Minutes of a Meeting of
Board of Zoning Appeals
Held November 1, 2018

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

Excused: Tyo

Also Present: Jeff Fillar (Safe Built), Mark Barbour, Law Director

Audience: Doug Moore, Josh Fohtanez (sp), Ford Huffman, Scott and Sandra Brantley

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

Chairman Norton called the meeting to order at 7:35 p.m.

Motion by Norton, second by Bruno, to approve the minutes of the meeting held October 18, 2018, as prepared and distributed.

Motion passed 6-0.

Traci Stradford C.O. 1153.03 (side yard set back) Applicant
29032 Millard Drive is requesting a variance to build an accessory building in client’s backyard.

Mr. Norton stated that a question has come up as to whether this application request even required a variance at all. The norm that the ordinance calls for and has been conducted by the BZA is when an ordinance is changed what is previously existing or is grandfathered in. There was a change to the amount of side yard that is required. The side yard that is existing on the house does not fit the current ordinance, but it did fit the previous ordinance. The distance from the front corner of the house, on the narrowest part of the lot, would be required to be nine feet and it is not nine feet. The proposed expansion of the structure, the three seasons room, does not get any closer to the property line. He explained that based on his interpretation, it does not require a variance. Mr. Norton asked the audience if there were comments or questions regarding this agenda item.

Audience member stated that they were not sure if their application request needed a variance or not. He mentioned that a person from the Building Department was also not sure if this would be sent to the BZA.
Board of Zoning Appeals
November 1, 2018

Audience member also mentioned that since the original application was submitted they have talked to the neighbor and have agreed to move it six feet from the property line as opposed to the originally requested three feet.

Mr. Norton explained that the Building Department wanted to make sure that everyone was on the same page because the application lacked some clarity.

Mr. Bruno wanted clarification as to if the replacement of the existing structure was going to be the same measurements as the original structure.

Mr. Norton explained that this is not a replacement structure. The three seasons room in the breezeway is a brand new structure. The existing structure is being added to rather than modified.

Mr. Norton stated that the only thing the Board had to do is make a motion that this application did not need a variance.

Motion by Mr. Burke, second by Mr. Gess that the property at 29032 Millard Drive does not need a variance based on the reasons previously stated by the Chairman.

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

Mr. Norton told the homeowners they could make the modifications to their drawings when they resubmit it to the Building Department.

Doug Moore
497 Bradley Road

C.O. 1163.05(H)(3) Applicant is requesting a variance for a 6 foot high fence for their entire backyard.
(Tabled on Sept. 6, 2018, Oct. 4, 2018 and October 18, 2018)

Mr. Norton discussed the previously tabled agenda item for Doug Moore at 497 Bradley Road. He explained that the Board had received clarification of what the State and Federal requirements are as far as to how cities deal with group homes.

Mr. Barbour requested that his memo dated October 26, 2018 be included and on the record. He spoke to the representative from the Cuyahoga County Board of Developmental Disabilities that answered some of the factual questions that Board members had asked. (A copy of the memo is included at the end of the minutes.)

Mr. Barbour explained that when he spoke with Miss Kachmyer from the Cuyahoga County Board of Developmental Disabilities, she indicated that if the BZA would grant a variance for a
temporary or special use permit that would require the fence to be removed when it was no longer used as a group home, that they would incorporate it into their operating budget. The Cuyahoga County Board of Developmental Disabilities would take on the obligation to remove the fence at their cost if and when they vacate the property.

Mr. Burke (and seconded by Mr. Bruno) asked Mr. Barbour if he discussed with her about the removal of the fence when and if the particular resident, who the fence is requested for, is no longer at the property.

Mr. Barbour answered, “yes.”

Mr. Burke had a few questions for audience member, Doug Moore. He asked if the purpose for the fence was as a second barrier to prevent the resident from leaving the property.

Doug Moore answered, “Correct.”

Mr. Burke asked Doug Moore if only a backyard fence is being requested due to hope that this resident will be allowed to be in the backyard without a staff member.

Mr. Barbour explained that he could answer Mr. Burke’s question. He explained that as the facts indicate the resident is about 27 years old, otherwise physically fine and there are two staff members that live there and the plan is to add a third resident. The residents are never by themselves anywhere and always under supervision, but because this resident is physically fine, she can get away from the staff member. She is quicker and more athletic than the typical staffer. Currently if they are in the backyard with her, they need to be close enough to grab the resident if she were to run off.

Mr. Burke asked Doug Moore if a staff member would be outside with the resident even if there was a fence put in the backyard.

Doug Moore stated that generally speaking the resident would be with a staff member outside in the backyard.

Mr. Burke stated that the Board is trying to find a reasonable accommodation to accomplish what is needed for the resident and the group home. Mr. Burke explained that he and Mr. Norton went out to the property to take a look around and take measurements. He discussed how the yard is a fairly large lot and wondered if the county and the group home would consider a fenced area less the entire property area. If discussed that the current property measurements would require substantial variances and proposed they come out 32 feet, go south, and come back to the southeast corner of the property. This would entail considerably less of a variance as originally proposed leaving a substantial area for the residents.

Doug Moore asked for clarification on the measurements.
Mr. Norton explained some current fencing issues with the group home’s neighbors. A neighbor to the north has a six foot fence due to having a swimming pool and the neighbor at the rear of the yard that has a fence which is 57 inches by his measurements. He mentioned that the homeowner in the back had mentioned how it would look silly to have two fences backed up to each other with only six inches between the two fences.

Mr. Norton explained that the other issue with the group home’s backyard is that it has some areas that are rough. If the point of the fence is to allow the residents to have recreational time and enjoy the backyard, then the purposed smaller sized fenced in yard is plenty of room for that. He also explained that the Board is always trying to allow the smallest variance that is needed in order to fulfill the needs of the property owner. The purposed measurements would accomplish what the group home is requesting and also take into consideration the fences that the current residents have around their property.

Mrs. Young asked what happens to the rest of the yard that is not fenced off.

Mr. Norton explained that the remainder of the yard would still be available and they could possibly put a gate in the back to access it. It would leave plenty of room for it to be mowed and maintained.

Mr. Burke stated that he felt the purposed measurements seemed like reasonable accommodation and not also does not grant more of a variance than is necessary.

Doug Moore explained that he could not speak for the county, but from his point of view it was a good option. He was concerned that cutting the yard up would make it feel like a cage for the residents, but the purposed 32 feet back and the width of the entire backyard would not have the cage like feel.

Mr. Bruno explained that his property and many west of Dover Center have similar sized backyards.

Mr. Miller had a question for Mark Barbour. He asked if this would be reasonable accommodation that still permits the occupant to enjoy the property without being a burden to the municipality.

Mr. Barbour stated that the answer to that would ultimately be for the fact finder in the case to decide. There is no rule book you can go to and look up and get a measurement for the certain size that is reasonable. It is definitely defined in the Law. Based on his opinion, he feels the purposed measurements would be reasonable in size to accommodate the resident.

Mr. Gess explained that one way to challenge it would be to ask that Doug Moore go back to the County and ask for their acceptance. The County would then be able to come back and provide reasons as to why the purposed measurements are not reasonable.
Mr. Barbour explained that the Board as a body can make a determination as to if this is a reasonable accommodation or not. The applicant does not have to agree with the Board and simply because they disagree does not mean that they are right. The Board has the power to make the decision to demonstrate that they have considered all the relevant factors. Given to them.

Mr. Norton stated that he felt the smaller measurements were reasonable for the Board to allow and it provides equal opportunity necessary to fulfill the group home’s mission. It is also understandable that if the County Official’s feel that the measurements are too small and will feel too cage like, they have a right to come back to the Board with more information as to why it would not be an adequate amount of backyard.

Mr. Bruno agreed with Mr. Norton and Mr. Burke but also wondered if the Board should be considering the size of the other group home back yards within the county.

Mr. Barbour suggested the Board consider what Bay Village’s ordinances are, the particular location that is involved and the specific use that is being requested. What other sites may allow may be wholly upon where they are rather than the application of their particular geography. This yard in particular happens to be situated on a large lot.

Mr. Bruno asked Doug Moore if the resident who the fence is being requested for has a chance to go to public parks and places while supervised. He also asked if when she is out, if she goes out in public without incident.

Doug Moore explained that yes, the resident is taken out fairly often and is supervised one on one.

Mr. Barbour explained that the resident is not a danger to anybody but herself. The resident developmental delays where she lacks judgement and decision making skills. She is not going to hurt anyone else but could get herself into a dangerous situation.

Mr. Burke asked Doug Moore if this proposal should be brought back the County.

Doug Moore said that he absolutely needs to bring it back to the County and could have an answer as soon as tomorrow as to if the purposed fence size is ok for the resident.

Mr. Burke discussed that Doug Moore could verbally amend the application proposal in the meeting and take it to the next meeting.

Mr. Norton asked if the application specifically requested that they enclose the entire backyard.

Mr. Barbour suggested the Board could make a decision that modifies the application. As he read the ordinance, the Board can modify any application rather have the applicant submit a new one.
Doug Moore agreed he would like for the Board to modify the current application based on time restrictions and the weather changing.

Mr. Burke suggested making a resolution for the smaller area subject to the approval of the county.

Mr. Norton explained that by doing this it shows that they have heard their original request and the Board is suggesting that the smaller fenced area is suitable and if the County feel that it not the proper size, they can come back to the Board with more details. That way it can move forward and they do not need to come back so long as it is within the perimeters that the board sets.

Mr. Barbour discussed that the Board could do that and grant a special use permit that permits the applicant to build a fence in an area and manner that the Board decides and if for some reason the applicant is dissatisfied they could reconsider your decision. At that point the Board could decide if they would like to reconsider or make it final. At that point the applicant could decide to appeal the decision.

Mr. Norton stated that he preferred the term temporary variance as opposed to a special use permit.

Mr. Gess suggested that the variance is more tied to property rights and uniqueness to the property. Everything that has been discussed is a temporary use. He believed it could still be contingent upon the uniqueness of the medical needs of the resident and set conditions and not get in to the size of the variance that would have to be granted.

Mr. Burke discussed ow he had started writing a motion earlier in the day and he used the word temporary but he did consider it a variance because it is variance from the required maximum 32 feet going in one direction.

Mrs. Young asked if it was considered a temporary variance because the fence would have to go away after the resident is no longer in the home. She also asked if there had been any consideration to making the fence a wood fence opposed to a metal one.

Mr. Bruno suggested the Board could use the word contingent variance.

Doug Moore explained that they decided on a metal fence because it matched with the neighbors.

Mr. Norton discussed how this does not fit the ordinance because the ordinance has to do with a privacy screen and this is not a privacy screen. This request is unique in that is not like a gazebo, it is a security fence. The Board can call it a special permit or a variance.

Mr. Barbour suggested not calling it a security fence and calling a temporary variance based upon on the particular use of this residence as a group home and this resident.
Mr. Burke also proposed the Board put together some findings of fact.

Mr. Miller stated that he was more comfortable with Mr. Burke’s proposal because it is less burdensome to the neighborhood being that the fence is several feet away from the property line. He stated that the Board can be resolved about trying to assist the County about this particular resident but the Board also has to be conscious of how it is being addressed to the neighborhood.

Mr. Burke stated that the purposed fence is more akin to the six foot fences that are required around a swimming pool.

Mr. Fillar shared that the word temporary variance is not defined in the City’s zoning code and the Board would be using a word that is outside the book.

Mr. Burke suggested just using the word variance and building in the contingency that the fence is removed after the resident is no longer at the property.

Mr. Bruno shared that the Board has moved in the past to make a variance contingent upon findings of fact and would be comfortable doing it again for this application request.

Mr. Norton stated that the Board is allowed to make conditional approvals.

Mr. Barbour agreed that the Board is allowed to make conditional approvals. He stated that he thought the Board could use the word temporary even though it is not in the code but could also phrase it as a conditional variance.

Mr. Burke summarized the motion.

Mr. Norton suggested revising the variance specific to the group home rather than to only the resident.

Mr. Miller agreed and suggested adding or any subsequent resident in the group home.

Mr. Gess stated that the county is willing to remove the fence when the resident leaves but the resident is expected to live there as long as possible.

Mr. Burke mentioned adding the wording, any resident with a similar disability.

**Motion** by Mr. Burke, **Second** by Mr. Bruno that the property at 497 Bradley Road be granted a variance from C.O. 1163.05(H)(1) and (3) of a privacy screen of 6’ 4” and that a variance for the construction of a fence not be more than 32 feet in length in any direction. The fence will originate from the northeast corner of the garage for 32 feet to the south to a point which is equal distance from the south foundation of the house and thence west to the southeast corner of the house provided that only so long as the person for whom this application has been made or any other resident with a similar disability be a resident of the property. Further, it be provided that at such time as the current resident with the disability or any other resident with the same
disability is no longer a resident of the property, that the part of the fencing that is not in compliance with the ordinances of the City of Bay Village be removed or modified. Finally, the Director of Law of Bay Village shall provide a certified copy of this resolution and be filed as the Cuyahoga County Recorder’s Office for this permanent parcel.

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

Mr. Norton suggested the Board provide the findings of fact for the motion for the property at 497 Bradley Road.

Motion by Mr. Burke, Second by Mr. Bruno that the applicant at 497 Bradley Road has shown to the satisfaction of this Board, that one resident has a developmental disorder known as elopement autism disorder and as a result the resident is prone to wander away from the property. Second that the application seeks to have a portion of the yard enclosed with a 6’ high fence to prevent the resident from leaving the property. Third that an enclosed area described in the motion will require a variance from section C.O. 1163.05 is a reasonable accommodation as that term is used in Federal Fair Housing Amendments Act of 1988 necessary to grant the resident of the property an equal opportunity to enjoy the housing of their choice.

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

Motion by Mr. Burke, Second by Mr. Bruno to add an amendment to the previous resolution that the design style of the fence be as submitted with the application.

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

There being no further business to discuss the meeting adjourned at 8:22 p.m.

____________________       _____________________
Jack Norton, Chairman     Kateri Vincent, Secretary
Memo

To: BZA
From: Mark Barbour
Date: 11/20/2018
Re: Zoning Variance at 497 Bradley Road- re: resident’s medical condition

On October 16, 2018 I spoke to Katy Kachmyer from the Cuyahoga County Board of Developmental Disabilities. She had the permission of the guardian of the particular resident at the home to speak to me. Regarding the resident's use of the home, it is planned that this home would be her residence for as long as possible and as permanently as possible. However, oftentimes medical issues require that the residents have to move due to hospitalization or other progression of various illnesses.

The particular resident in question was born in 1991 and is 27 years old. She is physically healthy and does not suffer from any physical disability. She has developmental delays and some mental health issues. She takes medication.

She moved into this particular residence on Bradley in mid-June, 2018, however shortly thereafter she became ill due to some complications related to her medication and then developed a serious infection while she was in the hospital and spent two months until late August in the hospital and then returned to the home. Therefore, she has not yet returned to full, normal health because of her lengthy hospitalization, which was disabling.

However, her typical prior behavior involved consistent attempts at what is termed “elopement”, meaning that she would try to leave the property at regular opportunities. The home in which she lives has to have a protected egress and ingress, which typically is a keypad system which the residents are not able to manipulate. The prior residence had a 4 foot fence and she was able to climb over a 4 foot fence without any problem. As mentioned above, she is physically fine and she can run like any other 27-year-old woman. Therefore once she elopes, they can have some trouble catching her. There are two staff members that live at the house and there are currently two residents. They are expecting to add a third resident.

The current resident therefore has a history of elopement, although not from the present facility but rather from her prior facility, which was pretty consistent and attempts
were made on a regular basis. Ms. Kachmyer is available for further telephone consultation and was quite cooperative.