

Minutes of a Meeting of
BOARD OF ZONING APPEALS
Held September 6, 2012

Members Present: Burke, Dostal, Norton, Taylor, Tyo

Absent: Bruno, Campbell

Also Present: Gary Ebert, Director of Law
Dan Galli, Director of Building and Engineering
Bob Lyons, Building Inspector, City of Bay Village

The following persons signed in this evening: Ronald and Barbara Kryw, Jim Flynn, Stewart Watterson, Mary and Mark Barringer, John Swidrak, Aodk Architecture, Gayle Fisher, Russell Thompson, Kent Silverberg, Paul Koomar

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

A copy of City of Bay Village Codified Ordinance 1127.01 was posted and Mr. Norton advised that the code states that the Board shall consist of seven electors of the City not holding other municipal office or appointment. If all members are not present at a meeting, the applicant may request a delay so that all members may be present. An applicant may delay a decision up to two times.

Motion by Dostal, second by Burke to approve the minutes of the meeting held August 16, 2012 as prepared and distributed. **Motion carried 5-0.**

Jim & Susan Flynn
613 Welshire

C.O. 1350.03 –Variance of 48 square ft.
to construct shed

Mr. Norton advised that the Board has had an opportunity to visit the site and review the application. Mr. Jim Flynn was present and addressed the Board. Mr. Norton noted that Mr. Flynn has stated in his application that he would like to have a shed similar to his neighbor's shed. Mr. Norton stated that he measured the neighbor's shed, and it is within code. The size is 12'3" by 10'3". Mr. Flynn has requested a shed that is 12' x 14', an additional 48 square feet. Mr. Norton noted that it is difficult to find any difference in Mr. Flynn's lot from the ordinary, typical lot in the city. The Board must be careful not to set a precedent in approving a larger shed than the size specified by the building codes.

Mr. Flynn thanked Mr. Norton for the explanation, noting that he measured the shed of his neighbor's differently, and his measurements must be in error. After confirming with Mr. Bob Lyons of the Building Department that the foundation measurements of the shed were acceptable, Mr. Flynn withdrew his application for the shed. He will construct a shed to the measurements within code.

Ronald and Barbara Kryc
319 Glen Park

Adjudication Order

Mr. Norton advised that the position of the Board of Zoning Appeals this evening is to hear this request to have this adjudication order delayed or turned back. He asked Mr. Kryc if he had anything to present to the Board this evening in consideration of that request.

Mr. Kryc addressed the Board of Zoning Appeals stated that they had no idea their building permit was about to expire. Notice was given to the Kryc's of expiration of a previous permit three years ago, and Mr. Kryc thought that notice is sent as a matter of policy to permit holders.

Mr. Kryc noted that heavy rainfalls interfered with his excavation work. He stated that they put up fencing around the site, and offered to put up more secure fencing which they were told was unnecessary. A broken city sidewalk was replaced, and piles of dirt removed in an effort to be good neighbors. They were about to finish their foundation the day the notice came in from Mr. Galli that the work must be stopped.

Mr. Kryc distributed copies of new plans for the home to the Board, noting that they have downsized the plans considerably. The new addition is going to be the same size as the former living room that was attached to the home. A second floor will be added. It is hoped to have this construction completed by November, with drainage and siding in place. The driveway will be finished by December, according to their plans.

Mr. Kryc stated that excavation on the property began August 20, 2011. Mr. Norton stated that the city has tried to be patient and has discussed this project with Mr. Kryc over the past months. They were assured that the site would be put into a safe condition and construction progress would be made over the summer months. There was no progress over the summer and the site is not in a safe condition. Mr. Kryc stated that work was stopped by the Building Department on August 6, 2012.

Mr. Norton advised that if something reasonable could be shown to the city that indicated Mr. Kryc was sincere about his intended efforts to restore the property to a safe condition and make progress on his construction, the Board may consider a moratorium on the adjudication. Mr. Norton asked if Mr. Kryc thought he could have the foundation walls brought up to grade and the

backfilling done within the next 30 days. Mr. Taylor stated that he would like to see a complete construction schedule, in writing, including start and finish dates. Mr. Kryc stated that they could provide a construction schedule.

Further discussion followed. Mr. Burke asked Law Director Ebert if there is any provision prohibiting the Board of Zoning Appeals from granting an extension provided the applicant obtains a performance bond which would be forfeited to the city if the work is not done within the time frame being discussed. Mr. Ebert stated that there is no provision that disallows that action by the Board.

Mr. Ebert advised that the Board of Zoning Appeals could delay the enforcement of the adjudication order for thirty days. If there is not compliance by the thirtieth day, the city may move forward with the adjudication. If there is compliance within the thirty days, Mr. Kryc can apply for a new permit. The city does not have to issue another building permit, based on prior experience. The decision would rest with the Building Director as to whether there has been compliance. The length of time for a new permit can be established by the Building Department.

Mr. Bob Lyons of the Building Department informed the Board that the Building Department has an issue with the construction. The block walls for the foundation are neither plumbed nor straight. Mr. Lyons distributed pictures for the Board of the block walls. He stated that he would not approve that as a foundation in its present condition. Mr. Galli stated that it is important to note that the Building Department does not look at the ongoing work; they look at the completed work. If the completed work is going to be based on what has been done, it is not going to pass. The work that has been done must be brought to code. Mr. Kryc stated that the walls will be straightened out. The footers did pass the pre-pour inspection. Mr. Lyons explained that some of the work must be remediated before proceeding further.

Discussion followed as to whether a thirty day time period would be sufficient for a delay of enforcement of the adjudication order. Mr. Norton asked if any members of the audience would like to comment on this case.

Mr. Bob Holliday, owner of the home adjacent on the south side to the property, stated that his daughter and four of her children live in the home. He asked if the walls not plumbed will be torn down. He was informed that they would be torn down. Mr. Holliday stated that they have complained about the project since it started. The dirt from the excavation was placed on the public sidewalk and residents, including their grandchildren, had to walk in the street to get around the property. Originally there was no fence around the excavation; finally, after many months, a temporary fence was installed. Mr. Holliday stated that his major concern is safety, and suggested that a locked, chain-link fence be installed to protect the children.

Gary Brahler, 320 Glen Park, stated that the Kryc's dug the excavation in June of 2010. An exposed sewer pipe ran from the original foundation out to the street. The dirt was on the sidewalk from 2010. Mr. Galli stated that the large pile of dirt was moved last year. Mr. Brahler stated that the property is a hazard and the construction has been underway for at least two years. The neighbors have had to live with this condition, with months going by without anything being done. The telephone pole was knocked over this past summer.

Mr. Burke reiterated his previous statements that he still has a problem why something would be done if an extension would be granted. Looking at the correspondence from the city back to December of 2011, mentioning a number of items that need to be taken care of, and yet, 8 months later, August 10, of 2012, a letter from the city states that many deficiencies noted by the city on December 2, 2011 are still open and unresolved. Mr. Burke asked why this Board should give any additional time if over those eight months Mr. Kryc failed to complete many of the items listed on the December letter. Mr. Kryc stated that all of the items were completed with the exception of the relief cuts in the sidewalk.

Building Director Galli stated that the request to maintain the construction fence to provide a protective barrier around the excavation has been a constant problem. The Building Department has gone by the property and notified Mr. Kryc that the fence has to be maintained. Mr. Kryc has used a typical orange snow fence. Mr. Lyons and Mr. Galli stated that the means and methods are not the city's responsibility. What the city wants is the fence to be maintained. Everytime they went by the property the fence needed to be restored. The item asking that weather tight construction at the front of the property be provided was addressed by Mr. Galli. Mr. Galli stated that Mr. Kryc is very lucky that it was a mild winter last year. Mr. Galli stated that the plumbing lines are out in the open, contrary to the requirement to provide frost protection around the exposed plumbing lines. The excavation has been a problem since July of 2011.

Mr. Grayson Smith, 289 Glen Park Drive, stated that if an extension is granted by the Board of Zoning Appeals, the foundation must be completed, the backfill must be done, and the top on the foundation must be done so that water doesn't go down and the area is not considered a health and safety issue for the children in the neighborhood. He stated that this would be a minimum health and safety standard.

Mr. Dostal asked if there are professional, architectural drawings on record. Mr. Kryc stated that they did have professional drawings but since the project has been downsized new drawings prepared by Mr. Kryc have been submitted. Mr. Lyons stated that they have applied the original drawings to a smaller scale.

Bob Heisser, 344 Glen Park asked if the goals set are met within thirty days, and an additional one year permit is applied for, could Mr. Kryc leave the property unfinished for another year. Mr. Ebert stated that after the original year of the permit, the Building Permit can apply a time frame for the second permit. He noted that the city would not finish uncompleted work. The property would be secured from a safety standpoint, and the city would have to file in court for demolition. Any expenses incurred by the city would be placed on the tax duplicate of the property.

Motion by Burke, second by Tyo, that the property located at 319 Glen Park Drive be granted a stay until October 6, 2012 from enforcement of the adjudication order issued by the city, provided that by October 6, 2012, all of the items specified in the letter to the homeowner dated December 2, 2011 be remedied to the satisfaction of the city. Secondly, that the foundation and the flooring system be completed by October 6, 2012, and approved by the City Building Department. Thirdly, that the excavation be properly backfilled to the satisfaction of the city by October 6, 2012, and the site shall be maintained in a safe condition to the satisfaction of the city.

Mr. Ebert noted that Section 1303 of the Codified Ordinance of the City of Bay Village allows the homeowner the sum total of 180 days (two 90-day extensions), including the occupancy permit time, as an extension of the permit, including the 30 days allowed in the motion by Mr. Burke for a stay of the enforcement of the adjudication order. If the Building Director does not grant the extensions, the matter goes to the Board of Zoning Appeals.

Roll Call Vote: **Yeas – Burke, Dostal, Norton, Taylor, Tyo**
 Nays – None.

Motion carried 5-0.

Daniel Barringer
24433 E. Oakland

Objection to Intent to Build
at 24429 East Oakland

Mary Barringer addressed the Board stating that she is representing Daniel Barringer, who is out of the country. Mrs. Barringer submitted two photographs, stating that the proposed fence would go from the neighbor's existing fence to the sidewalk. The photograph displayed a string indicating where the fence is to be installed. Mrs. Barringer stated that the Intent to Build sign states that "Would substantially injure the existing use..." Mrs. Barringer related that her husband and she are both handicapped and need to get out of their cars in their driveway. Whether they are handicapped or not, with the fence installed in the proposed placement, the car

doors will not be able to be opened for exiting. When they put their home up for sale they feel that prospective buyers will be reluctant to purchase the home when they pull in the driveway and can't open the car door. This will "Affect the value of the neighboring property," as listed on the Intent to Build.

Mr. Norton stated that he noticed when he visited the property that there is no door on the side of the Barringer home. He asked if they would normally pull into the back apron area and get out of the car where there is access to the house, or stop just in front of the house where the front door is. Mrs. Barringer replied that they normally don't use their front door for day-to-day activities, but where the fence is they won't be able to park on the driveway. They will have to park on the grass to open the door, even in front of the house to use the front door. There are three cars owned by the Barringer. Normally, the cars are put away at night. Their son is a contractor and he has a truck. The driveway is left open for him during the day because his equipment goes in the garage. Mr. and Mrs. Barringer park in the street or in the driveway until night time. Mrs. Barringer stated that they would like to have use of their driveway.

Mr. Norton stated that it doesn't appear that these lots are unique from most of the lots in the city. They are narrow driveways, but people have a right to put up fences. Mr. Norton stated that he finds it difficult to find that this is a unique situation that is not repeated all over the city. The only place that there would be difficulty opening the car doors is along the side of the home. Immediately behind that area, going toward the garage, the driveway flares out.

Mrs. Barringer stated that when they have company over and their children come home they won't be able to park in the driveway. Mr. Norton stated that a five-and-one half foot car, in a driveway of these dimensions, and with the fence there, would not be a problem, although tight. Mrs. Barringer stated that you would have to be a contortionist to get out of the car with the fence as close as it is. And, they certainly have no intention of doing harm to the fence trying to open the car door any further to get in and out of the car. She stated that she believes they are entitled to use their driveway, open their door and get in and out of their car.

Mr. Burke asked if the fence is within code as far as the distance from the lot line. Mrs. Barringer stated that it is two inches off the lot line. Mr. Burke stated that what he understands is that Mrs. Barringer is asking the Board of Zoning Appeals to grant the Barringer's rights to use the adjacent property. Mrs. Barringer stated that they are not using the property; they are using the air over the property to open the car door. Their feet will not be on the neighboring property.

Mrs. Barringer asked if the neighbor could move the fence back. Mr. Tyo stated that they could move the fence back but they don't have to move the fence back.

Mr. Norton stated that the only question before the Board this evening is whether this is a unique situation from others in the city that would permit them to make a determination that one property owner who wants to put a fence up shouldn't be allowed to do so. Mrs. Barringer stated that she is not saying they shouldn't put a fence up, but she is saying they need more clearance.

Mr. Norton stated that he thinks Mrs. Barringer is exaggerating the situation. For a handicapped person not to have the door swung all the way open is a legitimate statement. In that case, the car can be further in the back, where there is room, or further toward the front door, where there is room. Parking lots are tight by their design and may not accommodate opening car doors all the way. Mrs. Barringer stated that parking lots are designed so that people can open their car doors and get in and out. Mrs. Barringer stated that she does not know why they are being denied access to their driveways. The house has been there for 62 years and there has never been a problem before. Since the neighborhood situation has come up, there are some people in the neighborhood that want to keep inciting more and more problems.

Mrs. Barringer asked why it says on the permit "Substantially injure the existing use and value of the neighboring property" if the Board has already made up their mind that the Barringer's just have to pull their cars somewhere else.

Mr. Burke commented that the photograph shows three feet of vegetation between the concrete drive and the Barringer home. He asked if the code permits any of that area to be of concrete in order to widen the driveway on the right hand side. Building Director Galli stated that the driveway can go up to the property line, and the foundation of the home. If the driveway were widened next to the Barringer home they could get out of the car. Mrs. Barringer stated that they could get out of one side of the car, but not the other side.

Mr. Burke stated that he does not see how this Board can tell an adjoining property owner that they have to give up some of the rights to their property. Mrs. Barringer stated that the fence will injure the existing use of the Barringer property. Mr. Tyo stated that opening a car door is not "use of their property."

Mr. Norton stated that he would be able to find 100 situations that are identical to this. Mrs. Barringer stated that she would challenge Mr. Norton to do that. Mr. Norton stated that a fence along a driveway is a very common thing. Mr. Norton stated that he does not think it is necessary to get out of the car with the doors fully opened along the whole length of the driveway.

Motion by Tyo, second by Taylor, that the Board of Zoning Appeals approve the objection to the Intent to Build at property at 24429 East Oakland.

Roll Call Vote: Yeas – None
Nays – Burke, Dostal, Norton, Taylor, Tyo

Motion denied 0-5.

Law Director Ebert stated that this is part of all the neighborhood controversy that is taking place. He has offered the services of city hall, has talked to the Barringer attorney, and Mr. and Mrs. Jasin. This is all part of the situation with the cameras that has been going on for a long time. If that can be resolved, perhaps this can be resolved as far as the location of the fence.

Mrs. Barringer stated that they are not the ones that called the media. Mr. Ebert stated that mediation is scheduled sometime late October.

Mr. Ebert stated that the only appeal to the decision of the Board of Zoning Appeals this evening is Common Pleas Court. The attorney must file within 30 days. The neighbor has the ability to get a permit for the fence unless an injunction is obtained from the court.

**John Swidrak, applicant for
Allen and Pamela Szegedy
31406 Lake Road (property owners)**

**New construction on property
encroaches within the 30% open side
setbacks (36 feet required – 26 feet
provided) and front setback**

Mr. Norton advised that the Board has had an opportunity to visit the site and review the application.

Mr. Swidrak stated that three variances are requested due to size and location of the lot, its relationship to Lake Road, and the neighboring property to the north, which is a non-buildable lot, owned by the Eagle Cliff Property Owners Association. In regard to the variances requested on the sideyard, there is a minimum ten feet setback on either side. In 2004, the codes were changed that there is a minimum sideyard of 30% of the sum of both side yards, or in this case 36 feet. The plan for this home is 26 feet sum of both sideyards, requiring a variance of 10 feet. A minimum of ten feet is being maintained on the westerly property line, and 16 feet on the easterly property line. In order to keep balance on the lot, a variance of 10 feet is requested on the east property line.

From the property line on Lake Road, there is a 45 foot setback that they are encroaching 13 ft., 7 inches into. They have rotated the garage to try to eliminate backing onto Lake Road and before backing out, and sitting in the path of the sidewalk on Lake Road.

The third variance is on the back of the property line. Because of the width of the property and the last 41 feet that is shared common property, there is 75% lot depth required. The adjacent properties, and many of the houses in this area, are actually right on the property line. In this case they would like to keep the house 5 feet off of the property line. According to code and dimensions of the lot, the required setback is 23 feet, 9 inches. A rear yard variance of 18 feet, 9 inches is required.

Mr. Norton noted that the homes to the east and west, and others along that strip, look as though they substantially encroach on the front yard setback. He asked if this proposed home is in line with the two adjacent homes. Mr. Swidrak stated that they did not have a survey of any of the other lots near the property. Going off of aerial photographs, the property to the east is in line, and the property to the west is further back.

Mr. Burke asked if the variances are based on the original drawings or the revised drawings. Mr. Swidrak stated that the variances are based on the revised drawings and Mr. Galli's memorandum of August 31, 2012.

Mr. Swidrak presented letters signed by both the east and west neighbors stating that they do not have an objection to the variances for the lot. Mrs. Ingrid Abram, the property owner across the street brought up a question of a storm sewer easement. Mr. Swidrak stated that there was a temporary easement of 30 feet, which is now a permanent easement of 10 feet. It appears that the 30 feet continues past north of the property on the shared lot. Point two, raised by Mrs. Ingram that the lot at 31406 Lake Road is 95 feet rather than 100 feet as shown on the original drawings, has been addressed by changing the drawings to show that the lot is 95 feet deep. The date of the most recent revised drawing is September 4, 2012. Mrs. Abram was not present this evening.

Mr. Norton noted that this is an area that typically has been allowed some latitude. The lot has been turned sideways with the common areas in the back. In order to make it buildable, there is a great deal of frontage in order to place a decent home, but there is no depth. In the past, the city has included the common area in the rear as to fulfilling the need to have a rear yard. Also, Lake Road was widened along this area, which affected these lots negatively resulting in quite a few variances in the records allowing some tolerance with the front setbacks. The sideyard setbacks are reasonably generous considering where this is proposed compared to the two properties adjoining, one of which is only 5 feet, and the other even less. The goal of the Council in changing the sideyard requirements to allow more openness is being achieved with this home more so than with the neighboring properties.

Mr. Swidrak stated that the garage will be kept as a one story building to prevent creating a wall, which is the intent of having the garage placed where it is on the side.

Motion by Burke, second by Dostal, that the property at 31406 Lake Road be granted three variances as follows:

1) A variance of 13 feet, 7 inches from the minimum front yard building line requirements as specified in Section 1153.02 (2) of the Codified Ordinances of the City of Bay Village;

2) A variance of 10 feet for the sideyard from the minimum sideyard requirements specified in Section 1153.03 (1);

3) A variance of 18 feet, 9 inches from the minimum rear yard requirements specified in Section in 1153.04,

provided that the variances granted in this resolution be used solely for the purpose of the construction as submitted to the city in revised drawing of September 4, 2012, and that the variances not be used for any additional construction within the side, front and rear areas upon which the variances are being granted.

Roll Call Vote: **Yeas – Burke, Dostal, Norton, Taylor, Tyo**
 Nays – None.

Motion carried 5-0.

There being no further business to come before the Board, the meeting adjourned at 9:12 p.m.

Jack Norton, Chairman

Joan Kemper, Secretary