

Minutes of a Meeting of  
BOARD OF ZONING APPEALS  
Held March 21, 2013

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

Absent: Mr. Dostal

Also Present: Bob Lyons, Building Department, Mark Chernisky, Brian Maurer, Tom Kelley, Mary and Dan Barringer, Gayle Fisher, Terry Bennett, Paul Jasin

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

**Motion** by Bruno, second by Tyo, to approve the minutes of the meeting held March 7, 2013 as prepared and distributed. **Motion passed 6-0.**

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.

**John Outcalt**  
**30015 Applewood**

**C.O. 1359.01 (a) – Variance of**  
**5 ft. of sideyard**

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

Further review of the application and discussion followed.

**Motion** by Burke, second by Tyo, to grant a variance in the amount of 5 feet to the sideyard of the property at 30015 Applewood Drive for the installation of an air conditioner, per Codified Ordinance 1359.01 (a) per the application and drawings submitted, and requiring a sound blanket for the air conditioning unit.

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

**Motion passed – 6-0.**

**Robert F. Gesing**  
**26720 Normandy**

**C.O. 1359.01 (a) Variance of**  
**7 ft. of sideyard**

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

**Motion** by Tyo, second by Taylor, to grant a variance in the amount of 7 feet to the sideyard of the property at 26720 Normandy for the installation of an air conditioner, per Codified Ordinance 1359.01 (a) per the application and drawings submitted, requiring a sound blanket for the air conditioning unit, and screening from the neighbor.

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

**Motion passed – 6-0.**

**Thomas Kelley**  
**310 Tanglewood Lane**

**C.O. 1141.04 (J) – Special Permit**  
**for arbor**

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

**Motion** by Burke, second by Tyo, to grant a special permit for the installation of an arbor, per Codified Ordinance 1141.04 (J) per the application and drawings submitted.

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

**Motion passed – 6-0.**

**Charles M. Kennedy**  
**574 Marygate Drive**

**C.O. 1153.03 – Variance of 5’4”**  
**and 8’8” for total sideyard**  
**requirement**

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

Further review of the application and discussion followed.

Mr. Tyo reported that this is a unique situation where the house is twisted 90 degrees.

**Motion** by Tyo, second by Bruno, to grant a variance to the property at 574 Marygate Drive, per Codified Ordinance 1153.03 in the amount of 5 feet, 4 inches, and 8 feet, 8 inches to the sideyard variances per the application and drawings submitted.

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

**Motion passed – 6-0.**

**Lori B. Campana**  
**30006 Lake**

**C.O. 1153.03 – Variance of 7’ for**  
**porch on east side of home**

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

Further review of the application and discussion followed.

Mr. Norton stated that from the street there will not be a very high elevation. The drawing shows an open picket, and it would change the character if there would be a solid wall or roof. There is 13 feet from the porch to the property line.

**Motion** by Burke, second by Tyo, to grant a variance in the amount of 7 feet to the property at 30006 Lake Road per Codified Ordinance 1153.03 for the construction of a porch/patio as submitted with the application and drawings with the requirement that the porch/patio at no time shall be covered or in any way made into a enclosed or covered porch, and that the railings be as per the drawings submitted and according to the city code.

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

**Motion passed – 6-0.**

**Mark Jeffers**  
**26960 Lake Road**

**C.O. 1145.02 (C) Special Permit**  
**Generator (side yard placement)**

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

Mr. Jeffers submitted an amended drawing, showing the generator being placed in the front yard. There were problems with the side yard placement. The rear yard placement would not be a workable location because of the fence and deck. The house is set back over 200 feet from the street. The generator would be placed in front of the garage with screening. The placement would be five feet from the front of the house and three feet off the side. The generator is 48 inches long, 25 inches wide, and 29 inches tall. The gate of the fence will be 36 inches high. Mr. Norton noted that the corral type structure proposed for the generator could end up with other equipment stored in it off-season. Mr. Norton would like all of the fencing to be 36 inches high, the height that the gate is proposed.

**Motion** by Burke, second by Tyo, that the property at 26960 Lake Road be granted a variance from the provisions of Codified Ordinance 1145.02 (C) and that as a result of this variance the generator be permitted to be placed in the front of the property, as per the drawings that were submitted to the Board on March 21, 2013, provided that there be uniform height and appearance of screening year-around for the unit, not to exceed 3 feet, 4 inches in height, and that in all other respects, including, but not limited to the testing of the equipment, it conform to the recently passed ordinance of the city regarding generators. \

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

**Motion passed – 6-0.**

**Daniel J. and Mary T. Barringer**  
**24433 E. Oakland Rd.**

**C.O. 1163.05 (H) (2) Installation of**  
**8 feet high fence for 27 feet along**  
**east side of driveway**

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

Further review of application and discussion followed.

Mary Barringer discussed the fact that a variance was granted to a neighbor for the height of a fence on October 1, 2009. Mr. Norton advised that the variance was granted prior to the code being changed to permit the height of fences to be 6'4" to allow for a 4 inch clearance from the grade. At this time, the fence is in compliance with the current code. Planters on top of the fence have been removed at the request of the Building Department. Mr. Norton acknowledged that Mrs. Barringer's previous report to the Board of Zoning Appeals regarding the variance and the planters was correct.

Mrs. Barringer stated that the Barringers would like an 8-ft. high fence because the neighbor's lights are shining in their yard, and they have had several incidents of vandalism which this 8-ft. high fence would prevent. Mrs. Barringer related that they have had Round-Up sprayed in their

yard. They had cupboards laying on their driveway drying, and the next door neighbor sprayed water on them. Mrs. Barringer believes that an 8-ft. high fence would prevent those types of incidents. The fence would also block their vision of signs being put on people's fences, and lights being put on neighbors' fence to shine into the Barringer's family room. Mrs. Barringer further stated that they had an 8-ft. high fence put up for three or four months and had absolutely no problems. The police weren't called. Mrs. Barringer advised that they have had security cameras installed on their property because of trespassers turning on their hose, throwing their newspaper down the street, and egging their house.

Mr. Tyo asked Mrs. Barringer for a brief history of how these problems started. Mrs. Barringer stated that her son power-washed their deck and the neighbors took objection to that, called the police, and said that they were violating the noise ordinance. The councilman told the neighbor to keep calling every hour until they could make him stop. The police came and said the Barringers were not in violation; they did not start too early or work too late. After that the neighbors installed lights which shine into their family room, and it escalated from there. Prior to that the neighbors were all friends. There was a settlement in court, however, there would be a \$500 charge to get the records. The settlement was that the cases were dropped, the Barringers were supposed to get the 8-ft. fence and their son moved out. Prosecutor Gary Hotz told the Barringers' attorney that he would see that the 8-ft. fence went through. It would cost the Barringer's \$500 to prove this to the Board of Zoning Appeals.

Mr. Norton stated that the Judge is not empowered to change the rules of Bay Village. The attorney, Mr. Hotz, said that the Barringers have the right to bring their request to the Board of Zoning Appeals. If the BZA disagrees, the Barringers have the right to take the question to court. Mr. Norton noted that the Board of Zoning Appeals, when granting a variance, grants the variance to the property, not the individual. The variance lives forever with the property. The BZA must find cause that there is something unique about the property. Mr. Norton stated that if the Board of Zoning Appeals granted this variance with no justification for an 8-ft. fence relating to the property, a precedent would be set that anyone who came in that wanted a higher fence up to 8 feet, would have to be granted their request.

Mrs. Barringer asked the reasoning of the Board of Zoning Appeals in granting a 6'4" variance prior to the code being changed to allow the height of 6'4". Mr. Norton explained that the Board of Zoning Appeals took into consideration the distance needed underneath the manufactured sizes of fences at 6' to allow clearance for maintenance of a 6' fence. Council did adopt the 4" rise to make the installation of fences more practical based on the way fences are designed and manufactured.

Mr. Burke noted that variances are sometimes granted in anticipation of a change in the code by City Council due to numerous requests, such as has been the case with the placement of air-conditioning units. Mr. Burke stated that he would have no reason to believe the Council would ever think of increasing the current fence height ordinance to 8 feet.

Mrs. Barringer asked if they would be permitted to have a temporary fence until the neighbor moves, since the house is up for sale. Mr. Burke stated that variances are granted permanently.

**Finding of Fact**

**Motion** by Burke, second by Taylor, regarding the property at 24433 East Oakland Road and the request that is before the Board of Zoning Appeals for a variance, that the following Findings of Fact be approved:

- 1) There is no practical difficulty or unnecessary hardship existing as to this property that is particular to the property itself (particular to the real estate);
- 2) If this Board fails to grant a variance, that failure would not deprive the owner of the property rights that are inherent in the ownership of the property;
- 3) If this Board should fail to grant the variance requested, such failure will not be contrary to the purpose and intent of the zoning code of the City of Bay Village.

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

**Motion passed 6-0.**

**Motion** by Burke, second by Tyo, that the property at 24433 East Oakland Road be granted a variance of 1’8” for the increase in height to the 27-foot fence along the east side of the property, as per the application and drawings submitted.

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

**Motion denied 0-6.**

There being no further business to come before the Board, the meeting adjourned at 8:30 p.m.

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Jack Norton, Chairman

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Joan Kemper, Secretary