Meeting Minutes of
Board of Zoning Appeals
Held December 5, 2019

Members Present: Young, Norton, Bruno, Gess, Tyo
Excused: Miller and Burke
Also Present: Eric Tuck-Macalla (Building Director) and Mark Barbour (Law Director)
Audience: Pat O’Boyle, Robert Drake, Kathy and Bob Rhubart, Lydia DeGeorge and Brian Todd

*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 7:30 p.m.

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

Motion passed 5-0.

Mr. Norton explained that the Board of Zoning appeals is constituted of seven members and only five are in attendance, which is enough for a quorum. But if during the course of the discussion the applicant is uncomfortable with how the conversation is going, it is the applicant’s right to request that the agenda item be tabled until a following meeting when all members can be in attendance.

Brian Todd
31114 Manchester Lane

The applicant is requesting a variance per C.O. 1163.05-(Fence regulations) to install a privacy screen. 48’ longer than permitted.

Mr. Norton discussed the second agenda item and explained that the Board has had an opportunity visit the site and review the application. He asked if there was discussion.

Mr. Bruno explained that it is the Board’s job to enforce the Code created by City Council. He stated that the variance request was a sizable request from a variance standpoint. The yard is a relatively decent size but 48’ is a big request.

Ms. Young asked a question about the drawing that was submitted with the application. From her understanding it showed 32’ on either side of the house and 8’ across the back.

Mr. Todd explained that he came up with the measurement and is when you come to his backyard you have from the house over to the side yard. The front of the house faces south and
the back of the house faces north. On the west side of the house there is approximately 9' from his house over to a foot or two of his property line and going into his backyard. On the west side of the house has around 12’.

Ms. Young clarified that there was 7’ on one side and 11’ on the other. She asked if the fencing in those areas were proposed to be 6’ in height.

Mr. Todd stated that the 6’ portion he is hoping to get is the 11’ going from his house to the side yard and down 32’ to the fence line on the east. On the west side it would be 7’ over and down 32’ to the hard line.

Ms. Young clarified that he did not want any 6’ fencing in the back just a regular 4’ fence.

Mr. Tyo clarified that it is going to go 32’ in a single direction down the side of his yard, make a jaunt and will be 7’ on one side and 11’ on the other. He clarified that there will not be any 6’ fencing along the back.

Mr. Todd explained that the back will be a regular 4’ fence. He stated that his neighbor has a 6’ privacy fence on the east and goes 16’ past where he wants to end his fence. On the west side his neighbor has an addition that essentially goes back that far. He is only trying to prevent the neighbor’s from being able to see into their living room and vice versa. The fence line stops just past his living quarters.

Mr. Norton discussed the east side of the yard where the air conditioner is located and the neighbor having a 6” fence. He wondered if the existence of his 6’ fence would provide enough privacy for both properties. Mr. Todd would not need his own 6’ fence to create the privacy. He could take the 4’ fence and continue it along that and not need a variance. It would not change the aesthetics.

Mr. Todd explained that his neighbor’s fence is older and not in the best shape.

Mr. Bruno explained that the Board has recommended compromises in regard to that and suggested working with his neighbor who already has a privacy fence. He does not see anything unique with this particular request.

Mr. Todd asked why he can’t run a 40’ 6’ privacy fence in his yard like his neighbor has.

Mr. Norton stated that his neighbor shouldn’t have done that but it is not to say that everybody follows the rules and gets a permit. In his situation, there is construction going on at the house next door and inspectors are following the construction for the benefit of the City and community.
Mr. Gess asked if the 40’ of 6’ fence was the only 6’ fence in the neighboring property. If there is, there may have been a variance for the extra 16’ which may have been within a small tolerance.

Mr. Norton stated that it is possible the neighboring property got a variance to the 32’ in one direction rule. The Board is supposed to be picking around the edges and making small changes. It can be a little confusing because there is a rule on the books that is based on 10% of the perimeter. The applicant’s perimeter is 542’. Under the 10% rule they could only have 54’ of privacy screening. If they applied that, then his variance request would be for 28’ rather than the 48’. The 48’ would be needed if it is interpreted on the 32’ rule only. Which there have been various interpretations of that in the past. If he eliminated the 32’ request on the one side since there is already the neighbor’s screening then he would fall within the 10% rule.

Mr. Bruno clarified that on the east side of his property it appeared to be 11’ to the wall of his home that would need fencing. He asked if he had thought about greening that area with arbs or pines.

Mr. Todd explained that he wants to have access to his backyard.

Mr. Bruno explained that Council is trying to avoid having pens and corrals in backyards. City Council prefers aesthetically to have greening opposed to fencing.

Mr. Todd explained that he has a 5, 3 and one year old and wants to have a fenced in yard so his wife could keep the kids contained.

Mr. Bruno stated that he understands but is not sure the children would be able to jump a 4’ fence.

Mr. Gess stated that if the Board would go with the 10% rule, it is still nearly a 50% variance request.

Mr. Norton agreed and stated that it is still a 28’ variance even if they were only thinking in terms of the 10% rule which is still a significant variance. That is why he was thinking that they should continue a 4’ fence along the east side yard and it would drop the variance request 32’ and he wouldn’t need a variance for that. The only thing left in question is the 11’ and 7’ leg of fencing that is proposed at the 6’ height.

Mr. Todd explained that he wanted those legs of fencing to be 6’ because that is the height of the fence that runs along the side.

Ms. Young explained that Mr. Todd could work with his neighbor to replace his fence on the one side at Mr. Todd’s cost and it would match his fence.
Mr. Norton explained that that has been done in the past and two neighbors have worked together to get a longer run. He explained that the City is trying to avoid corrals in rear properties which chops the neighborhood up.

Mr. Norton stated that the variance request is a larger request even if they were just talking about the 10% rule. The Board might feel more comfortable with allowing the 6’ privacy fence on the 11’ and 7’ legs of the fence.

Mr. Todd explained that on the east side of the house he would be okay to concede some of his request but on the west side he was trying to avoid looking into his neighbor’s windows and vice versa. His measurements were made to make his fence match and make it look uniform.

Mr. Bruno stated that he agreed with the Chairman and would be ok with the 7’ on the west side and the 11’ on the other but the long stretch on the east side seems to have the coverage from the neighboring property.

Mr. Todd stated that all he wanted was to keep his kids contained.

Mr. Todd clarified the new proposal. The east side 11’ will run 6’ immediately when it starts to run north will go down to 4’. He will do 7’ of 6’ fencing near his patio/walkway and take it down just past the edge of his patio.

Mr. Tyo asked that they take a ten minute recess. He explained that the Board is trying to play Switzerland.

Mr. Norton stated that that is part of the Board’s job. City Council has tried to redo the whole fence ordinance recently. He agreed that after the meeting there needs to be more clarification and involve Council but right now they need to discuss the case before them. He thinks they should use a combination of common sense and applying the rules as they have been interpreted for quite a while. If they agree to the 32’, 11’ and 7’ of 6’ privacy screen they can let this citizen move on and continue with construction. The Board is better off discussing with Council and the Law Department for further clarification at a later date.

Mr. Tyo understood what the Chairman was saying but if this case was brought to the Board two weeks ago, they would not even have been in the meeting discussing the request.

Mr. Bruno stated that Mr. Tyo made a fair point.

Mr. Gess stated that it is an excess of the 10% rule either way.

Ms. Young clarified that two weeks ago the Board allowed up to 32’ in both directions which is the same discussion today.

Mr. Norton stated that based on what their interpretation has been in the past that is true. But there has been another interpretation on the table that said it is 32’ is the total which has yet to be
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resolved. Even if they ignored the 32’ and dealt with the 10% rule, there still needs to be a major variance of 28’. But if the compromise seems to meet the spirit of the ordinance and is okay with the homeowner then he felt that the Board should not hold up the homeowner.

Mr. Barbour explained that City Council spent 7-9 months having at least 12-15 meetings in regard to the fence ordinance. There was ample opportunity for Council to change the ordinance and they ultimately did not change it. They had every opportunity to change it completely or slightly and they did not make any changes. For the Board to make any changes, act in a certain way or make decisions based on the thought that someday soon City Council is going to intercede in this discussion would not be something he would rely on. They will not revisit this issue anytime soon.

Mr. Tyo stated that then the way he is interpreting it is it can be 32’ with a drastic angle change rather than the 10% rule.

Mr. Norton clarified that they would have to still meet both requirements in affect. He discussed the justification for having the 10% rule with varying lot sizes.

Mr. Norton explained that the Board should fall back on how they have been doing it in the past.

Mr. Bruno explained that if they followed Mr. Norton’s logic, this lot size is not big enough based upon what they have done in the past.

Mr. Norton agreed and based on the 10% rule they would only have 54’ and therefore they would still be 28’ over.

Mr. Gess explained that there sounds like there is an opportunity to drop the east 32’ run which would then comply with how the Board has ruled in the past and they would still be under the 10% rule.

Ms. Young clarified that based on the 10% rule the applicant had the opportunity to get a panel for the 11’ side and return at 6’ and then drop it down.

Mr. Norton agreed and explained that technically there is 4’ left and he could turn the corner.

Mr. Gess clarified the measurements. Based on the size of his lot and the 10% rule the applicant would have 54’. There would be 32’ on the west plus 18’ across the front. He would still have 4’ to work with.

Mr. Bruno stated that he is not comfortable granting anything on the east side of the property.

Mr. Norton explained that the Board has allowed a transition piece for one 8’ section to step down from 6’ to 4’. The applicant could do that on both sides which makes it a better architectural transition. If he did that he would need a slight variance because it goes past the 32’ in one direction.
Mr. Todd asked for clarification of the Code and if it was 32’ in any direction or 32’ total.

Mr. Norton explained that in the past the interpretation has been made that if you changed direction, it is 32’ in one direction and the amount of 32’ is based on the 10% rule. In this case, the 10% rule would allow the applicant to have 54’ but he can only have 32’ in one direction. The other side of the lot has been interpreted as another direction.

Mr. Tyo asked if the applicant would be okay with 32’ and then a gradual transition to 4’.

Mr. Todd clarified that the west side of the property where his neighbor’s addition is would need some screening. So on the west side where his patio is he will do 32’ and return 7’ to the house. On the east side he will take it 11’ over and within the 8’ of the first post he will step it down or transition the fencing from 6’ to 4’.

Mr. Todd agreed to the newly proposed variance request.

Mr. Bruno asked if it would require a 4’ variance.

Mr. Norton stated that for the sake of simplicity the variance request should be for 4’.

**Motion** by Mr. Bruno, **second** by Mr. Gess that the applicant at 31114 Manchester Lane be granted a variance per C.O. 1163.05 for 4’ based on the drawings as prepared and submitted and based on the discussions that were had so that the applicant can run 4’ of a taper of fencing along the east side of their property from the corner of 11’ that proceeds back towards the north. The west side will be 32’ as prepared and submitted of 6’ fence with 7’ facing the south of the property towards the street. At the end of the 32’ run there will be a transition down to 4’ within 8’ of the end.

Mr. Tyo asked for clarification as to where the transition piece will be.

Mr. Todd explained that he will bring it down to 4’ by the time they hit the first post.

**Roll Call Vote:**
**Yeas – Young, Norton, Gess, Bruno, Tyo**
**Nays –**

**Motion Carried 5-0**

Jamie and Gerald Farina
28041 Osborn Road

The applicant is requesting a variance per C.O. 1359.01-(Air conditioning equipment, installation requirements) to retain the air conditioning condenser on the east side of the house. The variance requested would be 1’.
Mr. Norton discussed the third agenda item and explained that the Board has had an opportunity to visit the site and review the application. He asked if there was discussion.

Mr. Bruno discussed the 76 decibel rate on the condenser and how the Board prefers it at 74 or lower.

Mr. Norton asked if there was someone in the meeting on behalf of this agenda item.

Mr. and Mrs. Farina were not present at the meeting.

Mr. Barbour interjected by explaining that the unit was installed some time ago and a court action was filed. The applicant ignored the City’s request for him to comply with the City’s regulations after it was discovered it was installed without a permit. The City ended up having a court case. The court case was dismissed with the understanding that the applicant would appear before the BZA and follow the appropriate steps to obtain the necessary variance to install the air conditioner. It is unfortunate that the applicant was not in attendance.

Mr. O’Boyle, 28029 Osborn Road- neighboring property owner, showed the Board a picture of the unit’s location in comparison to his house and yard.

Mr. O’Boyle explained that the applicant, Mr. Farina, thinks he can do whatever he wants. He has also done something similar when installing his shed. It took a year of getting letters by the City for him to take care of it. He continued to ignore FedEx letters from the City and finally received one when he happened to be outside when one was delivered. It went to court because he kept ignoring the letters from the City. He pleaded no contest to the violation and was fined $100. Mr. O’Boyle told him a year ago that the condenser was in violation and illegal. Mr. Farina thinks he can do whatever he wants and can ignore the City. He has a big backyard and could have put it anywhere away from the fence. All of Mr. O’Boyle’s bedrooms are on that side of the house and he will be retiring soon.

Mr. Tyo asked if there was an air condition condenser on that side previously.

Mr. O’Boyle stated that there was never one there and his house does not have air conditioning. He assumed whoever installed the unit knew the location was illegal. It is a foot and a half away from his property.

Mr. Bruno stated that he has been to the property and there is no reason that the unit could not be put behind the home originally per the Code.

Mr. Tyo stated that it would depend upon the location of the furnace.

Mr. O’Boyle stated that Mr. Farina’s house is laid out identical to his, 1,406 square feet. He could run it differently.

Mr. Bruno stated that they could run a condenser line and wire down the back corner.
Mr. Norton explained that the Board should step back just a touch. It is fairly common that a citizen doesn’t know about building a permit or if they do, they don’t worry about pulling a permit. We do not want to put a lot of stock in him unwisely resisting this to a point where he was brought to court and was given a slap on the wrist. The other factor is, if you look at this property, this is the logical place to put it. This is a corner house almost to the point where you think this is the backyard based on the orientation of the house. There is the neighbor’s driveway between this property line and the neighbor’s home. The wall of Mr. O’Boyle’s house is 16’-20’ away. There is some uniqueness to the property which is one of the things that need to be considered.

Mr. Norton explained that he would much rather have this be settled by all 7 Board members and with the applicant present rather than trying to resolve the issue at the meeting.

Mr. Bruno agreed.

Mr. Barbour stated for the record that the applicant has not been a regular participant in any proceeding that is part of this dispute.

Mr. Norton has no doubt that giving him another chance is not going to change the result.

Mr. Barbour stated that he wants the Board to be fully informed on all their decisions.

Mr. O’Boyle stated that Mr. Barbour has been on top of it since day one like he has as well. He explained that Mr. Farina feels he can do whatever he wants. (ex: fence, shed and air conditioning unit) Every time the City tells Mr. O’Boyle to do something, he doesn’t. Mr. Farina thinks he can do whatever he wants.

Mr. Tyo appreciated Mr. O’Boyle’s point but explained that Mr. Farina is not here and that is why Mr. Norton suggested tabling the item until the next meeting.

Mr. O’Boyle’s explained that Mr. Farina never showed up to court and his lawyer kept getting continuances and tried to ignore it. His bedroom is right next door and he does not want to see it or hear it and it is illegal. Mr. Farina knows it is illegal and he thinks he can get away with it and he does not think he should be able to get away with it.

Mr. Gess explained that beside fences, air conditioning units has to be the next highest variance request that come before the BZA because of the way the ordinance is written relative to the way the properties and houses are situated. There are very narrow lots and side lots and it is not uncommon that variances are granted.

Mr. O’Boyle wondered why it was fair even after they had broken the law and not got a variance.

Mr. Gess stated that he is not sure the Board should take any sort of more punitive approach to elevating the case because of the history. He understands the frustration but as a Board it is not
appropriate to consider what might be viewed as obstruction as part of how it is evaluated. If this had come to the Board in a normal approach there would be consideration for its location relative to the property, screening and decibel. They would also be looking at the other neighboring properties and picking the lesser of two evils because there is no great place.

Mr. O’Boyle asked why he couldn’t have placed it in another location.

Mr. Gess is not suggesting it shouldn’t happen or it couldn’t happen.

Mr. Bruno stated to Mr. Gess’ point that the applicant is not present. So the Board cannot ask him to explain further. One thing that they should take into consideration is it is a corner lot and he has a garage that blocks the view of where that air conditioner could be behind that corner. He does not see why he wouldn’t place it there staying in the spirit of the Code and not facing the neighbor’s property.

Mr. Norton agreed and stated that when he was at the property the location seemed to be in a logical place but he did not get out to see where it could be placed differently. If you can satisfy your need without needing a variance, that is always the better option. He would like another opportunity to look at the lot more specifically.

Mr. Bruno agreed.

Mr. Norton stated that if the applicant does not show up again the Board will have to use their best judgement.

Mr. O’Boyle stated that he does not understand why the Board is cutting him so much slack when he keeps breaking the law.

Mr. Norton explained that the BZA is not an enforcement, they are trying to be considerate to both sides.

Mr. Bruno stated that the Board understands his frustration yet they want to be fair to everyone involved.

Mr. O’Boyle explained that the line set would not have to be that far and taken just around the corner.

Mr. Tuck-Macalla explained that in the Board’s packet there was a violation letter that he sent to the Farina’s. Rather than be looked at as a variance, it could be looked at as a challenge to the Building Director’s interpretation of the Code. That is not ambiguous.

Mr. Norton stated that he does not think the Board can challenge the Building Director’s interpretation because it is clear it is not far enough away.
Mr. Tuck-Macalla explained that at the end of the letter it says that Mr. Farina has the right to appeal whatever the Building Director says is wrong. It does not need to be an interpretation of the Code, they have a right to appeal. Should we go to court again on this, usually the judge asks if the person appeals the letter.

Mr. Norton stated that they could look at this like an appeal from Mr. Farina but the Board would be right back in the same position. They would uphold that, the Building Director had the right to turn this away because it was a clear violation of the ordinance that you have to be 10’ away. Mr. Farina could then say that he would then like to apply for a variance.

Mr. Gess clarified that Mr. Tuck-Macalla’s most recent letter was the October 8, 2019 letter. He wondered if in order to comply, he applied for a variance since that letter was sent. In the process of obtaining the permit he was notified that he needed a variance which is why the case is before the BZA.

Mr. Tuck-Macalla stated that no, after 31 days he applied for a variance not a permit.

Mr. Barbour explained that he understands the Board’s statements about not wanting to put any weight on compliance or not compliance but he does think it is a factor when someone is not compliant and if they are so obvious that they are not compliant.

Mr. Norton understands and some people have an attitude that property rights are the end all be all and nobody should have anything to say about what they do at their property. But the Board needs to be careful.

Mr. Barbour stated that they need to get the Laws changed if they feel that way.

Mr. Norton stated that when they do not, they need to be sent to Common Pleas court. The judge usually starts with a slap on the wrist and they go up from there.

Mr. Barbour explained that the City did that in this case and the Rocky River Municipal Court Judge said that the City was right and Mr. Farina was wrong. So now Mr. Farina has essentially taken the incorrect steps. He was supposed to get a permit first. From reading the ordinance, the Burden of Proof is on the applicant and not for the Board to interpret any evidence. He understands how far his advice goes with this Board but he wanted to point these out too because this particular instance is a frustrating circumstance for the Building Department, Law Department and the neighbor. The reason permits are important is so the neighbor’s have an opportunity to come in and be heard and the Board can remake their decision based on that. This particular incident, Mr. O’Boyle has been attentive to this matter and was denied his opportunity to present why this unit should not be placed on the side. Had he been given an opportunity prior to construction, considered it and that was the Board’s decision, it would be another thing. He wants the Board to make their own decision but he feels that some of the points need to be brought up for the completeness of this matter. He suspects it will continue into the future.
Mr. Bruno reiterated that is why the Board would like to table the item to give Mr. Farina one more opportunity to explain further.

Mr. Tyo agreed but the letter that goes to Mr. Farina there is something in there that says it was brought up tonight and because he was not in attendance, the Board continued it until the December 19, 2019 meeting.

Mr. Bruno agreed.

Mr. Norton explained that if it is continued the property could be examined more carefully. If the Board finds that it could be moved to a better location there is a chance Mr. Farina will still ignore that, it will continue to be sited and be back in court. The Board has always been careful not to put the City in a position of arrogance. The judge will see that he has been given every chance. Air conditioners are not run this time of year, so nobody is going to have a problem in the immediate future. The Board should take another look at it and be confident in their decision. The Board should be careful in separating out some of the emotion on the topic but understands the neighbor’s frustration.

Mr. O’Boyle stated that if the Board grants the applicant a variance it is as if they are rewarding him for breaking the law. It is very simple for him to run it differently.

Mr. Gess stated that he is not trying to justify it or make excuses. The O’Boyle’s have been living with it for years and this is the first time for the Board so they do not have a history with the applicant that is weighing into it. It is not uncommon for the Board to table the item and give the opportunity for the applicant to come back and explain and work together to come up with the best solution. Giving them another chance is consistent to what they have done in the past.

Mr. Norton explained that the Board needs to be careful to make sure that everyone gets as fair of hearing as they can.

Ms. Young asked to Mr. Barbour’s point if there was any chance of dismissing this because he did not file for a permit first.

Mr. Norton stated that he thinks a judge in the Common Pleas Court would not find that appropriate. It is very common to do something without a permit. Many people may not even know they need one but the contractor should have been 0aware of that.

Mr. Bruno reiterated that the Board wants to give the Farina’s the opportunity to explain further.

Motion by Mr. Bruno, second by Mr. Tyo to table the item of the application for the property at 28401 Osborn Road until the December 19, 2019 BZA meeting.
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Mr. Gess asked how the applicant will be notified. He suggested making sure the letter states that if the applicant is not able to attend it will be reviewed on its face value without any additional consideration or discussion.

Mr. Norton agreed.

Mr. Barbour stated that Ms. Vincent will send a letter notifying the applicant of the continuance and that action could be taken without their presence.

Mr. O’Boyle asked if letter was going to be certified.

Mr. Norton stated that no, they do not want to get overly legal. They are not a court of law they are the Board of Zoning Appeals and they have to maintain that their position is not the same as a judge in court.

Mr. Barbour stated that it is not necessary to send a certified letter.

**Roll Call Vote:**  
**Yeas — Young, Norton, Gess, Bruno, Tyo**  
**Nays—**

**Motion Carried 5-0**

Joseph Krall  
594 Elmwood Road  

Contest permit to open backyard hockey rink at 602 Elmwood.

Mr. Norton discussed the third agenda item and explained that this has been brought before them previously and that there has been a great deal of communication with the Building Department and the Law Department. He asked who was in attendance on behalf of the agenda item. Ice rink property owner at 602 Elmwood, Mr. Drake and the backyard neighbors at 611 Canterbury, Mr. and Mrs. Rhubart were in attendance.

Mr. Norton asked why the Board was here in the first place. In the past, there was question about the lights and the chiller needing a special permit for the ice rink not a question of the Drakes having the actual ice rink. There were terms and conditions made and agreed to and there was a side agreement made by the two neighbors that the City has nothing to do with that involves vegetation screening, etc.

Mr. Norton questioned if there has been a violation of the special permit with the Building Department.

Mr. Tuck-Macalla explained that for some reason in the past, the rink was permitted every year by the previous Building Department. He does not know why and personally feels it does not need a permit once it is in. It is like a swimming pool and when it is in it is in. Mr. Drake got a permit again this year and Mr. Krall called and said if he got a permit then he needs to get a ten
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day intent to build just like he had to get to put a fence up. In order to be consistent, the Building Department issued a ten day intent to build and Mr. Krall contested the intent to build. It is his feeling now that there should never have been subsequent permits. He does not think it is any different than a swimming pool and is how he would like to go moving forward.

Mr. Norton believes that the Board agreed. They were granted a special permit and it is not something that gets renewed annually. He agrees with the Building Department’s interpretation. Tonight the Board may have to simply bless the interpretation. If there is a violation of the special permit it becomes an enforcement issue with the Police.

Mr. Bruno agreed that the Board is not hearing any type of violation it is merely what Mr. Tuck-Macalla explained.

Mr. Tyo agreed and stated that the Board is only here to reverse the need for the annual permit that was needed to be obtained by Mr. Drake and made a permanent permit for as long as he is the owner.

Mr. Tuck-Macalla did not find anything in the file that required the homeowner to obtain a permit annually.

Ms. DeGeorge explained that there was some controversy over whether there was ever a permit issued to begin with. She asked if there was an original copy of the permit for the rink.

Mr. Rhubarth explained that they heard from the City asking if they had objections to lights getting put up around the rink but they never received any communication about the rink going up itself.

Mr. Norton explained that from his recollection the existence of the rink was not in question and is allowed under the present ordinances. The only thing in question was the lighting because of the hours of operation.

Mr. Rhubarth explained his additional concerns.

Mr. Tyo stated that the Board is trying to answer Ms. DeGeorge’s question as to the first permit.

Mr. Barbour explained that he believes the permitting process involved the lights and the chiller. The chiller also need a permit and needed to be inspected because it is an electrical device. The rink itself did not need a permit for its construction.

Ms. DeGeorge clarified that the rink did not require one.

Mr. Barbour stated that the Building Department at the time determined that the rink was not subject to the permitting process.
Ms. DeGeorge stated that something must have happened that it was required that he gets a permit every year. He would not be doing it if someone hadn’t told him he was required to do that at some point along the way.

Mr. Tyo stated that it could have been a permanent one and not one that was needed to be obtained annually.

Mr. Norton gave the example of an in ground swimming pool and it not needed a new permit every year.

Mr. Bruno asked the homeowner why he has obtained a permit every year.

Mr. Drake stated that Mr. Vogel (previous Building Director) told him he needed to do that.

Mr. Barbour clarified that he has been getting every year.

Mt. Tyo asked if he had the first permit that was given.

Ms. DeGeorge is interested in seeing the permit that was given before the rink was built.

Mr. Barbour explained that from what they can tell, there is only a permit for the lighting and chiller but not the actual rink.

Ms. DeGeorge asked if there is a legal basis based on him applying for a permit that they have to see it through with the ones who are contesting the rink.

Mr. Barbour’s opinion is that there is no basis to require the homeowner to continue to annually get a permit each year solely on the fact that that is what was done in the past. You have to have an ordinance or code that would require him to continue to obtain the permit or a condition that was given by the BZA or Planning Commission.

Mr. Norton stated that the only condition he recalls is that it was a special permit versus a variance and it went with this property owner and their use.

Mr. Barbour stated that based on the charter and ordinances the BZA and Planning Commission have the authority to set the requirement that some kind of permit should be obtained each year but there is no record of that being done by anybody.

Mr. Tyo stated that the only thing he remembers coming before the BZA were the lights.

Mr. Rhubart explained that based on this conversation, had they been provided the opportunity to voice opinions about the lights going in, why were they not given the same opportunity about the rink going in.

Mr. Norton explained that it was deemed that this is a device of play equipment and a permit was not needed.
Mr. Rhubarb explained that other issues they have with the rink is the noise level with the puck hitting the barrier, regularly find hockey pucks in their yard and damage to their garage siding. His primary concern is the property value. If they want to sell their house there would be repercussions to having the ice rink in the neighbor’s backyard.

Mr. Rhubarb explained that they have always had cordial conversations with the Drakes. Last year the Drakes agreed to put up nets to block the pucks from hitting their garage and landing in their yard. They have yet to install any on the west side of the rink.

Ms. Rhubarb explained that the noise level sounds like construction all day and into the night.

Mr. Rhubarb stated that this is not like a jungle gym.

Mr. Bruno stated that it is good that Ms. DeGeorge was present. This is really something that should be brought to Council as to what Codes and Ordinances do exist. The BZA enforces the Code that exists not legislate it.

Ms. Rhubarb explained that she was surprised that there is no ordinances that have to do with having an ice rink in the backyard. There are so many others in town and the fact that there are none for this is surprising.

Mr. Tyo stated that it is a very good point but going back to what was said earlier this is not in the Code and it was the first time something like this had been brought up. They would have had to draft Code in regard to this.

Mr. Bruno stated that this is permissible due to silence in the Code.

Mr. Norton explained that this has come in the past and it was related to a basketball court in noise level, etc. The only thing that was addressed at the time was the hours of operation. It came down to a noise control issue and why the lighting was tied into that. The City at point felt that as an item it was allowed if the lighting was treated in a certain way. It is still an issue but unfortunately not on the BZA’s table.

Mr. Rhubarb reiterated that they were given an opportunity to give an opinion about the lights but not over the existence of the rink.

Mr. Barbour explained that they were not given the opportunity to give opinion of the existence of the rink because at the time of construction, the Building Department at the time determined that a permit was not required. Had a permit been required to build a rink it would have been posted with a ten day notice.

Mr. Gess clarified that there is still the same interpretation in the current Code and that no permit is required.
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Mr. Barbour explained that the way it has been interpreted thus far, is that a hockey rink is a structure that does not require a building permit.

Ms. Young explained that there are many houses in Bay Village that have batting cages and that is also considered playground equipment too.

Mr. Rhubart explained she knows it is compared to an in ground pool but this is not something Mr. Drake leaves up all year. He takes it down in the summer and puts it back up and maybe that is why he is getting a permit each year. Also, due to the size of the rink she does not feel it is playground equipment. It takes up all of the yard. They have tried to live with it and realize it is not going to last forever.

Mr. Bruno reiterated that they should discuss further with Council and the Law Department but appreciate their concerns.

Ms. DeGeorge asked if the sides of the rink have been measured since to make sure it falls within the Code.

Mr. Tuck-Macalla stated that there is no Code in regard to hockey rinks.

Ms. DeGeorge stated that there was some question in the past that it fell under an accessory structure or a permanent structure.

Mr. Tuck-Macalla stated that he does not see it as a structure at all.

Mr. Bruno clarified that the height of the boards are 2’.

Mr. Tuck-Macalla stated that all he has in the files is a permit for the chiller and a permit for the lights.

Ms. DeGeorge clarified that they can limit the size of a shed but not the size of an ice rink.

Mr. Tuck-Macalla stated that there is a whole section in the Zoning Code that has to do with accessory structures and utility buildings but ice rinks are not addressed.

Mr. Barbour explained that the City would need an ordinance that gives a standard to apply.

Mr. Norton stated that could be done but by City Council and not the BZA.

Mr. Bruno stated that unless there is other business before the Board, he is close to moving to adjourn so the discussion could continue in the proper forum.

Ms. Rhubart asked what their recourse is.

Mr. Bruno stated City Council is their recourse.
Mr. Norton stated that the item is still before the Board because Mr. Krall has formally objected to the Building Department's decision to give a permit.

Mr. Tuck-Macalla explained that a permit was applied for and they went through the motion of giving a ten day tag and the ten day tag was contested. He does not have any problem with issuing a permit for the ice rink and it is his opinion that it does not need an ongoing permit. They will issue a permit this year.

Mr. Norton asked if Mr. Krall would need to come back.

Mr. Tuck-Macalla stated no, it has been contested and brought before the BZA so it no longer needs to be discussed if the Board agrees to the permit.

Mr. Norton clarified that they need to reject Mr. Krall’s request to counter the Building Department’s decision.

Mr. Gess asked for more clarification. He thought a permit was not necessary but now the Board would be granted the permit.

Mr. Tuck-Macalla stated that a permit has been filed and applied for.

Mr. Gess wondered if it would be easier to not require a permit.

Mr. Barbour stated that the Board could make a decision that would both turn down/decline Mr. Krall’s protest and also determine that a permit is not required.

**Motion** by Mr. Gess, **second** by Mr. Bruno that based on discussion today and information and interpretation provided by the Law Department, that a permit for an ice rink is not required based on the City’s Ordinances and that the contest put forth today is not applicable and is not enforceable.

Mr. Norton clarified that if the Board votes in the affirmative, they are allowing this to stand.

Mr. Barbour clarified that they are allowing it to stand, stating that a permit is not required and stating that Mr. Krall’s protest of the issuance of the permit is declined as being moot.

Mr. Bruno clarified that the Board is affirming the annual permit is not required.

Mr. Drake explained that this is his fourth season with the ice rink and it seems he and his neighbor, Mr. Krall, come to the City almost yearly. He does not want to be back here again.

Mr. Barbour stated that no one can guarantee that. The Building Department and the Law Department have decided that he does not need a permit. What is before the BZA is whether or not they agree that a permit is needed. If they vote in the affirmative, then the Drakes do not need a permit. If it is voted in the negative, the Drakes will need to come back for a permit. However
none of that is a determination as to whether or not he could be back in front of the City again for the use of the ice rink.

Ms. Rhubart explained that they have always been tolerant and patient but it is becoming too much.

Mr. Norton understands and there are some very valid points that have been brought up. Council has the opportunity to draft a simple ordinance for this kind of use that addresses the negative side of it. It could be specific to the hockey rink but unfortunately it does not fall on the BZA’s desk.

Roll Call Vote:
Yeas – Young, Norton, Gess, Bruno, Tyo
Nays-

Motion Carried 5-0

There being no further business to discuss the meeting adjourned at 9:08 p.m.

Jack Norton

Kateri Vincent, Secretary