Minutes of a Meeting of
Board of Zoning Appeals
Held October 18, 2018

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

Excused: Gess

Also Present: Steve Vogel, Chief Building Official

Audience: Jeffrey Kaltenstein

*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 7:32 p.m.

Motion by Norton, second by Bruno, to approve the minutes of the meeting held October 4, 2018, as prepared, edited and distributed.

Motion passed 6-0.

Jeffrey Kaltenstein
23817 Cliff Drive

C.O. 1125.02(A) Applicant is requesting a variance for existing setbacks to be grandfathered in for replacement garage and requesting a 2'5” height variance for their garage and an additional 10% variance for lot coverage, the existing structure is already 6% over the allowable 30%.

Mr. Norton noted that the first three original items on the agenda have been removed from tonight’s meeting.

Mr. Norton mentioned that the Daniel French agenda item was removed late that afternoon and he has done the pergola installation but they are holding back on any further requests at this time. The item will be tabled for a few meetings so as to keep him from having to complete the paperwork again if they decide to bring it back to the Board.

Mr. Norton discussed the Jeffrey Kaltenstein agenda item. He requested a variance for existing setbacks to be grandfathered in for replacement garage (which was not originally on the agenda.) and requested a 2’5” height variance for their garage and an additional 10% variance for lot coverage, the existing structure is already 6% over the allowable 30%.
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Mr. Norton stated that the memorandum from the Building Department did not include the 10% lot variance and the requirement for the rear yard to have no more than 30% coverage of an accessory building.

Mr. Vogel explained that when he did his calculations, they were well under the allotted coverage.

Mr. Norton stated that the architect calculated 46% coverage.

Mr. Vogel explained that he did not count the deck as part of the calculation.

Mr. Norton discussed that since it was on the drawings that were submitted the Board should consider it as a necessary variance to make sure they are covered whether the architect measured it from the house to the backyard or from the deck to the back yard.

Mr. Vogel stated that the deck could easily be covered and would be considered part of the main structure.

Mr. Norton stated that a piece of the deck is currently covered.

Jeffrey Kaltenstein explained that they currently have a pergola that is open.

Mr. Norton noted that in the past this area has been treated as a special area because it started as a cottage community where the lots were very small. As the properties grew from cottages to full time homes, that area became very dense.

Mr. Norton stated that he is concerned that the garage does not have a side yard and rear yard setback. The neighbor to the west could come back to the Board and request to build their garage on the same line which would be impossible if their garage was up to the line. He thinks it would be very negative to have the normal three foot side yard and rear yard setback. It would inhibit getting the structure into that area. He also noted that the turn into their driveway will be tight.

Mr. Burke discussed that it appears from the dotted line on the drawing that the current existing structure imposes on the property to the left.

Jeffrey Kaltenstein explained that when they moved in three years ago, they had the property surveyed and checked and the existing garage is slightly off square and hangs over the property line by an inch to an inch and a half. He stated that what they plan to rebuild would clearly be put at the line and not over the line.

Mr. Burke agreed with Mr. Norton about the three-foot setback on the south and the west side. He stated that the Board has to look at precedent and what they grant to one they may have to grant to another.
Mr. Bruno asked Mr. Vogel if there was anything in the file about a variance having been granted previously for the garage.

Mr. Vogel was not sure as he had not looked at the property file.

Mr. Bruno guessed that there had not been any request for the variance for this property, but it still raises the question if there is one.

Mr. Norton explained that, when looking at the garage, it has been there for quite a while.

Jeffrey Kaltenstein addressed a few of the questions that had been brought up. He stated that the property to the west (the corner lot that side loads from the side street) already has a garage that is right up against theirs. He guessed that there was only about four feet between the two structures. He stated that they would basically maintain the same distance with the exception of the current inch to an inch and a half overhang. He also explained that if the garage were to move to the east to allow for the three feet, their driveway is extremely tight and he did not believe it would be able to be maneuvered by two vehicles to park in the garage.

Mr. Bruno agreed with the comments made by Mr. Norton and Mr. Burke that he is not comfortable with the setback since they would be changing the existing structure that would grandfathered, but is comfortable with the height as well as the lot coverage request.

Mr. Norton stated that one of the things that the Board has to be careful of is not encroaching on the property rights of the adjoining properties. He explained that variance lives with the property not the owner and, at some future point, someone may want to take that lot to the west of Jeffrey Kaltenstein and build a bigger garage right up the property line as well. The city would be hard pressed to tell the lot to the west that they cannot if it was granted here. The city would be taking a right away from them that was given to someone else. The concept of staying away from the property line is so that each property owner has adequate access to for maintain around the structure.

Mr. Bruno also stated that the six inch buffer is also put in place for safety as well, in case of fire.

Mrs. Young asked if the corner lot house to the south of Jeffrey Kaltenstein is a side loading driveway.

Jeffrey Kaltenstein explained that his neighbor to the south has a large lot that spans three lots on Cliff Drive. Their garage is a side load from Fordham.

Mrs. Young asked for clarification as to where their garage is located.

Jeffrey Kaltenstein explained that his neighbor to the south’s garage is right up against the neighbor to the west and diagonal from his property. The three garages are all in close proximity to each other.
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Jeffrey Kaltenstein mentioned the reason for rebuilding the garage was because the neighbor to south had a tree from their property fall on their garage. It caused so much damage that insurance deemed it totaled.

Mrs. Young asked if he had plans to change the driveway in any way.

Jeffrey Kaltenstein stated that he did not have any plans to change the driveway.

Mrs. Young discussed that because the reason for the rebuild was because of an act of nature, wouldn’t the board allow Jeffrey Kaltenstein to build the new one on the current foundation.

Mr. Norton explained that the ordinance reads that if this was a building permit to rebuild the roof then it would be allowed to stay as an existing nonconforming structure. Once the value of work and repair exceeds 50% of the value, then the ordinance states they are not allowed to continue to have a nonconforming structure. The home owner is essentially starting over and the structure would no longer be considered to be grandfathered in based on the original garage.

Mr. Tyo agreed with Mr. Norton on setting precedent, but he also discussed how it is now standard for home owners to build two car garages. If it is inaccessible then it is ludicrous that he is going to build a one car garage and in that particular area of homes, all the house are tight and structures go right up to the property line. He feels that Jeffrey Kaltenstein has the right to have a two car garage and is more inclined to write a motion that takes that into consideration based on the lot and the area in town that he lives.

Mr. Miller discussed with Steve Vogel about past conversations that the Board has had about other properties and their proximity to each other. He mentioned that within a certain distance they would need to be fire rated. Based on the current drawings he did not see any mention of that.

Steve Vogel mentioned he had made a note of it.

Jeffrey Kaltenstein discussed that he spoke with Steve Vogel about adding fire rating to the walls and since the original drawings were made, his architect had updated the drawings to show that the walls adjacent to the property line would be fire rated.

Mr. Miller asked if he was removing the windows on the west side of the garage.

Jeffrey Kaltenstein answered, “yes.”

Mr. Burke asked about the addition on the east side of the garage being extended approximately five feet and if the entire structure were to be moved the three feet, it wouldn’t change the vehicle approach in the driveway from what it is now.

Mr. Norton explained further about the current approach not being effected by the new purposed changes. The current return is on the north east corner over two and a half feet and so the present
garage door opening would line up with the existing pavement and not materially change the approach with a 17 foot door in the plans.

Mr. Tyo asked if the window to the left of the garage door was recessed.

Mrs. Young said, “yes.”

Jeffrey Kaltenstein explained that he would have to repour part of the driveway if he were to move the garage over a few feet. He explained that the existing garage door is currently 17 feet and his driveway is fairly tight to the door opening and if it was moved over, it would no longer line up on the left. It would also cause them to take up another section of the backyard.

Mr. Bruno pointed out that the current drawings show a new rectangular portion of concrete is needed to be poured ahead of the steps. He explained that if Jeffrey Kaltenstein were to add another foot to the current concrete measurement the garage would be able to be shifted within the setbacks. He stated that he could live with the rear setback but was unclear what was behind the current garage.

Jeffrey Kaltenstein mentioned that directly behind it is a large backyard and the side load garage is to the left. He also mentioned that by moving it over three feet it will make his already small backyard even smaller.

Mr. Miller discussed that by his choice Jeffrey Kaltenstein has decided to make the garage larger which would result in making the yard smaller. He then explained that the Board is trying to examine the proximity and if he wanted to keep the backyard he would not choose to expand the garage.

Mr. Burke asked what will be the use for the upstairs portion of the garage and if there were plans to have it be living quarters.

Jeffrey Kaltenstein explained that the space upstairs will not be used as living quarters and will be used for storage and additional play area for their kids.

Mr. Bruno asked if he had plans for adding electricity or plumbing and Jeffrey Kaltenstein said he did not plan for plumbing but possibly adding electricity.

Mr. Norton explained that in the past applicants who wanted a garage larger than allowed was because they wanted a staircase area and the motion was included so that it could not be used as a living area in the future.

Mr. Miller discussed having a compromise on the requested three feet and make it one and a half instead. He explained it would get the garage off the property line and wouldn’t change the approach when driving in from the right hand side.
Mr. Norton expressed that they could consider that, but explained that this area in town has been treated unique in that it started off as a cottage sub community and has been turned into full time residences. Mr. Norton warned that they need to be careful about that and with the past actions of the BZA. They would need to be consistent with doing something less than the required three feet.

Mr. Bruno asked if there was any email or any representation from the property owner on the left. None were noted.

Jeffrey Kaltenstein stated that property owner to left is currently occupied by renters but that he has talked to the owners many times and they are excited about the project.

Mr. Norton asked if there was any further discussion.

Mr. Burke discussed that if the BZA goes with the three feet he could be ok with that but is not ok with a low setback. He mentioned he would be ok with the suggested one and a half foot compromise that was mentioned.

Mr. Miller stated that the compromise of a foot and a half would give more than five feet between the two structures.

Mr. Norton agreed and discussed how it would allow for future change in the western property if they were granted the same foot and a half variance. The western property would not be precluded of not having equal access and ability.

Mr. Tyo asked Jeffrey Kaltenstein if the foot in a half was doable or is the board constructing before designing with the Boards offer.

Jeffrey Kaltenstein stated that a foot and a half is agreeable. He mentioned that if it were to be three he would probably ask to table the application so he could consult with his architect.

Mr. Burke asked if he would be willing to amend his application tonight.

Jeffrey Kaltenstein agreed he could.

Mr. Burke mentioned the variance asking for the 2’5” height expansion.

Mr. Bruno explained that a similar variance was granted in the past to a property on the corner of Fordham and Bruce. He believes it is in the context of the neighborhood and surrounding properties.

Mr. Norton and Mr. Miller agreed that it would be in keeping in the architectural design of the structure and to have a usable second floor.
Mr. Burke motioned to Chairman Norton that the property at 23817 Cliff Drive be granted three variances. The first variance is that a setback on the south and west line of one and a half feet instead of the required three feet. Second is that the height of the structure be granted a 2'5" variance above the maximum of 18" required by the code. Thirdly, the requirement that no more than 30% of yard space be covered by the structure that the variance to that be granted to permit the construction of the garage as shown in the application provided that they meet all required fire codes and fire-retardant materials. Secondly, the second floor of the structure be for storage purposes and not used as living space and that no plumbing is permitted on the second floor.

Mr. Norton asked for a point of clarification; would the west and south side of the garage be made mandatory to have a one-hour fire wall as part of the variance?

Mr. Miller, Mr. Bruno and Mr. Burke all answered yes that the one-hour fire wall would be part of the variance.

Mr. Vogel explained that is was part of the building code and that if it is less than five feet, you are required to have that.

Mr. Tyo also wanted to give a correction that when Mr. Burke was making the motion he change the word “required” by code to “allowed” by code.

**Motion** by Mr. Burke, second by Mr. Bruno that the property at 23817 Cliff Drive be granted three variances. The first variance is that a setback on the south and west line of one and a half feet instead of the required three feet. Second is that the height of the structure be granted a 2'5" variance above the maximum of 18" allowed by the code. Thirdly, the requirement that no more than 30% of yard space be covered by the structure that the variance to that be granted to permit the construction of the garage as shown in the application provided that they meet all required fire codes, fire retardant materials. Secondly, the second floor of the structure be for storage purposes and not used as living space and that no plumbing is permitted on the second floor.

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

There being no further business to discuss the meeting adjourned at 8:03 p.m.

Jack Norton, Chairman

Kateri Vincent, Secretary