeas – Bruno, Burke, Miller, Norton  
Nays – None  

Motion Carried 4-0  

Mr. Burke asked for verification that the address for Zaki Touma was correct. It was determined that the address was correct 23609 Lake Road.  

There being no further business to discuss the meeting adjourned at 8:04 p.m.  

[Signatures of Jack Norton, Chairman, and Kristine Jones, Secretary]