Meeting Minutes of
Board of Zoning Appeals
Held October 17, 2019

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

Excused: Tyo and Gess

Also Present: Eric Tuck-Macalla (Building Director)

Audience: Ken Esry, Matt Klein, Mike Newman, Ken Esry, Michael Weber, Craig Catanzarite, Matt Yedlick

*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 7:32 p.m.

Motion by Mr. Bruno, second by Mr. Burke to approve the minutes of the meeting held October 3, 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 if 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.

Matt Klein
29010 Edgewood Road
(Tabled September 19, 2019)

The applicant is requesting a variance per C.O. 1121.42-(Special permit) to keep a large garden enclosure.

Mr. Norton discussed the second agenda item and explained that the Board has reviewed the new information that was gathered since the October 3, 2019 meeting. There was a question as to whether the structure was on the applicant’s property and the question has been resolved in the positive. The structure is on the property. There were also comments from the Law Director at the last meeting. He asked if there were any comments.

Mr. Burke asked if there was anyone present in regards to this agenda item.

Mr. Klein, the applicant, was present.

Mr. Norton explained that his only reluctance was the question as to where it is located at the last meeting but that has since been resolved. If this was a Jacuzzi tub in the middle of the enclosure
Board of Zoning Appeals
October 17, 2019

and someone wanted to enclose it, it would be allowed. The fact that there is garden activity inside the enclosure versus some other use still seems reasonable.

Mr. Klein stated that after the last meeting he has decided that he planned to take the garden down and move it 6’ further onto his property. He would also like to take the fencing that was permanently attached to it and make it removable so he could adhere with the Code. He is happy to move the garden enclosure but not at this time of year but will move it in the spring.

Mr. Burke clarified that he planned to still use the same materials.

Mr. Norton stated that then it would be in keeping with the garden enclosure Ordinance and so all it would require is patience on the City’s part.

Mr. Klein stated that he also planned to put a row of hedges in between the two properties.

Mr. Norton stated that he can’t think of a better solution.

Mr. Bruno agreed.

Mr. Burke asked if he any problem stating in the motion that the enclosure will be moved 6’ father to the west on his property.

Mr. Klein stated that he will move it a minimum of 6’.

Mr. Bruno stated that he would not want to provide for any year round screening either.

Mr. Klein stated that the posts stick up 6’.

Mr. Burke stated that a finding of fact might be needed as a temporary wildlife fence because the posts will still be up year round even when the fencing material is taken down.

Mr. Norton stated that it is definitely somewhat of a structure but still in the spirit of the Ordinance.

Mr. Burke proposed that before there is a motion, the Board first have a findings of fact based on the Law Directors September 26, 2019 memo to the Board of Zoning Appeals.

Motion of finding of fact by Mr. Burke, second by Mr. Bruno that the garden enclosure is not a temporary wildlife fence as that term is used in C.O. 1163.05, that it is entirely within the applicant’s property boundaries and that the size and construction does not impact negatively on the character of the neighborhood.

Roll Call Vote:
Yea’s – Young, Norton, Burke, Miller, Bruno
Nays–
Board of Zoning Appeals
October 17, 2019

Motion Carried 5-0

Motion by Mr. Burke, second by Mr. Bruno that the property at 29010 Edgewood Road be granted a special permit for a garden enclosure with the construction and size that is already on the property provided that the garden enclosure be moved away from the east lot line of the property at least 6’ to the west. At no time shall the enclosure be changed from its current design in the application unless the homeowner files an additional application. The applicant is required to maintain the garden enclosure subject to the City’s property maintenance inspections and a failure to maintain the garden enclosure will cause a loss of the special use permit being granted. The moving of the enclosure will occur on or before Memorial Day. The permit will terminate if the purpose of the enclosure was no longer for use of a garden and the permit does not live with the property. If the property is sold, the special permit use would also terminate.

Roll Call Vote:
Yea – Young, Norton, Burke, Miller, Bruno
Nays-

Motion Carried 5-0

Michael and Kate Newman
26804 Russell Road
(Tabled October 3, 2019)

The applicant is requesting 3 variances per C.O. 1153.04-(Minimum rear yards), 1149.05-(Attached garages) and 1359.01-(Installation requirements). The new rear yard will be 41’, a variance of 2.93’, the garage size will be 768 sf, a variance of 168 sf and a 6’ variance for additional condenser on the west side of the home near the existing condenser.

Mr. Norton discussed the third agenda item and explained that the Board has had the opportunity to visit the site and review the revised plans. He asked if there was discussion.

Mr. Norton clarified that based on the addition that will be added and the new house size, the 6’ garage variance would no longer be needed.

Mr. Tuck-Macalla stated that he believes a variance would be needed before and once the house is built and the square footage is increased, the garage size is no longer out of compliance.

Mr. Norton stated that because the building permit will be for the new design, the new size of the garage would be in compliance. The Board does not need to act on that request but the rear yard and side yard condenser do need to be acted on.

Mr. Norton asked if there was discussion.
Board of Zoning Appeals  
October 17, 2019

Mr. Norton stated that it appears that the spirit of the ordinance has been substantially achieved. The rear yard request of less than 3’ is a modest request. The condenser on the west side of the house would be fairly close to the front so a screen should be considered.

Mr. Esry stated that there is an existing condenser in place and they are proposing a second A/C condenser be placed to the north of the adjacent existing one.

Mr. Norton stated that it would be important for the two condensers to be screened from the neighboring house and the street.

Mr. Norton asked if there was discussion.

Mr. Miller asked what the decibel rating was on the new condenser.

Mr. Esry stated that it has not been selected yet because the addition of the house has not been designed but they are happy to comply within the requirements.

Mr. Miller asked if they knew if the existing unit had a sound blanket.

Mr. Esry was not sure but he does know that the existing unit was installed in 2001 and they were not sure if a permit was pulled for that unit.

Mr. Tuck-Macalla stated that the Building Department does have a permit for the existing unit.

Mr. Miller asked if there was a variance granted for the current unit.

Mr. Tuck-Macalla stated that there is no documentation that there was a variance but they did have a permit. The next door neighbor’s condenser is right next to the applicant’s as well.

Ms. Young discussed the rear yard variance request and the bump out on the eastern end of the garage.

Mr. Esry stated that the garage bump out is 2’ and that distance to the property line is reflected on the bottom string of the dimensions at 39.6’.

Ms. Young stated that the bump out would affect the variance request.

Mr. Norton stated that they are at a 4.93’ so setting it at 5’, it would be covered.

Mr. Esry stated that they are trying to provide for some visual interest of the garage from the street and to create an outdoor space for a patio as well.

Mr. Bruno stated that the revised plans were much better than the last presentation and he thanked the applicant.

Motion by Mr. Bruno, second by Mr. Burke to grant the property at 26804 Russell Road a variance per C.O. 1153.04 a 5’ variance to the minimum rear yard setback requirement and also
move to grant a variance per C.O. 1359.01 for an additional condenser on the west side of the home near the exiting condenser per the drawings as prepared, submitted and revised on October 11, 2019 provided that there is year round screen, fencing or vegetation.

Roll Call Vote:
Yeas – Young, Norton, Burke, Miller, Bruno
Nays-
Motion Carried 5-0

Leon Sampat
On behalf of Barjesh Bath-Walters
25248 Lake Road

The applicant is requesting 2 variances per C.O. 1359.01-(Installation requirements) and C.O. 1370.05-(Residential use location requirements) to install an Air Conditioning Condenser within 10’ of the side lot line, 6’ from the lot line and a back-up generator 8’7” from the side lot line.

Mr. Norton discussed the fourth agenda item.

Mr. Bruno stated that he was happy with the decibel rating on the unit.

Mr. Tuck-Macalla stated that he got a phone call from the neighbor saying that they did not have issue with the request.

Mr. Norton stated that he feels it is a fairly normal requirement from the neighboring house and from the street with year round screening of some type.

Mr. Bruno agreed and clarified that the generator not be tested more than one time a week during the hours of 9:00 a.m.-5:00 a.m. aligning with the Ordinance.

Mr. Norton asked if there was further discussion or a motion.

Motion by Mr. Bruno, second by Mr. Burke to grant the property at 25248 Lake Road a variance per C.O. 1359.01 for the installation of an air conditioning condenser installed 6’ from the side lot line and a variance per C.O. 1370.05 for the installation and placement of a backup generator 8.7’ from the side lot line provided that both units be given year round screening from view from the street and the neighbor to the east and that the generator be tested per the Ordinance.

Roll Call Vote:
Yeas – Young, Norton, Burke, Miller, Bruno
Nays-
Motion Carried 5-0

Craig Catanzarite
465 Juneway Drive

The applicant is requesting a variance per C.O. 1359.01-(Installation requirements) to install an Air Conditioning Condenser
within 10' of the side lot line, the variance will be 6'.

Mr. Norton discussed the fifth agenda item and stated for the record that there is a letter from the adjoining property objecting to the location.

Mr. Norton clarified that the neighboring properties’ air conditioning unit is around behind that side of the house into the backyard. He asked if there is a reason that the contractor felt that he could not move it back a short distance and around the corner.

Mr. Catanzarite stated that the contractor put the unit in place there without fully understanding what the requirements were in the City. He explained that it seems quiet and if it is moved to the back, he is not sure how much the neighbor’s will gain. If it is an issue, he understands.

Mr. Norton stated that one of the difficulties he has with it, is setting a precedent and the contractor was taking a short cut at the applicant’s expense. They should know the rules when they are working in Bay Village.

Mr. Catanzarite explained that he thinks the contractor was not aware and it may have been his first time working within the City but he is right, he should have known.

Mr. Miller clarified that the basement is finished. He asked what proximity is the furnace or the A/C unit on the interior.

Mr. Catanzarite stated that it is actually on the other side. Based on research, the manufacturer stated that it would be okay to trench and do a water proof conduit for the refrigerant line and power line.

Mr. Tuck-Macalla stated that it is possible.

Mr. Miller clarified that they would move the unit to the backyard.

Mr. Catanzarite asked if the unit was put in the back on the corner, would it now be considered the rear lot.

Mr. Tuck-Macalla stated that it still needs to be 10’ from the side yard.

Mr. Catanzarite stated that he believes it is 8’.

Mr. Burke asked if the application should be tabled.

Mr. Norton agreed and if it does not come back on the agenda because it is moved, then the Building Department would follow up on the issue.

Mr. Miller discussed the proposed revised placement of the unit with the applicant’s neighbors. He asked if it would be okay if the unit were moved to the rear yard and the most forward edge
was aligned to the edge of the side yard of the home. He explained that the unit will move around 18’ back away from the home.

The neighbor stated that their back patio is located near there and as long as it was setback enough that he had some shielding they would be okay with it.

Mr. Catanzarite stated that it would be great because there is the fire place that bumps out. So if it has to be within the 10’, it would probably have to go in front of the fireplace which will then push it more out into the yard. He stated that it would be great if he could have it placed right around the corner because there is an open spot.

Mr. Bruno stated that he thought it was a reasonable solution.

The neighbor clarified it will be moved from the view from their patio and will be well shielded.

Mr. Burke suggested the application be tabled in case any further discussion is needed and before the unit is moved, the plans should be submitted to the Building Department for review.

Mr. Tuck-Macalla stated that he would be happy to look over the plans with Mr. Catanzarite prior to the installation of the unit.

Mr. Norton suggested that they consider granting a variance to keep it in line with the house, knowing that it is going to still be a little less than the 10’. If it is kept, no further than the side line of the house, they do not have to come back. If it is fulfilled, then the Building Department does not need to send it back to the Board.

Motion by Mr. Bruno, second by Mr. Burke to grant the property at 465 Juneway Drive a variance per C.O. 1359.01 for the installation of air condenser unit within the 10’ required side yard lot with a setback of 6’ so that the placement of the condenser would be further back into the rear of the property consistent with the line of sight with the photographs submitted with the application. Also provided that this condensing unit be screened with year round fencing or vegetation.

Mr. Catanzarite agreed and stated there is already fencing now.

Mr. Burke explained that the fence could be removed at any time so the Board would still require the motion to state that year round screening is necessary.

Roll Call Vote:
Yeas – Young, Norton, Burke, Miller, Bruno
Nays-
Motion Carried 5-0

Stephen Shill
On behalf of Tammy Rae Morikis
24300 Lake Road

The applicant is requesting a variance per C.O. 1121.42-(Special permit) to construct an address marker.
Mr. Norton discussed the sixth agenda item.

Mr. Norton stated that the only problem he found is that the Board does not know what they are dealing with exactly from both the location on the property and the size. There is not a plot plan.

The builder explained that Mr. Schill was not able to make it and the homeowners were of town so he was sent to represent for the applicant and answer any questions.

Mr. Burke asked if Mr. Tuck-Macalla was given any measurements or a plot plan were sent in to the Building Department.

Mr. Tuck-Macalla stated that he had called Mr. Schill to ask for them but did not receive them with the plans.

Mr. Burke stated that he could not make a determination without receiving both the measurements and the plot plan.

Mr. Norton explained that one of the considerations is the location compared to the intersection of the driveway and sidewalk. They want to keep it so there is a 10’ distance so pedestrians can be visible. The physical size is needed as well and without them, the Board is unable to make a motion.

The builder stated that he would only be giving an educated guess. He explained that the two posts flanking the address are about the same size of the posts that are flanking the current gates and the middle portion is about 5-6’.

Mr. Norton suggested the item be tabled until more information is submitted so it can be used as a reference for granting a variance.

The builder stated that he is okay with whatever the Board suggests and he had hoped that information had been submitted.

Mr. Norton asked if there was further discussion or a motion.

Motion by Mr. Burke, second by Mr. Bruno to table the application at 24300 Lake Road.

Roll Call Vote:
Yeas – Young, Norton, Burke, Miller, Bruno
Nays–
Motion Carried 5-0

Mr. Norton discussed the analysis given to the Board by Mr. Tuck-Macalla on the 31666 Lake Road agenda item from the previous meeting. He complimented and thanked Mr. Tuck-Macalla for going above and beyond in his analysis.
Board of Zoning Appeals
October 17, 2019

Mr. Burke asked what the status of the concrete front yard on Cliff.

Mr. Tuck-Macalla stated that the Building Department hasn’t done anything and he is not sure what they can do.

Mr. Burke stated that maybe the Law Director needs to look into it.

Mr. Tuck-Macalla stated that from his understanding, once it is permanent and it hasn’t been cited by the City, the project is permitted by default. From his knowledge a Building Inspector said that the homeowner could do that so it makes it so the owner can go back and use it in their argument.

Mr. Bruno explained that he heard that the Building Inspector supposedly had told them the day before that they were to stop the pouring of the cement.

Mr. Norton agreed with Mr. Tuck-Macalla and said that it is permission by omission. They had approved the pre pour and forms and then Bob Lyons caught it and said it could not be done like that but at that point in time the wheels were in motion. They should have still stopped but it is a gray area.

Mr. Tuck-Macalla stated that there is also some questions as to where it sits within the Code. It is in the Parking Code in the 300’s. He does not enforce any part of the 500’s where speeding is discussed, etc. That not being in his section of the Building Code, throws a shadow on the discussion. It would really have had to go to the Police and they would have had to tell them they could not do that.

Mr. Bruno explained that it was brought up in quorum and that was one of the things they are hoping to get cleaned up at some point.

Mr. Tuck-Macalla explained that there is a lot that needs to be cleaned up in the Code and he has been keeping a list to get things changed.

Mr. Bruno stated for the record that the person who poured the concrete to the fire hydrant had to have known better.

There being no further business to discuss the meeting adjourned at 8:16 p.m.

Jack Norton
Kateri Vincent, Secretary