Meeting Minutes of
Board of Zoning Appeals
Held November 21, 2019

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

Excused:

Also Present: Eric Tuck-Macalla (Building Director)

Audience: Roger Jones and Family

*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 7:28 p.m.

Motion by Mr. Bruno, second by Mr. Gess to approve the minutes of the meeting held November 7, 2019, as prepared and distributed.

Motion passed 7-0.

Roger Jones
29089 Northfield Road

The applicant is requesting a variance per C.O. 1163.05-(Fence regulations) to keep the previously installed 6' fence. The variance would be for 18’ feet of fence.

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. Burke stated that based on looking at the drawing submitted with the application and from visiting the site he believed that the fence, although constructed without a permit, is in conformity with the ordinance. (C.O. 1163.05) There have been many discussions over the years in regard to this topic. Specifically, subsection C.O. 1163.05 (H)(3) states that the privacy screen shall not exceed 32’ in any direction. It seems to him that when the ordinance was approved by City Council many years ago, if there was intent that sections of privacy fence in various directions would have to be added up they would have not phrased it “in any direction” they would have phrased it “total in all directions.” Secondly, in subsection C.O. 1163.05 (H)(1) a privacy fence shall not exceed 10% of the perimeter of the property. In this case, the perimeter of the property is 503.2’. So 10% of the 503.2’ does not exceed that. This is a total of 48’.
Mr. Tuck-Macalla explained that Law Director Barbour added his opinion several months ago that the way that he interprets the law is 32’ period. The 10% rule was for a lot that was very small. He needs to have direction when assessing applications and the Law Director said 32’.

Mr. Burke stated that whatever the Board decided on in this meeting is not a reflection on Building Director Tuck-Macalla. He understands that he has to use that as guidance and he agreed that more guidance is needed. He is suggesting guidance different from the Law Director.

Mr. Tuck-Macalla stated that he understands, but we really have to be consistent.

Mr. Burke stated that consistency was actually the third point he was going to make. Over the years there have been discussions about the importance of precedence and being consistent on what the Board does. As long as he has been on the Board they have interpreted that section of the Code to mean that it is up to 32’ in any direction of the property as long as it did not exceed 10% of the perimeter. Consistency and precedence is important in Courts but also in Commissions such as theirs that rule on Laws. It is important because the citizens need to be able to rely upon past decisions so they have some idea of what they can expect in here. Secondly, it is a matter of fairness. For at least 25 years the Board has interpreted the Code this way and he does not feel it is an unreasonable interpretation.

Mr. Tuck-Macalla explained that this issue was to be codified and was part of the fence ordinance when it went to Council a few months back. Due to the fact they did not pass a new fence ordinance, this section of it did not get passed.

Mr. Burke stated that he knows that there was a lot of discussion a few months back when the fence ordinance was being looked at for any possible changes and City Council decided not to make a change in the end. He thinks that based on the need for consistency and fairness to people that have gone before and those who come in the future they must continue to base their decision on how they have in the past. Unless City Council determines to rewrite that portion of the Code, it would seem they should read the ordinance the same way they have been reading it over the years.

Mr. Tyo concurred. He explained that ever since Mr. Norton and he had been on the Board this is the way they have interpreted it. They have even said that at the end to get a little extra length they could taper down the fencing which would not count as being part of the 32’. They always interpreted that way regardless of the size of the lot. Theoretically they could make an octagon out of the fencing and keep on going.

Mr. Bruno agreed with Mr. Burke and Mr. Tyo.

Mr. Norton explained that when the BZA was formed, they were formed to make the last decisions but City Council can override them. If Council fails to override them it can go to Common Pleas Court. In this situation they have a different interpretation from the Law Director.
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and the Building Department is basing their decisions based on his interpretation, which is appropriate. Since in affect they are disagreeing with the Law Director, then the logical thing is to be consistent tonight and then the Law Director has the opportunity to go back to Council and explain how the BZA is interpreting the Code. He can ask Council to override BZA and tell them that they want a different interpretation.

Ms. Young stated that the wording is ambiguous.

Mr. Norton agreed and stated that it is a poorly written ordinance and could have been much clearer. Council may want to make clearer. Only Council can change what the BZA has been using as their precedent.

Mr. Bruno agreed it is ambiguous and the Board is being consistent for many years.

Ms. Young asked the applicant if they were aware of the ordinance.

Mr. Roger stated that he read it the same way the BZA is interpreting it and made sure he was under the 32’. He realizes he should have previously gotten a permit prior to installing the fence.

Mr. Norton explained that Mr. Barbour is fairly new as the Law Director but had been on Council in the past. When this subject came up, his feeling was 32’ meant 32’ feet total. Not in any direction. He is interpreting it different than the Board has been traditionally interpreting it and that is why it has come up as a discussion. Right now the Law Director’s interpretation is what the Building Department is relying on when somebody comes in with a set of plans. City Council is the only elected people and they can rule any way they want and override the BZA as a nonelected Board.

Mr. Tyo explained that as far as tonight goes, the Board can vote on it and it can be followed up with Council.

Mr. Burke suggested that if there seems to be a consensus within the Board then the applicant’s fence would be within the Code and a request for variance would be inappropriate and it would be more appropriate for it to be an appeal from a decision of the Building Department. They can do that with a Finding Of Fact followed by a resolution either granting or denying an appeal.

Mr. Norton asked if everybody was comfortable with that.

Motion by Mr. Burke, second by Mr. Tyo that the Board of Zoning Appeals find as a matter of fact that the fence that is currently constructed in the backyard of the property at 29089 Northfield Road and as shown in the drawing submitted by the applicant be found to be in conformity with section C.O. 1163.05 (H)(3) in that it does not exceed 32’ of privacy fence in any direction.

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

Motion Carried 7-0

Motion by Mr. Burke, second by Mr. Gess that based upon the Finding Of Fact with the concurrence with the applicant at 29089 Northfield Road move that the matter be styled not as a variance from C.O. 1163.05 but rather an appeal from the decision from the Building Department in that such appeal be granted so that a “yay” would be in favor, allowing the fence as it is built and granting the appeal.

Mr. Burke asked the applicant if the Board has concurrence with him to change this to an appeal from a decision of the Building Department instead of a variance.

Mr. Roger agreed.

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

Motion Carried 7-0

There being no further business to discuss the meeting adjourned at 7:42 p.m.

[Signature]
Jack Norton

[Signature]
Kateri Vincent, Secretary