Meeting Minutes of  
Board of Zoning Appeals 
Held April 4, 2019

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

Excused:  

Also Present: Mark Barbour (Law Director), Eric Tuck-Macalla (Building Director)

Audience: Colleen Harding and Christian Wimmer

*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 7:37 p.m.

Motion by Mr. Bruno, second by Mr. Gess to approve the minutes of the meeting held March 21, 2019, as prepared and distributed.

Motion passed 7-0.

Colleen Harding  
30508 Salem Dr.  
(Tabled from March 21, 2019)  
The applicant is requesting a variance per C.O. 1153.02 to build porch another 6’8” into the front yard setback.

Mr. Norton discussed the second agenda item and discussed that the neighborhood is unusual in that all of the houses were built 10’ in front of the allowable build line.

Mr. Norton explained how the Board has seen the sketch and asked the homeowner if she had anything further to add.

Ms. Harding stated that she understood the Board had more questions and wondered what she needed to further do for the Board.

Mr. Norton explained that the Board has had the opportunity to visit the site and look at the neighborhood and explained that the Board members may have more questions and discussion.

Ms. Harding explained that they have not moved into the home as of yet and they are hoping to build a porch because the house is visually very flat with very little coverage for rain. She explained that their family currently enjoys to sit out on their porch and hope to do the same in this home.
Ms. Harding explained that the current sketch was designed by her architect to fit the house. They originally went with a smaller design but it did not look right. The architect recommended that it be the length of the one section of the house to be the most visually appealing.

Ms. Young explained that if she recalled correctly, all the houses on the street are visually aligned all the way down the street. She asked if the other houses on the street had porches.

Ms. Harding explained that some houses on the street do have porches such as the one they are proposing. She explained that the house to the West does have a porch.

Mr. Tyo stated that from his understanding, the houses on Salem Dr. were designed after residences in Colonial Williamsburg.

Ms. Harding explained that the street definitely has a theme and distinct look to it.

Mr. Tyo explained that he appreciated that they are intending to make the porch smaller than the entire length of the home but wondered if the porch should be cut down even further. He stated that as far as appearances go, it really covers the house.

Mr. Burke explained that about half the houses on the street do not have an overhang and look similar to the Harding residence and some homes have a full porch.

Ms. Harding explained that she thought about half have porches and half do not.

Ms. Young explained that the homes on the side of the Harding’s do not have porches.

Ms. Harding explained that many of the homes on the other side of the street do have porches.

Mr. Tyo explained that there appears to be a character to the houses on the street. He pointed out that no neighbors for or against the porch were in attendance at the last meeting nor the current one.

Mr. Norton explained that he feels conflicted in that he does like the idea of front porches in that they provide coverage for inclement weather and they can also be a sitting area. He feels they do knit the neighborhood together but on the other hand the neighborhood was designed differently. He stated that Ms. Harding should consider a smaller front porch.

Mr. Bruno explained that the Salem Dr. area is similar to Huntington Woods area with consistent setbacks and similarly aligned. He stated that the Salem Dr. side of the street that the home is on is absent of front porches and feels a minimal accommodation would be appropriate.

Mr. Norton asked what Ms. Harding thought of a transparent/open designed porch that was more in the 10-12’ range centered on the door that was wide enough for weather protection and for a couple of chairs. He felt it would be a reasonable compromise.
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Mr. Tyo explained that the smaller porch would go out to where the shutters begin.

Mr. Miller echoed Mr. Norton’s thoughts in that the porch should have transparency and be smaller and more contained. He feels that would be in keeping with the style of the homes on the street.

Mr. Bruno asked if their conversation resonated with Ms. Harding.

Ms. Harding stated that she would need to think about how much of a cut down the Board is talking about but hopes to have enough room for a couple of rockers and a planter. She explained that the home to West does have a porch but is farther setback. She stated that she did not plan to have spindles and planned to just have a cement pad put down.

Mr. Miller showed Ms. Harding the Board’s proposed plan of the smaller front porch.

Ms. Harding stated that she did not think that was much of a porch and they would not have enough room to open the door and have chairs.

Mr. Norton explained that the Board would require a more specific drawing from the architect before a motion could be made. A more detailed drawing would help the homeowner and the Board see if it would be adequate room for the front door, chairs and planter.

Ms. Harding asked that the Board look at the other side of the architect’s drawing and to explain exactly how many feet the Board is proposing.

Mr. Tyo showed Ms. Harding the proposal of a 14’ porch.

Mr. Norton explained that the BZA is allowed to tinker around the edges of the ordinance and not to set a precedent that changes the rules. If a rule needs to be changed it is done by Council. He explained that if the porch was the width of the house it would be a pretty dramatic variance from what the ordinance states. The BZA must be careful about how they judge the impact of a variance, as it stands with the property.

Ms. Young explained that what the Board is suggesting, is similar to what the neighbor to the West has in the front of their home.

Ms. Harding asked for clarification on the porch and if a new drawing was needed by her architect.

Mr. Norton stated that yes, a more detailed drawing would be needed and would also help to make Ms. Harding feel more comfortable with the size of the porch. The architect will be able to design something within the perimeter of a 12’-14’ which would minimally satisfy both Ms. Harding and the Board.
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Mr. Norton suggested that the Board table this item for a future meeting to give the architect time to draw a new rendering.

Motion by Mr. Bruno, second by Mr. Tyo that the Board will table the application at the property 30508 Salem Dr. to a subsequent meeting to provide the property owner time to submit a new architectural rendering to the Building Department as an amended application.

Roll Call Vote:  
Yeas – Gess, Miller, Tyo, Bruno, Norton, Burke, Young  
Nays-  
Motion Carried 7-0

Christian Wimmer  
On behalf of Jay E. Jesensky  
356 Pinewood Drive  
The applicant is requesting a variance per C.O. 1359.01 (a)(c) for the approval of the location of a condensing unit that would be located 5'-0" from the property line in lieu of the 10'-0" that is required. The proposed location would be located in the North side yard in a landscape bed.

Mr. Norton explained the third agenda item. He asked if the unit was already installed and if the applicant was notified by Westland that a variance would be needed.

Mr. Wimmer explained that the unit had previously been installed and the applicant was notified that a variance was needed.

Mr. Norton asked why a variance was not requested prior to installing the unit.

Mr. Wimmer explained that Westland had the application filled out and submitted before the unit was installed but could not be on the agenda.

Mr. Norton explained that the Board frowns upon a contractor who gets the citizen in trouble. Technically the unit was installed illegally and the citizen is on the hook for not having a variance before installation.

Mr. Wimmer explained that Jay Jesensky wanted to get the work done and was well aware that the unit was being installed before having a variance granted. He explained that his company is always in the loop with the Building Department and stated that Bay Village is a little different than some other cities in how things are done.

Mr. Norton explained that the Board has had the opportunity to review the application and visit the site and asked for discussion.
Mr. Miller stated that from his observation there appears to be a very limited amount of placement locations on the property. He stated that the condenser could have been moved further away from the property line in the back of the house.

Mr. Wimmer asked what Mr. Miller was considering the back of the house.

Mr. Miller stated that anything beyond the back wall would be considered the back of the house.

Mr. Wimmer stated that he considers the North wall the back of the house but technically it is not the back of the home since the address is on Pinewood. Historically this house was the last house built on the street and then Northwood was built out.

Mr. Miller stated that the application made note that there is no basement in the area that is otherwise a garage. He asked where the furnace was placed in the home.

Mr. Wimmer showed the Board members where the furnace was on the rendering and told them that it was located in the basement on the edge where the porch comes out. (4’ in from the back wall)

Mr. Miller asked if the line set could have been brought up over the ceiling and down into the garage and out.

Mr. Wimmer explained that it could not be done like that because there is a breezeway in between the garage and the home.

Mr. Miller asked if the entire home was gabled.

Mr. Wimmer answered yes.

Mr. Miller asked if they could have found a spot in the ceiling and have brought the line set across and out.

Mr. Wimmer explained that in order to do that, the line hide and line set materials would need to be placed outside. He explained that they do not like to do that for too long of a run and like to keep the line in the home as much as possible.

Mr. Wimmer explained how this home was a unique challenge to them due to the fact the address is technically the back of the home. He explained that they were not trying to set a precedent but trying to make the equipment work as best as possible.

Mr. Norton stated that the unit would need to be landscaped or have decorative fencing.

Mr. Bruno agreed with the location due to the fact there is no basement to run at the garage.

Mr. Tyo asked for clarification as to where the furnace is located.
Mr. Wimmer showed the Board on the sketch.

Mr. Bruno asked if there was a crawl space.

Mr. Wimmer said that the garage is a slab. He stated that they had tried to get another heat run brought out to the breezeway to provide cooling and it proved impossible.

Mr. Tyo asked if the basement was full height.

Mr. Wimmer stated that the basement is full height.

Ms. Young asked if the neighbors to the North had any issue with the unit.

Mr. Wimmer explained that the neighbors have not expressed any concern. He explained that the neighbors are very close to the property line and have two condensers on the South end of their home. It is still within the rear shadow of the home.

Mr. Bruno stated that the Board’s concern is the visibility to the street.

Mr. Wimmer stated that the old unit was located on the front/North side of the home and that it was always visible. He explained that he does have a seating area in that portion and was not sure if it was originally 10’ back from the setback.

Mr. Bruno stated for the record that the decibels are 72 which is what the Board likes.

Mr. Tyo stated that looking at the options, this location is the least apparent from any angle and still has a short run.

Ms. Young stated for the record that even though the address is on Pinewood, the front of the house is facing Northwood.

Mr. Norton asked if there was any other discussion.

Motion by Mr. Bruno, second by Mr. Burke to grant the property at 356 Pinewood Drive a variance per C.O. 1359.01 (a)(c) for approving the already located air conditioning condenser within the side yard setback of 10’ at the current 5’ position per the drawing as prepared and submitted provided we grant the variance for year round greenery or fencing and that the unit be equipped with a sound blanket if it is not already included.

Roll Call Vote:
Yea — Gess, Miller, Tyo, Bruno, Norton, Young, Burke
Nays —
Motion Carried 7-0

Mr. Wimmer asked follow up questions for future applications. As technology changes they are starting to see a lot of mini split units that will begin to be installed more and more with very low decibels. (30 decibels) He asked what the best route was to install those as quickly as possible.
Mr. Bruno restated that the condenser should be placed on the back of the property and not visible from the street.

Mr. Barbour stated that as long as the ordinance is written the way it is, they will have to come in and get a variance.

Mr. Norton stated that eventually well into the future the ordinance will catch up to the technology but unfortunately the ordinance says 10'. He suggested that as soon as they are near signing a contract with a customer they should get the process started to shorten the time frame.

Mr. Wimmer asked what they should do if they are replacing an existing unit that had been previously installed not following code.

Mr. Miller stated that he would need to get a variance.

Mr. Wimmer asked if the City had a record that could be looked at to see if the unit had been previously given a variance to be installed a certain way.

Mr. Miller said that they could go to the Building Department to find that information. He mentioned that each home in the City has a file where that information would be located.

Mr. Barbour stated that a person cannot take something that is nonconforming and continue to do that if you have an opportunity to correct it.

Mr. Miller stated that if it is installed in a nonconforming condition and they come to the Board, they may still tell you no.

Mr. Wimmer stated that is the risk they took with this particular application. He and the home owner were aware they were installing without a variance and may have had to move it.

Mr. Barbour discussed how the City is in court right now with a similar issue. Somebody installed a condenser without a permit, never got a permit and still does not have a permit.

Mr. Wimmer stated that they are trying to keep customers informed of the need to apply for variances.

Chris Hartzell
577 Humiston Dr.

The applicant is requesting a variance per C.O. 1153.03 for a 7'5" side yard setback.

Mr. Norton explained the fourth agenda item. He stated that no one was there on behalf of the agenda item but wondered what the Board felt about going ahead with it.
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Mr. Miller stated that a thorough discussion had been previously had on this specific request in 2017. The homeowners had not acted on that previous approval. He stated he did not have any questions and was confident in moving forward.

Mr. Norton explained that a motion for an extension would be needed in order for the homeowner to have time to pull a permit and start construction.

Mr. Miller discussed that the applicant had let the 12 month period run out from the previous time it was brought to the Board and that the new motion granted would start their request for another 12 months.

Mr. Burke clarified that the property has since been split and asked if the remnant had been joined to their property since the last time this request was brought to the BZA.

Mr. Tuck-Macalla stated that he does not have witness to that but yes, according to the records the lot has been split and joined.

**Motion** by Mr. Burke, **second** by Mr. Bruno that the property at 577 Humiston Dr. be re-granted variances per C.O. 1153.03 of 2’8” to the sideline setback requirement on the North side of the property. Secondly, a variance of 10’8” to the total side yard requirement of the ordinances. Thirdly, a variance for 7’5” side yard setback. This motion is granted subject to demolishing the garage that is currently at the rear of the property, provided that the applicant provides to the satisfaction of the Law Director, evidence that the property at 573 Humiston Dr. was in fact split of record and that the South portion of that split was joined to the subject property. In granting this variance it is consistent with both the current and prior (May 4, 2017) application as submitted.

**Roll Call Vote:**
**Yeas** - Gess, Miller, Tyo, Bruno, Norton, Young, Burke
**Nays**-
Motion Carried 7-0

Mr. Norton asked if there were any comments or discussion on proposed fence regulations that could be given to the Council members.

Mr. Bruno asked that the Board be notified of the next meeting dates and times so the Board has a chance to be present.

Mr. Barbour stated that he would make sure the BZA was notified via email of the next meeting on April 9, 2019 at 6:00.

Mr. Norton stated that it would not hurt to be vocal about the proposed fence regulations due to the fact there are different opinions.
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Mr. Bruno stated that he has considered weighing in on online forums but feels something as a Board with a quorum is the better way to make the Board’s voices be heard.

Mr. Barbour stated that Board could give opinion as a whole but could also attend the meeting as individuals/residents.

Mr. Miller stated that the Board could ask the chair of the committee and the Council members (Mace, DeGeorge and Tadych) to come before the BZA to discuss the proposed fence regulations and get the opinion of the Board as a quorum. He said he found it helpful when he was drafting ordinances as a Councilman.

Mr. Norton asked if there was any other business before the Board.

**There being no further business to discuss the meeting adjourned at 8:27 p.m.**

\[Signatures\]

Jack Norton

Kateri Vincent, Secretary