

Minutes of a Meeting of
BOARD OF ZONING APPEALS

Held May 3, 2012

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

Also Present: Gary Ebert, Director of Law, Bob Lyons, Building Department

Audience: Ben Ockner, David Madigan, Scott Bleisarth, Katherine Edmen, Karen Dade, John and Nancy Black, Eric Hansen, Dick Majewski, David Davenport, Jess Oster, David Heider, Doreen Zeska, Pat Mayer, Dan Sweeney, M.D. David Maddux, John O'Neill, Jeff Day

Chairman 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 Taylor, second by Tyo, to approve the minutes of the meeting held April 19, 2012 as prepared and distributed. **Motion carried 7-0.**

**Jen & David Davenport
361 Longbeach Parkway**

**C.O. 1151.01 – Variance of 2 feet
to increase the ridge height of
detached garage from 18 feet to 20
feet**

Mr. David Maddux, architect for the Davenports, appeared before the Board and explained that the property at 361 Longbeach Parkway backs up to the park. The existing garage is too small for cars, is beginning to become dilapidated, and needs to be replaced. The home is a beautiful, classic Longbeach home, with beautiful details, but lacks an accessible attic. The Davenports have four children and the family is in need of storage. Plans are to maximize the ability to have storage above the garage without carving up the entire back yard. The details of the garage will match the details of the home.

Mr. Burke asked the footprint as compared to the existing house. Mr. Maddux stated that the footprint is 3 feet longer, and 3 feet deeper. Mr. Burke asked if there is any intent to use the upstairs of the garage for living space. Mr. Maddux stated that there will be no plumbing or utilities for any type of living facilities above the garage.

Motion by Burke, **second** by Dostal, that the property at 361 Longbeach Parkway be granted a variance from the requirements of Section 1151.01 of the Codified Ordinances of the City of Bay Village to permit the construction of a new garage, the amount of the variance being two feet, as per the application submitted by the owner and provided that the attic space in the new garage not be used for living space.

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

Motion carried 7-0.

**Rose-Mary Center
for property located at 30401 Ashton Lane**

WITHDRAWN 4-27-12

**C.O. 1163.05 (3) – more than 32’
of 6’ high fencing in one
direction
C.O. 1163.05 (4) fencing closer
than 10’ to neighbor’s home
C.O. 1163.05 (1) more than 10%
maximum allowable (264 feet, 6
inches variance)**

**Bradley Bay Holdings
Bradley Center Ltd.
605 Bradley Road**

**C.O. 1127 and C.O. 1125
Variance to Code Regulations
to construct Memory Care Facility
addition to existing facilities**

Mr. John O’Neill of Bradley Bay Health Center stated that they are present before the Board for an expansion of a non-conforming use and a use variance. Mr. Ben Ockner, attorney for the project, and Mr. Yost, the contractor for the project, were also present. Mr. O’Neill proceeded to explain the structure and the project they are anticipating to construct by reviewing the plans that have been received by the members of the Board. The addition will come off of the southeast corner of the building, proceed south, and travel west about half-way toward Bradley Road. The

parcel for Bradley Bay is the 385 feet piece on Bradley Road, and a small piece that was more recently acquired. The next parcel is the Bay Commons and the railroad tracks.

Mr. Ben Ockner, attorney with Berns, Ockner, and Greenberger, LLC addressed the Board and advised that a few years back the Board of Zoning Appeals approved variances that would allow a two-story expansion of the Bradley Bay Health Center that would have more than twice the number of units that are being sought currently. Mr. Ockner stated that there was considerable litigation that went into that prior approval and the years that the litigation lasted, and the resources it consumed, resulted in the project as approved not going forward. They are requesting a much smaller project at this time. There are two requests this evening. The first is for the expansion of a non-conforming use on the northern parcel, and the other is for a use variance on the southern parcel. The southern parcel is not usable for any of the purposes for which it is zoned because of its narrowness and proximity to the existing facility. The zoning code contemplates that a place of comfort will be provided for everyone in Bay Village. Putting a facility dedicated to Alzheimer's patients is in furtherance of that. The standards that apply to expansion of non-conforming use and for the use variance are clearly established. The supplement to the application refers to the Fair Housing Act, and the Religious Land Use and Institutionalized Persons Act. Those must be referenced in the possibility that the rights being discussed in this proceeding tonight are enforceable through law suits in federal courts through those acts.

Mr. Burke asked if he understood Mr. Ockner to say that the expansion of the non-conforming use relates only to the northern parcel, Permanent Parcel No. 203-15-07, and the use-variance/permit relates to the southern parcel.

Mr. Ockner stated that the expansion of the non-conforming use is only with respect to the northern parcel. The use variance would apply to the southern parcel. The northern lot is the lot upon which the existing structure is located. The attachment that would go over to the other parcel needs the reference to the non-conforming use.

Mr. David Madigan, 30601 Cambridge Drive stated that he has lived at Bay Commons for 29 years. Initially there was a very good plan for use of that property which was a mirror image of Bay Commons. There is opportunity to look at developing the property other than for the purpose being sought tonight. In looking at the other proposals that have been submitted, they are always trying to put too much building on too little land. This proposal seems to be scaled correctly, where the amount of building seems to fit the amount of land they have. Mr. Madigan stated that he is concerned about making the decision of permitting a different use for a piece of property in one section of Bay Village. If someone else requests the same sort of thing in a different section of Bay Village, how will the rules be applied? If it's alright here, it may be alright in the center of town, and you may not like the same results. The decision made in this

