Meeting Minutes of
Board of Zoning Appeals
Held April 18, 2019

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

Excused: Burke and Miller

Also Present: Eric Tuck-Macalla (Building Director), Councilwoman Lydia DeGeorge, Councilman Dave Tadych, Councilman Marty Mace

Audience: Maureen Androsik, Mike Shaughnessy, Russell Thompson, Sylvia Milhoan, Jill Braudt and Mary Slaman

*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 7:34 p.m.

Motion by Mr. Bruno, second by Mr. Gess to approve the minutes of the meeting held April 4, 2019, as prepared and distributed.

Motion passed 5-0.

Tad and Maureen Androsik
28421 W. Oakland Rd.

The applicant is requesting a variance per C.O. 1149.06 for a 22’ tall garage.

Mr. Norton discussed the second agenda item. He explained that that Board has had a chance to visit the site and review the application. He also explained that the Board of Zoning appeals is constituted of seven members and only five are in attendance, which is enough for a quorum. But if during the course of the discussion if the applicant is uncomfortable with how the conversation is going, it is the applicant’s right to request that the agenda item be tabled until a following meeting when all members can be in attendance.

Mr. Norton asked if there was discussion.

Mr. Bruno clarified a variety of items regarding the proposed garage. He asked if the new garage will be placed on the existing footprint of the existing garage, if they planned to have the garage plumbed and electrical added and if the garage will be used as a living quarters.

Ms. Androsik stated that yes, the garage will be placed on the existing footprint, no it will not be plumbed but for the hose at the back of garage, there will be electrical for garage door and no living quarters.
Ms. Androsik stated that they plan to use the garage as storage.

Ms. Young asked if they planned to use the cement pad that is already existing.

Ms. Androsik’s architect explained that they plan to pour a slightly larger cement pad than the existing footprint by a few inches. They felt it was better for the lot to go up as opposed to out to help preserve the yard.

Ms. Androsik explained that their neighbors are all close and are fine with the new garage. The proposed garage was designed to keep in line with Bay Village to match the house.

Mr. Norton stated that it was an attractive design and the extra 4’9” is relatively small against the 18’ rule. The design of the garage is in line with the style of the home and neighborhood.

Motion by Mr. Tyo, second by Mr. Bruno that the Board will grant the property at 28421 W. Oakland Rd. a variance of 4’9” per C.O. 1149.06 for a 22’ tall garage per the application as approved and submitted.

Roll Call Vote:
Yeas – Gess, Tyo, Bruno, Norton, Young
Nays-
Motion Carried 5-0

Bay Village Council Members: Environment and Safety Committee Discussion of the proposed fence regulations. (1163.5)

Mr. Norton explained the third agenda item.

Mr. Tadych stated that he did not have any questions but was anxious to hear what the Board had to say in regard to the proposed fence regulations.

Mr. Norton explained that the Board has expressed their opinions at several meetings in the past and asked if any member had comments to make directly to the Environment and Safety Committee Members and to the audience.

Mr. Bruno explained that due to work and personal conflicts he has not been able to attend prior meetings. He wanted to make comment for the record that there has been discussion among the Board members in quorum and he has been following comments and discussion on social media platforms. He explained that social media allows for a significant avenue for people to communicate their opinion on both sides of the discussion.

Mr. Bruno commented that he seconds the comments the Law Director Barbour has made that the City has every right to set the tone for the aesthetic of the City. The fence issue that is currently being discussed is an issue that was thoughtfully created at the time Code was set, especially the 32’ rule and 10% perimeter.
Mr. Bruno stated that he personally lives on Russell Rd. in Ward 1 which has a similar lot to many of the homes in Bay Village (narrow and deep). He feels that Council was thinking of this when the Code was created in limiting the run of 6’ fencing. He feels it is reasonable for anyone to be able to have 32’ feet across the back or side for security/privacy. He feels the current Code also took into consideration the lots in town that are larger and that is where the 10% perimeter rule comes in. Many times this is where the BZA comes into play and needs to give consideration for this. He feels Council did an excellent job at the time to try to give consideration to set the tone of being neighborly and fostering communal nature among the residents.

Mr. Bruno feels that Council even took the aesthetics of Bay Village into consideration when creating the fencing Code along with the Tree Commission and Green Team. He personally would like to see arborvitae or pines as opposed to fencing (corrals) in the backyards. Part of the reason why he lives here is because of the beauty and aesthetic. The property values reflect that because of the way the fence Code reads.

Mr. Bruno added one last comment on some of the behaviors of neighbors and pets that come into play with some of the variances requests. He feels that fences are not quite the answer to behavioral problems that can cause issues between neighbors and not in the spirit or tone of what Bay Village is about. He feels our society needs to move more toward resolving issues as opposed to avoiding them.

Mr. Norton asked Ms. Young to share her thoughts and opinion on the discussion.

Ms. Young echoed Mr. Bruno’s thoughts on the fences ordinance. In consideration with those that have smaller or narrower lots, she feels that the 6’ fence does provide lack of access and visibility for safety, police and fire services. The 6’ fence limits visibility and neighborliness.

Ms. Young thought some tweaking/compromise of the 32’ ordinance could possibly be made. She was not sure she was for a full 6’ fence.

Mr. Bruno seconded Ms. Young’s thoughts on the safety and security aspect. He shared that his property is located near the highway and could be susceptible to crime. He explained that he and his neighbors self-policing their properties. If he or his neighbors did have the corrals, someone could be in his backyard and no one would be able to see. He does not see that 6’ fence as helpful when it comes to security. He shared that if a property has a fence in their backyard, it makes it difficult to get safety equipment into the backyards.

Mr. Norton asked for audience discussion.

Mike Shaughnessy had a process question between Environment and Safety Committee and the Board of Zoning Appeals. He asked what role the Board or Zoning Appeals has in terms of what the Committee will propose to Council.
Mr. Norton explained that the history of the BZA’s job is to give the citizen a venue to ask for a variance to an ordinance. The BZA consists of seven unelected citizens that can take the specific situation a person has and a citizen can ask for a variance on a particular parcel that will live with the parcel indefinitely.

Mike Shaughnessy asked more specially if the Environment and Safety Committee will be the ones to come up with the recommendation based on what has been heard from Bay Village citizens. He asked if the BZA looks at that in terms of their recommendation and confer with Council.

Mr. Norton explained that the BZA does not have any position of approving or disapproving. He stated that the comments started with this Board because they are the ones that hear the requests for changes, for example the fence ordinances. The Board has heard repeatedly that citizens would like slightly higher fences because an animal can get over a 4’4” fence which is conflict with the concept that Council originally had in keeping the openness of the yards.

Mr. Norton explained that the new proposed fence regulation would meet the request by raising the height and still leaving the openness/opaqueness. He stated that now people are claiming that their animal can easily get over a 5’4” fence but he feels a vast majority cannot do that. The Board feels that the proposal is a reasonable compromise but it is up to Council to make the law.

Mr. Bruno stated that when it comes to variance requests, the Board of Zoning Appeals are the enforcers of Council in regards to the Code. He asked that Mr. Gess comment on the three criteria the Board looks at when determining if a variance is needed.

Mr. Gess explained that during the last two years serving on the Board he has seen many applications come to the Board with requests that have to do with a situation or a use.

Mr. Gess shared what is stated on the application for Board of Zoning Appeals which are the parameters for which the Board is supposed to evaluate the application with.

“When variances are requested, the appellant per Section 1127.04 (D) must state and the Board must find that:

a. A practical difficulty or unnecessary hardship exists and is peculiar to the premises.
b. Refusal will deprive the owner of property rights.
c. Granting the appeal will not be contrary to the purpose and intent of the zoning code.”

Mr. Gess explained what Chairman Norton often states, the Board is able to tinker with the Code within reason that is in keeping with the spirit and intent.

Mr. Bruno described examples of unique properties throughout town. (Ex: near Martin’s Deli, properties along the train tracks and ravines) Based on the uniqueness of the property the Board has allowed certain variances for practical and purposeful reasons.
Mr. Tuck-Macalla explained that properties near commercial properties, train tracks, schools and churches do not need a variance because it is already built into the Code to be able to put up a 6’ fence.

Mary Slaman asked if the BZA was going to make a recommendation to Council.

Mr. Norton explained that as a group, the Board has expressed their opinion on the three major proposed changes to the fence regulations. (The transition pieces going from 6’ to 4’ on each end, the 75% transparency of a higher fence of 4’4”-5’4” and 32’ of 6’ privacy screen) He stated that he thought the Board agreed on the transition pieces and raising the height of the fence but there was some discrepancy within the Board on the 32’ rule.

Mr. Norton explained that the Board’s position is simply because fence regulations are dealt with within the BZA. He explained that Council has asked the BZA for their opinion on the three aspects.

Councilman Mace, Chairman of the Environment and Safety Committee, asked for verification among the BZA members as a whole on their position on privacy screens. He explained that based on the average sizes of the lots in town, he had come up with the 40’ run rule to give citizens more privacy. He stated that citizens are now using their backyard as an extension of their home with outdoor kitchens, living spaces, etc. and still want the corrals. He had spoken with Mr. Miller, Mr. Norton and Mr. Burke previously and was interested in what the rest of the Board felt. Lastly, Councilman Mace asked if the Board had ever granted a variance where a person has a 32’ existing section along the backside of the property and allowed a variance to come up the other side of the property. He explained that it was stated last night that you cannot put any more than 32’ of privacy screening on a property in totality.

Mr. Norton explained that the ordinance reads, “in one direction” and as long as you change direction, you can add more.

Mr. Bruno stated that one thing the Board often counsels applicants about is working with neighbors. One property owner can put up to 32’ and the neighbor can put up 32’ feet if they would like to make privacy longer and work together they can. There are ways that it can be done to accommodate privacy considerations together.

Councilman Mace stated that he interprets the ordinance the same way as the Board in that with perimeter consideration would allow a variance in another direction. It should go to the 10% as long as it does not stretch beyond the 32’.

Ms. Young asked if the changes to fencing regulations was brought to the Committee because citizens came to Council asking for the changes. (especially the 6’ change) She explained that there is around 24 meetings a year and on average every other meeting there is a fence related
application. Although it comes up regularly, there is not more than a dozen in the last year. For a town our size, that is not a lot.

Mr. Norton explained that some of the requests were way over the top where the applicant wanted to put 200’ of 6’ fence which would make a literal corral. It was no longer tinkering around the edges. He explained that there have also been requests for extra fencing due to the fact there was a 40’ difference between a patio and a garage and asking for an additional 8’ in one direction which seemed reasonable.

Mr. Bruno explained a situation that had recently come up with the Board and a group home where a taller fence was needed for the safety of one of the residents. The Board very carefully and delicately handled the request with the advice of Law Director Barbour. The group home worked with the neighbor to put up the transparent fence that helped the group home but did not affect the neighborhood.

Mr. Norton suggested the Board be polled to get everyone’s opinion. He explained that Councilman Mace was aware of Mr. Miller’s position and Mr. Norton explained that Mr. Burke was uncomfortable with the 32’. He stated that personally he was neutral between 32’ and 40’. He explained that he felt strongly on the transparency of the fence and he is comfortable with a higher fence.

Mary Slaman asked for clarification of what the 75% transparency of a fence would look like and if the Board meant it for just the top portion of the fence.

Mr. Norton explained the 75% transparency is in regards to the entire fence and explained that if you took a metal/ornamental iron or wood fence, you’d have 1” of picket and 3” of open space, then 1” of picket and so on. As long as they are 4” on center with 3” of opening for every 4” of space. A fence with 75% transparency is able to be looked thru, even on an angle. The neighborhood, the view and the natural setting of the yard stays open. In effect, it does not serve as a privacy fence at all.

Mary Slaman stated that she feels very strongly that a 5’4” fence is not much different than a 6’4” fence. She explained that she does see a difference between 4’4” and 6’4” fence which is why you can have a side yard fence and a privacy screen. She stated that she respects all the work the committee does and feels they are very reasonable but she predicts the City will have people want an even higher fence.

Mr. Norton explained that the ordinance is proposing to go form 4’4” to 5’4” and asked if she favored going higher than that.

Mary Slaman said no, and that she thinks the ordinance should stay as is.

Mr. Tyo explained that both Mary Slamon and Sylvia Milhoan attended the Environment and Safety Committee meeting the previous night and had shared important points.
Sylvia Milhoan stated that she was against the proposed changes.

Mr. Norton asked if the fact that it would be transparent would have any bearing on her opinion of the proposed fence regulations.

Sylvia Milhoan stated that she feels once it is changed, people will want to change it more and more and make it even higher and she is not wanting that to happen.

Mr. Norton stated that there will always be people who disagree and feel like they would like a solid fence, 7' high but that is why Council will need to come up with what they think is the right decision for the City as a whole.

Mary Slaman disagrees that the City is aware of proposed fence changes. Due to her job she is on Facebook every day and only learned about this meeting last week. She proposed this process be slowed down so more people in the City can attend meetings and become aware.

Mr. Norton stated that he believed it started quite a bit before December and has been in the works for about a year.

Councilman Mace stated the actual consideration of the proposed change within the Environment and Safety Committee started in December but it was discussed in October prior to that.

Mr. Norton discussed a previous case where the past Law Director, Gary Ebert, agreed to put a case on hold for a woman who wanted a 5’ high transparent fence. The Board was comfortable granting it but uncomfortable granting because it would have made a change in the law. Once the Board sets a precedent, they cannot tell the next person in a similar position they cannot do it. This discussion was proposed last fall and Gary Ebert proposed it to Council.

Councilwoman DeGeorge stated that it was the case of the woman that wanted the 5’ high fence that started this and over the summer Dwight Clark, Marty Mace and Lydia DeGeorge visited the property to take a look at it. The woman tabled the application and it started the conversation.

Councilwoman DeGeorge discussed how she has been to BZA meetings in past where the Board states that Council makes the rules. She felt at that point that maybe Council should revisit the rules which got the ball going. The first thing that was looked at was a compromise to go to 5’4” and as word got out it morphed into a number of residents asking about the 6’ privacy fences for these reasons. That is how the height and the privacy came to be due to the fact everyone wanted to weigh in and give their opinion.

Mr. Gess stated, that in his opinion, the City lacks a residential architectural review board. There are such a vast amount of properties in a variety of sizes within the City that being a one size fits all is difficult. As a citizen, he is very content with the current fence ordinance. He is happy to suggest accommodations to include the tapering because it has an architectural feel to it and could save people from having to come to the BZA for approval. He stated that he is okay with
the proposed higher transparent fence which keeps with the intent. As a citizen he values and appreciates what it does for the community of Bay Village but he thinks it opens up so much subjectivity which can vary greatly.

Mr. Bruno stated that Council could make some changes given that there are situations where tapering was recommended and other practical situations. The higher fence with significant transparency is relatively reasonable given the tone of some people in the City. In his opinion he feels a majority of people do not want a fence with 100% privacy. If it was put up to a vote, he feels like it would prove itself out.

Councilman Tadych clarified what he thought was being said by the Board. The Board could do with or without the 5’4” fence and the Board likes the current ordinance.

Mr. Norton stated that he believes the Board is comfortable with going from 4’4” to 5’4” as long as it is a see through fence. (75% opacity) Which would help with a lot of the cases that get brought to the BZA, specifically the dogs that can jump over fences but also keeps the visual expanse of the City.

Mr. Tyo stated that no, he was not comfortable with going to the 5’4”.

Mr. Bruno stated that he was comfortable with the current fence ordinance however if there is a majority within the City then it should be addressed and discussed and a compromise should be made.

Mr. Norton suggested the BZA polled on the position of each member. Speaking for Mr. Burke, he is comfortable with the 5’4” transparent fence, comfortable with the transition pieces, but not comfortable going from 32” to 40’.

Ms. Young asked for clarification on the proposed fence regulations.

Mr. Tyo stated that the BZA’s job is to tweak the ordinances a bit and the fences ordinance has always remained 4’4”. If it gets moved to higher fence there will still be people who would like it to be even higher for other reasons and so on.

Mr. Norton stated that in all the years he has been on the Board, they have stuck with the 4’4” and the opaqueness was never a question. The opaqueness changes the dynamic of the question because the lack of visibility is the whole reason behind it and not wanting to create a corral. The question the Board is trying to answer is whether or not a person can have a slightly higher fence while keeping in the spirit of openness. From his point of view, he is comfortable with the higher fence as long as it is open.

Ms. Young asked if most people looking for a 6’ fence are looking for privacy or for dogs.
Councilwoman DeGeorge stated that those who wanted a 6’ fence want it for both privacy and for dogs.

Ms. Young stated that because of social media those that do not even want a 6’ fence have an opinion on the matter which is now snowballing. If a person is asked if they want the fence regulations to stay the same or do you want more privacy, people will most likely say more privacy. But they are not necessarily people who would be coming to the Board to ask for a 6’ fence.

Councilwoman DeGeorge stated that people were not solicited on the topic but once word got out, people started to have an opinion on it and it took on a life of its own. She stated that SafeBuilt gave all the statistics of those people who came to the City requesting the different variances and of those, the accepted and rejected applications.

Mr. Bruno stated that the 4’4” fence measurement is the standard panel size which gives a practical aspect to the regulations. He suggested people could plant arborvitae as opposed to fencing which is more appealing. He feels it is great that this discussion is taking place but he is comfortable with the current ordinance.

Ms. Young stated that the proposed fence regulations does not really address the people who want privacy.

Councilman Tadych stated that a 5’ fence with the opacity of 75% will not keep a dog from getting out. Dogs are able to squeeze through tight spaces. He feels it would not control a normal sized dog or cat.

Councilman Mace stated that it has been brought up at almost every meeting that Council is not interested in animal control with this fencing ordinance. Animal control is within the animal control section of the Code. If changes are to be made with the controlling of animals, then that part of the Code would need to be changed. There is nothing in this specific ordinance that states that fencing is for animal control.

Mr. Bruno stated that going along with animal control problems are human behavior problems. He is sympathetic to those that come before the Board but there are alternatives to fences and privacy screens.

Councilman Tadych stated that he did not understand Mr. Norton’s reasoning for allowing 5’ fences if it is only to keep animals from escaping.

Mr. Norton stated that a lot people would say they would like their dog to run on their property without a leash but the 4” is just too short to properly keep a dog in. He stated that the proposed 5’4” is a compromise and is the general consensus of the Board.
Councilman Tadych stated that Councilman Mace just stated that the fence regulations should not be changed due to the fact of controlling an animal. That would fall under an ordinance for a pet not a fence ordinance. He stated that the need for a 5’ fence would go down the drain when that is no longer under consideration.

Mr. Norton stated that it is a pretty common situation in a community like Bay Village. There are a lot of dog owners that have dogs that can go over the 4’ fence and it seems like a reasonable compromise to change the height by a foot without changing the purpose of the original ordinance. The original ordinance was created to keep the view open and landscape exposed.

Mary Slaman shared that she attended the Environment and Safety Committee meeting on April 17, 2019 but wanted to say how she feels to the Board as well. She feels a 5’-6’ fence are not going to keep her children safe, on the contrary they create an environment that is not safe. Due to where she lives, she has a street in front of her and behind her. Her backyard goes up to her neighbor’s front yard. A 5’-6’ fence would block her ability to see her children as she leaves her driveway. A 5’ fence with slates would still block her view. It creates an unsafe place for her when she is parking her car. Part of her backyard is backed up to her neighbor’s backyard which is right at the Metroparks cliff which creates a lot of activity, especially during the summer. She wants to be able to see the people approaching her yard. She is a single mother that has full legal custody of her children with a history of domestic violence. She represents a community of woman who would most likely not attend a meeting like this. She personally needs to see who is coming to her house and have time prepare in order to protect her children and herself. Personally, her son was kidnapped and molested and was found behind two locked doors and was not able to be found due to the barriers. The tall fences are no different to her. When she is outside, she needs to be able to see over fences. Due to the fact her son has special needs, when he is upset he likes to run and hide. She needs to be able to run after him and see him. She stated that criminals know they cannot be seen by neighbors behind tall fences which creates a safe haven for burglars once in your yard. The chances of someone seeing a burglar are greatly reduced, criminals may specifically target your home due to the fact you have a higher fence, it is harder to get help if you need to get your neighbor’s attention and creates a false sense of security. As a home owner, she has a right to not have a fence but it cannot be exercised if her neighbor chooses to put up a fence. She feels that the compromise is to keep the ordinance as it is. People can still get their fences but she does not need to have a fence that is even higher. She feels that Bay Village is not like other cities and that is what makes it special. Taller fences block the wind and the views. She feels a 5’ side yard fence is too high and feels like a wall. She does not want Council to extend the privacy screen because some lots have larger front yards than backyards. Based on the 10% perimeter, the extension could become her neighbor’s entire side fence and her backyard. She requests that the City continue to preserve the character and safety of the community and vote no on any changes to the ordinance.
Mike Shaughnessy stated that he agrees with Mr. Bruno and does not think the populous want the fence ordinance to be changed. Based on the people he has talked to, they like the openness and aesthetics within the City. He feels the transparency is the biggest of the three issues. He wonders if the jump from 4’4” to 5’4” make that much of a difference to the BZA. He feel the BZA will get the same amount of requests for taller fences. He feels people are either on one side or the other and if a compromise is made, the City is likely not going to please anybody.

Mr. Norton explained that there seems to be a difficulty in translating this from height to opacity. It is not a discussion of higher fence or lower fence it is about the opacity that is in question. In the case of many of the comments that were made, a higher fence with 75% opacity is a much more secure fence as opposed to solid fence. From the standpoint of the police department, they do not like the corrals. Their job is to know what is on the other side of the fence. Also, from an architectural standpoint making the transition pieces a little more graceful. Everybody deserves to have an area that they can make private, typically around their patio. Mr. Norton stated that a 5’4” fence is going to appear less of fence than a 4’4” solid fence. A person cannot have a 5’4” fence that cannot be seen through.

Mr. Norton stated that he feels if a majority of people would not mind a 5’4” fence as long as it could be seen through. But it is ultimately up to Council to make that decisions.

Mike Shaughnessy stated that what he was trying to say was the ordinance could be changed by leaving the 4’4” alone but make it 50% open. They could read in the same sentence but could be separated. He stated that it is important to him that the ordinance be left alone but if push came to shove, the 5’4” is more acceptable than getting to the 75% transparency.

Mr. Tyo stated that as far as the transparency goes, the 4’4” fence has the appeal and the appearance of a neighborhood fence. If the City goes to 5’4” and keeps the transparency the same or increased a bit, you still have a 5’4” fence. He stated that he could live with 5’4” but once you get to 6’ you get the corrals. He stated that he is less hung up on the transparency than the height defined as a privacy screen. Which is the only thing that is being talked about when you are talking about 6’ fence or 6’ section of fence.

Mr. Bruno agreed with Mr. Tyo.

Ms. Young stated hypothetically that if you have a nice 4’4” white picket fence in your backyard and your neighbor wants to put a higher more transparent fence, now you have fence on fence. She thinks it would look awful to see two different height fences in the backyard.

Mr. Tyo stated that it was addressed last night by Law Director Barbour and he was going to look into it further.

Councilman Tadych discussed that there would be garbage accumulated between the two fences due to the space between which in turn would ruin the neighborhood.
Mr. Tyo stated that people typically install expensive woods fences with a 20 year life cycle and they do not take them down any sooner than they have to. They wait until it rots and falls down.

Councilwoman DeGeorge asked if everything was put aside and Council allowed 6’ privacy fences, is there a fear that everyone would be inclined to put them up? Would a greater majority of residents want to install a 6’ privacy fence?

Mr. Norton thinks it would be relatively few however it only takes one in a string of backyards to chop the neighborhood in half. There will be some who create the corral. The ability to create the visual barrier is his concern.

Ms. Young described fences in Avon Lake and the difference between fences on properties and how they can effect property values.

Mr. Bruno gave examples of other cities that have high fences and corrals. He stated that it is not a fear but a practically to Mr. Norton’s point, that as soon as someone puts up a 6’ fence on Russell Rd. between Fordam and Clague, he feels more people are going to start doing it over time. He is afraid it will change the aesthetic of the City in which it makes it unique.

Mr. Gess said that if the regulations were magically changed today, he does not think there would be a rush overnight but overtime it would become the norm within the City. Everyone is focused on today but there is a need to think about what is going to happen in 10, 15, 20 years from now. That is where you see the negative detriment to the City. He shared how he put up a fence and then his neighbor put the same fence up, it just becomes a natural slow progression.

Board members shared personal anecdotes about fences that they have witnessed in their yard and in different cities and how it can change the look of the property.

Mr. Tuck-Macalla shared that there are 8 or 9 properties that he can think of off the top of his head that the backyard front on a major road. There are 7 continuous properties on Electric that their front yards are on Bruce so they have the potential to put a fence along the street. There are a couple of properties on Wolf Rd. that have properties like that as well which make it unique to Bay Village. It may not happen tomorrow or ever but if the fence ordinance was changed, it could happen.

Mary Slaman stated that the best way to not have 6’ fences is to not put up a 5’ fence.

Mr. Norton stated that fortunately the BZA does not make that decision and the elected Council men and woman get to make the decision on behalf of the citizens.

Mr. Norton asked Councilman Mace if there was anything further that is needed to be discussed at this meeting.
Councilman Mace stated that he has gotten a better idea on how the Board feels on the proposed changes. He explained that he will talk to Law Director Barbour about whether or not the 32’ must be continuous or can change direction.

Mr. Tuck-Macalla asked a question about the 32’ in any direction. The way the Building Department has been interpreting it is that, for ex: a property can 20’ in one direction and then another 12’ in the different direction. But only allowed a total 32’.

Mr. Norton explained that for the 30 years he has served on the Board the way the ordinance has been interpreted is the 10% rule overrides the 32’ rule. It states that a property is allowed to have a privacy screen up to 10% of your perimeter. For example, if you have a large lot and 60’ is 10% of your perimeter you are allowed that much of privacy screening. Another part of the ordinance states 32’ in one direction. You can have more 6’ privacy fence than the 32’ based on the size of your lots perimeter.

Mr. Tuck-Macalla stated that Law Director Barbour will have to weigh in on this issue with a memo because it effects the way he does his job on a daily basis. If the Board is interpreting it one way and the Building Department is interpreting it another, it can cause issue. His interpretation is that the 10% rule is for a smaller lot and it shall not be more than 32’ in any direction and to him that means two directions.

Mr. Norton agreed that clarification was needed and for all the years he has been on the Board, it has been interpreted differently within the Board and the prior building department.

Councilman Mace stated that Law Director Barbour did state the night before that 32’ is the cut off for 6’ privacy screening for a backyard but more clarification is needed if it is to be interpreted as in ONE direction or ANY direction.

Mr. Bruno reiterated Mr. Norton’s point that the Board and prior Building Department had been interpreting the Code that way in the past. He feels that the Board has been very fair, careful and consistent in enforcing the Code.

Mr. Tuck-Macalla stated that he is not new to reading code. He explained that code is written in certain order for that reason and the last thing that it states is it “shall not be more than 32’.” Building code is written the same as zoning code. Shall not is the last word and is the limit. If that is not how it is to be interpreted then maybe the Code should be rewritten. A memo is needed from the Law Department clarifying that point.

Russell Thompson shared that he was in attendance on behalf of his significant other. His lot 568’ and he wondered if he could have 56’ with 32’ being in one direction.

Mr. Norton stated that yes, 56.8’ is their allowable privacy screening and shared that a lot of people will split that total amount up. According to his lot’s measurements, he has 56.8’ of 6’ privacy screening as long as no more than 32’ is one direction. He shared an example of a lot
potentially needing to come to the BZA for an extra few feet due to special circumstances. (ex: distance between home and garage) Typically a request for that would be approved.

Mr. Bruno spoke to Councilwoman DeGeorge asking that due to her influence on social media, she encourage people to listen to this recording of this meeting on the City’s website. Due to the fact there is not a significant amount of attendance at the meeting, it would be good for people to hear the BZA’s opinion on the proposed fence regulations individually and collectively.

Councilman Tadych shared a story of a resident in his ward that called for counsel earlier in the day. The resident explained that he is taking down his old patio fence that needs to be replaced with a total of about 62’ and has been up since 1974. The resident ordered the 6’ fence for his patio and the fencing company came to the Building Department and were told they could not install the fence since it did not meet the 32’. Mr. Tadych agreed with him but reached out to Law Director Barbour and it was stated that it can only be 32’. Mr. Barbour stated that the resident would need to go in front of the BZA because it is more than 32’ long and 6’ high. Mr. Barbour suggested he repair/paint the fence before installing a new one because the BZA would need to give approval.

Councilman Mace stated that he will get in touch with Law Director Barbour and Gary Ebert (prior Law Director) to research more on the ordinance and how it is and has been interpreted.

Councilwoman DeGeorge asked if the way the Board has been interpreting the Code sets precedent over how it will be interpreted in the future.

Councilman Mace stated that more research and inquiry will be had and the definition of “in ANY direction” will need to be explained. Further interpretation of the language is needed in order to make sure everyone is on the same page.

Mr. Tyo restated the Board’s interpretation of the 32’ rule.

Mr. Bruno made motion to adjourn.

There being no further business to discuss the meeting adjourned at 9:17 p.m.

Jack Norton

Kateri Vincent, Secretary