Meeting Minutes of
Board of Zoning Appeals
Held February 7, 2019

Members Present: Miller, Bruno, Gess, Tyo, Norton, Young

Excused: Burke

Also Present: Eric Tuck-Macalla (Building Department)

Audience: Darcy Good, Nicholas Arnold, Mr. and Mrs. Mixter, Kenneth Martin and Basama Ricaurte

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

Mr. Norton called the meeting to order at 7:32 p.m.

**Motion** by Mr. Bruno, **second** by Mr. Gess to approve the minutes of the meeting held November 15, 2018 and December 20, 2018, as prepared and distributed.

**Motion passed 6-0.**

28309 Lincoln Road pp#20229042 Building Department Hearing: Pursuant to section 1303.06(c) Posted application, complaints.

Mr. Norton discussed the second agenda item concerning an existing fence that had been put in with the unfinished side facing the neighbor, which is in violation of the fence ordinance.

Mr. Norton asked if anyone from the audience was attending the meeting with regard to this agenda item. He explained that the Board has had a chance to visit the site and review the application and asked for discussion.

Mr. Norton stated that from his judgement, the unfinished side of the fence does face the neighboring property. He asked homeowner if she felt that both sides of the fence are equally the finished side.

Ms. Good explained that the contractor that installed the fence had explained that he was trying to frame the lattice work so that both sides were essentially mirror images of each other.

Mr. Norton explained that after visiting the site, the side facing her property, the lattice is nicely trimmed off with a 1"x4"(trim). On the other side facing the neighboring property, it looks like a 4"x4" is left exposed and looks like the unfinished side. He offered a solution of adding another
layer of the lattice work finished with trim. He explained that the ordinance within the City is that the homeowner putting up the fence is to leave the least attractive/unfinished side facing their property.

Ms. Good clarified that a privacy screen was installed and not a fence that falls under its own section in the code and specifications. She also explained that the code stipulates that a finished side must be presented. Other than a depth issue, the privacy screen is a mirror image of each other on the front and the back.

Mr. Norton asked if the person who installed the fence was specifically a fence contractor.

Mr. Mixter asked if the hired contractor was licensed in Bay Village.

Mr. Norton asked if the Building Department has sited the property owner with the privacy screen.

Mr. Tuck-Macalla explained that the Building Department has not sited anyone. As far as the City is concerned, the fence is not on the property. Not until the permit is issued and after the ten days can it be challenged. He stated that on the plans it states that both sides would virtually be identical and that a finished side would be showing. He explained because the City code says a finished side and not the finished side, he believes the side facing the neighbor could be the finished side if that is what it was meant to be.

Mr. Tyo asked the homeowner if this was discussed with the contractor prior to the fence being installed or was she aware of the stipulation.

Ms. Good explained that the plan was presented to her this way by her contractor with the knowledge of her intention of adding vines to the lattice work.

Mr. Norton stated that he assumes the contractor was aware of the Code and was most likely putting the finished/nicer looking side facing the homeowner and that the neighbor is clearly looking at the unfinished side.

Mr. Miller explained that she could make the side facing the neighbor symmetrical by reframing the fence while not giving up a lot the already used material.

Mr. Tyo explained that adding a 4”x4” on the upright posts on the unfinished side and along the bottom would make both side look exactly the same.

Mr. Norton explained that the contractor could trim down the lattice work, center it between the 4”x4” and trim both sides equally to solve the problem. He suggested the contractor perform the work gratis.

Mr. Gess asked what the Building department would have done in their review of the fence had a permit been pulled prior to installation.
Mr. Tuck-Macalla explained that had the proposed plan been brought to him before it was installed, he would have had the contractor add trim with the lattice in between.

Mr. Bruno agreed with Mr. Norton’s previous comments that the unfinished side traditionally faces the property owner.

Mr. Norton explained that the reason this was brought to the Board was because no permit was issued or requested.

Mr. Tuck-Macalla asked on behalf of the Building Department, what is a finished side of the fence so that next time this issue arises he can assess accordingly.

Mr. Miller stated that he agreed that the neighbor is looking at the unfinished side and the fence should be facing the homeowner who is installing the fence.

Mr. Norton explained that from an architectural stand point and traditionally within the City, the finished side should be facing the neighboring homeowner.

Mr. Norton discussed that the reason the Board was here was to accept the complaint and because there has not been a permit issued, the fence is technically illegal. The contractor needs to come into the City with a new drawing to fix the fence. The City will then make the judgment about the solution for the finished side.

Mr. Mixter discussed that they had previously installed a fence and were told by the City that they need to install a “good neighbor” fence with identical woodwork on both sides of the fence. He explained that had his neighbor put in for a permit, they would have had a chance to look at the design.

Mr. Tyo stated that it is the contractor’s responsibility to pull a permit.

Mr. Miller and Mr. Bruno agreed that ultimately the property owner is responsible for making sure the permit is pulled.

Mr. Norton stated that the Board is here to accept the complaint and is referring it to the Building Department in which the Building Department will seek a permit for the unpermitted fence. The contractor will need to submit a sketch for the new design and be approved.

Motion by Mr. Bruno, second by Mr. Tyo to refer the complaint regarding the property located at 28039 Lincoln referencing C.O. 1303.06(c) related to construction of the fencing on the property to the building department for follow up.

Roll Call Vote:
Yeas – Bruno, Norton, Gess, Miller, Tyo, Young
Nays-
Motion Carried 6-0
Board of Zoning Appeals
February 7, 2019

Basama Ricaurte
31676 Lake Road

The applicant is requesting a variance per C.O. 1153.02 for front yard setback, 1153.03(3)(N)-1’6” variance at 2nd floor bump-outs, 1153.04- rear yard setback 22.25’ variance, 1155.04-small lot size.

Mr. Norton introduced the next agenda item and noted that this property is located in a special area within the City that has a common rear yard and this type of request is not unusual.

Mr. Norton explained that the Board has had the opportunity to visit the site and review the application and asked for comment.

Mr. Bruno did not see any information in the application that showed the front yard setback.

Mr. Martin, the architect representing Ms. Ricaurte, explained that since submitting the application there have been several issues that have arisen and a new sketch was presented to the Board. Specifically on page 5, he explained the variances that the homeowner would need. Mr. Martin explained that the new plan was made based on a conversation that was had with the neighbors who were concerned on their view once the construction was completed. Mr. Martin met with Ms. Baker. Mr. Martin explained Ms. Baker’s concerns as he remembered them. He presented designs and described them to the neighbor and the Board. Mr. Martin described the historical considerations on the property.

Mr. Norton asked whether the proposal was to maintain the footprint of the garage and add on top of the existing garage.

Mr. Martin stated that they’re requesting special permission to add to the garage vertically, which was already previously permitted. Mr. Norton stated that this request was already grandfathered in from the originally built garage.

Mr. Martin stated that their next request was for a rear yard setback and that they’re asking for a variance of 22.25 feet in order to accomplish the installation of the new rear wall.

Mr. Norton stated this request is common. There have long been questions about what to do with backyards, but were left in limbo with status. The City has traditionally allowed people to build up to the property line. Mr. Norton suggested there may not be an issue with this request, as well.

Mr. Miller stated that there was precedent that an owner’s site lines are parallel with their property lines. Even if your property lines are skewed, those are a homeowners site lines. Mr. Miller stated that the Board can’t really consider the site lines of the neighbor when considering
a request for setbacks and additions. The Board is only to consider the percentages of coverage and property lines.

Mr. Martin stated he presented materials regarding the site line of the neighbors only in the case that a neighbor were to come and complain about the request.

Mr. Martin discussed the next variance needed regarding the second floor bump-out that protrudes out beyond the 2’ permitted line of a window. He discussed the reason for this is to take advantage of the view of the park and lake behind the house without affecting the privacy of the immediate neighbor to the left. Also, the window must be of a certain size due to safety regulations which exceeds 1’6” beyond the requirement of the 2’.

Mr. Norton stated that right now they have 49’ foot width of the lot and they have 9’ 1” of the West side yard and a 6’ proposed East side yard. Which means they meet the 30% rule. He stated that they do not need variance for side yard. The only variances needed are for the bump-outs of 1’6” on the side yard.

Mr. Norton discussed the Board needs to reconfirm that it is indeed a buildable lot based on its size and history. He then asked the Board for any other thoughts.

Mr. Bruno discussed clarification if there needs to be a granting of a special permit or a grandfathered variance for the front yard setback of the construction of space above the existing garage.

Mr. Norton stated that he believed it would be a special permit to allow a 32’ setback from the property line as it currently exists to add a second floor which address the front setback issue.

Mr. Martin stated that the garage may need to be rebuilt.

Mr. Miller discussed the renderings and that they mentioned having shallow footings that may not be able to support a second floor.

Mr. Martin explained that based on initial inspection the footings would only support the garage itself. He discussed the sinking of the stoop in the front of the house because when it was built, they did not go three and a half foot below grade below/frost line.

Mr. Miller and Mr. Gess asked if it was their intent for the new structure to replace the old garage and if the second floor will be consistent with the existing footprint.

Mr. Martin stated that the new garage/second floor will be consistent with the existing front yard setback.

Mr. Norton asked for any further discussion.
Motion by Mr. Bruno, second by Mr. Miller that the property at 31676 Lake Road be granted a special permit per C.O. 1153.02 for a 32’ front yard setback for the construction of a garage and second floor living space intended to be occupied as prepared and submitted. Grant a variance per C.O. 1153.03(3)(N) a 1’6” variance at 2nd floor bump-outs per the drawings as prepared and submitted beyond the 2’ of the side yard requirements. Grant a variance per C.O. 1153.04 for a rear yard setback 22.25’ based on the drawings as prepared and submitted. Lastly reflect and grant a variance as grandfathered per C.O. 1155.04 related to the lot and structure size of the existing footprint. Any new construction does not violate the requirements as prepared and submitted.

Roll Call Vote:
Yeas – Burke, Gess, Miller, Tyo, Young, Bruno
Nays-
Motion Carried 6-0

There being no further business to discuss the meeting adjourned at 8:17 p.m.

Jack Norton

Kateri Vincent, Secretary