Minutes of a Meeting of  
Board of Zoning Appeals  
Held May 3, 2018

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

Excused: Young

Also present: Steve Vogel, Chief Building Official; Lydia DeGeorge, and Chris Howard

Audience: Tim Merriman, Lynn Merriman and Edward Pavicic

*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 7:38 p.m.

Motion by Bruno, second by Gess, to approve the minutes of the meeting held April 19, 2018, as prepared and distributed. Motion passed 6-0.

<table>
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<tr>
<th>Tim Merriman</th>
<th>C.O. 1163.05 (H) (3) Applicant is requesting a variance for a 6 foot high fence in the rear yard to be 75 feet instead of the required 32 feet.</th>
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<td>29924 Winsor Drive</td>
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Mr. Norton advised that the Board has had an opportunity to visit the site and review the application.

Mr. Bruno explained why the Board is sensitive to the installation of a 6 foot high fences beyond the 32 foot limit. He added that from the drawings that were submitted, by code, that 10% of the perimeter of the property would allow a total of 44 feet of a 6 foot high fence. However, the code is specific and only allows 32 feet of a 6 foot high fence in any one direction. The applicant is asking for 75 feet of a 6 foot high fence which is a significant variance request.

Mr. Miller asked the applicant why they feel that they need 75 feet of a 6 foot high fence. Mrs. Merriman explained that the 75 feet is a rough number and the fence would be between their property and their neighbors. She said that they have a one story home and the neighbors have a two story home and one of the reasons for the 6 foot high fence would be to offer them more privacy. Ms. Merriman referenced a home on the corner of Wolf and Basset Road that has a 6 foot fence around their property. Mr. Burke explained that the home Mrs. Merriman is referencing has a pool and code requires a 6 foot fence around a pool.

Mr. and Mrs. Merriman were informed as to the various options available to them to meet the requirements of the Building Code. Mr. Merriman stated that they will be withdrawing their application.
Motion by Burké, second by Bruno to reconsider the action taken regarding the property of 550 Red Oak Lane.

Mr. Ebert stated that he asked for the motion for reconsideration. The procedure is that the Board must entertain a motion for reconsideration. If there is a vote to reconsider and it is an affirmative, then the Board has to resurrect the whole discussion concerning the application for a variance before you can vote on that issue. He asked Mr. Chris Howard, City of Bay Village Engineer, Bramhall Engineering & Surveying Company to prepare a report for the Board, Mr. Pavicic, Mr. Vannucci, and Mr. Pavicic’s Engineer regarding the flood plan and lots that are one acre or less. Lots that are one acre or less are eligible for granting a variance. Also, one of the issues that was brought up at the last meeting was the concern regarding Federal Flood Insurance Plan. The report indicates various conditions where a variance can be entertained by the Board. Mr. Ebert provided a summary of the report. In Chapter 1306, there is a provision that says if the conditions are taken by the engineer or a builder to adopt to the regulations that an entertainment of a variance can be granted. The City could also request that a Hydrologic Engineering Analysis be performed by a professional engineer and have it submitted to FEMA for review and approval. The report also indicates that the adjacent homes were built prior to the Ordinance being enacted and that the lot is less than a half an acre. Mr. Ebert explained that he wanted this item to be back on the agenda to make sure these issues were brought before the Board’s attention. He stated that he does not represent Mr. Pavicic he just wants to make sure there is a full disclosure of the comments and some of the discussions that were held prior to this coming to the Board of Zoning Appeals, since he was not able to attend the last meeting.

Mr. Howard presented information regarding the flood plan. He explained that Zone A is an undetermined zone, there has not been any analysis done to determine the Base Flood Elevation. According to the 1977 flood plan map and the current 2010 flood plan map it shows that the subject property is located in Zone A. As well as a 2017 preliminary flood plan map from FEMA that shows the property to be located in Zone A. He presented an aerial photograph that shows the flood plan and contours. The property is at 645/646 Base Flood Elevation (BFE) the properties on the other side of the stream is 644/645 BFE, from this you can tell that the flood plan map is incorrect. If the area is going to flood it will flood on the other side of the creek. The issue is that this property is in Zone A and the Code says that if it is in Zone A the structure has to be at least 2 feet above the existing grade of the house. It is his understanding that both homes on either side of the subject property have basements. Again, Mr. Ebert stated that he wants to make sure that there is a full disclosure by the City.

Mr. Miller asked Mr. Howard if Bramhall has ever done a Base Flood Elevation Study (BFE) in this area. He answered that they have not. The BFE studies cost approximately $20,000 and then must submit the studies to FEMA to get approval once that Base Flood Elevation is determined. Then, FEMA needs to approve the study which can take up to a year to complete.
For the record, Mr. Bruno asked Mr. Howard that the two other properties that he mentioned that have basements, are those two properties in Zone A? Mr. Howard responded yes, they are adjacent.

Mr. Norton asked Mr. Howard if he is familiar with the guidelines from ODNR and FEMA. He answered yes. Mr. Norton referenced the variance guidelines and explained that in order to grant a variance and keep within the guidelines the City agreed too, several things must be present. He quoted, "The intent of the above variance criteria has been misinterpreted to mean that variances can be systematically granted for all intermediate or "in fill" subdivision lots of less than half an acre. Variances on "in fill" lots of less than half an acre are not automatic. The intent of 60.6 (a) (2) is not to place a lesser (or no) burden on half an acre lots, but a greater burden on lots larger than half an acre." The report states that the you have to find "Good and Sufficient" cause in granting a variance. "Good and Sufficient" cause means that by granting a variance there is substantial and legitimate benefit to be achieved by numerous other citizens, or the community as a whole. The report continues and says that financial hardship of the property owner is never "Good and Sufficient" cause for granting a variance. Also, the report refers to Exceptional Hardship. "Variances shall only be issued by a community upon determination that failure to grant the variance would result on exceptional hardship to the applicant." Finally, the report concludes that if your community does not follow these rules for issuing a variance you can be found in violation of FEMA. This can result in being removed from the program and the citizens of the community can lose the benefit of having Federal Flood Insurance.

Mr. Ebert stated that Mr. Howard is here on behalf of the City. He also stated that he does not believe the Board had a full disclosure of what the issues were at the last meeting.

Mr. Miller stated that the Board was very judicious with reviewing the facts that were presented. The Board at the last meeting gave the applicant the opportunity to withdraw their application, do the hydraulic study and submit it to FEMA. The applicant chose not to withdraw. Mr. Ebert stated that he is not asking the Board to change their opinion, he asked for a motion to reconsider so that the report from Bramhall could be presented.

Mr. Pavicic asked Mr. Howard if Bramhall Engineering has done any developer streets and engineer in other cities. He responded that they have and they are the City Engineer in Vermillion. Mr. Pavicic asked that back when this area was developed in 2002, would all the studies be required in order to facilitate a deeded lot. He explained that the parcel he bought was deeded. Mr. Howard stated he cannot answer that because he does not know what the City Ordinance was at that time. Mr. Pavicic stated his hardship is that the study should have been done. It is not due diligence as an individual lot owner to do that. The status of the lots come with those studies.

Mr. Norton stated that the City joined the FEMA program in 2010 and that is when the Ordinances was dated. The construction of those homes were done in 2002-2003, there is not any evidence that the City's agreement with FEMA predated 2010. Therefore, whatever happened back when those houses were developed it appeared not to have involved FEMA and the Flood Insurance question.
Mr. Burke suggested to table the vote on the motion to reconsider in order to have the City Engineers report be delivered to Mr. Pavicic, his council and his engineer to give them the opportunity to review and discuss and then come back with his council. Mr. Pavicic stated that he does not know if that is going to resolve anything at this point. He also discussed his situation with his loan.

Mr. Burke asked Mr. Howard if he had the opportunity to review the report that Kevin Hoffman prepared. Mr. Howard responded that he had. Mr. Burke explained that in Mr. Hoffman’s report by using topography and surrounding lots he was able to estimate that the BFE for the subject property to be 645.9 and asked Mr. Howard if believes this to be correct. Mr. Howard responded that he believes it to be incorrect and believes the BFE to be below that and that you cannot assume anything. Mr. Burke explained that the Board took for fact the estimate from Mr. Hoffman and based on that determined how many feet below the basement would be if there was a basement and how many feet above the first floor would be if there was no basement. Therefore, there is an issue regarding what the BFE really is. Mr. Howard said that if the BFE is 645.9 than the street on the other side of the creek in a hundred year event would be flooded because that elevation is 644. That is why he believes Mr. Hoffman’s number is not that high. Mr. Gess commented that additional due diligence needs to be done and from that it can be determined if a variance is needed.

Mr. Howard commented that he knows the ordinance says that if the property is less than half an acre that you can grant a variance. To clarify, FEMA has that in their guidelines that the reason they make it half an acre is because they do not want you filling the lot on the property to make it a buildable lot. You don’t want your neighbors filling their property three feet because this will create drainage problems with all the neighbors. Mr. Miller commented that if it is more than a half an acre or less than a half-acre the stipulations don’t give the applicant the relief for a financial gain. Mr. Burke referenced 1306.05 (d) of the City of Bay Village Ordinance which says any variance that the Board of Zoning Appeals would grant to not be inconsistent with the Federal Regulations. The Federal Regulations are pretty clear that the half acre does not relieve the burden of showing any of the criteria necessary. Mr. Norton stated that it does not relieve the burden of good and sufficient cause. Mr. Pavicic stated that it is not just a financial benefit, it is something that was over sought in 2003, those studies were required back then. Mr. Miller stated that they were not because the City of Bay Village did not join the insurance program until 2010, so it was not required. Mr. Bruno and Mr. Miller stated that the Board is not preventing Mr. Pavicic to build a home, he can build a home on a slab that is 2 feet above the grade.

Mr. Ebert stated that he wanted the report from Chris Howard to be part of the record (see Exhibit A). The only way to get this report before the Board was to put the item on the agenda motion to reconsideration.

Motion to by Burke, second by Bruno to table any further discussion and a vote on the motion to reconsider until the next regular scheduled Board of Zoning Appeals meeting. In the meantime, the report of the City Engineer be submitted to the applicant, his attorney and engineer and any other materials that the council for the City of Bay Village deems appropriate.
Board of Zoning Appeals  
May 3, 2018  

Roll Call Vote: Yeas – Bruno, Burke, Gess, Norton, Miller, Tyo  
Nays – None  

Motion Carried 6-0  

There being no further business to discuss the meeting adjourned at 8:28 p.m.  

Jack Norton, Chairman  

Kristine Jones, Secretary