Meeting Minutes of
Board of Zoning Appeals
Held October 3, 2019

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

Excused: Tyo and Young

Also Present: Eric Tuck-Macalla (Building Director) and Mark Barbour (Law Director)

Audience: Ken Esry, Anthony Hodge, Bridget Hoones, Sue Andregg, Matt Klein, Kate and Mike Newman, Ed Yenni and Dan Bennett

*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. Miller to approve the minutes of the meeting held September 19, 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 application and have had a chance to visit the site. He explained that the Law Director has had a chance to review the application and has written a memo on behalf of the Law Department.

Mr. Burke stated that he'd like to hear from the neighbors who were in attendance in regards to this agenda item.

Ms. Andregg, next door neighbor, discussed her issue with the large garden enclosure. She explained that she was under the assumption Mr. Klein had gotten a building permit prior to putting up the enclosure and his shed and he had not. She stated that it is not 3' from her property line. Mr. Lyons was out on the property and agreed that there may be a problem in relation to the
property line. She shared maps and photos with the Board and stated that she would like to the encroachment looked into further on her behalf.

Ms. Andregg stated that she has heard the property lines are marked by the telephone poles running through the yards. She is not sure where her pins are located.

Mr. Norton clarified her difficulty with the garden enclosure being too close to the property line and the structure itself.

Mr. Miller discussed the hand drawn map of the applicant’s backyard and it showing that the garden structure is 6’ from the property line.

Mr. Norton explained that if it were an accessory structure, the minimum is 3’. He asked Mr. Klein if he felt it was too close to the property line.

Mr. Klein stated that he based his placement off the telephone/property lines.

Mr. Norton stated that the Board did not have any other information as to where the property line is in relationship to the structure other than the photo that was taken by the neighbor.

Ms. Andregg discussed that when a new telephone was replaced in her yard it was moved over about a foot and a half closer to her property line and it does not line up with the pole in her backyard.

Mr. Norton stated that without a survey they do not have any other way to be certain on the property lines.

Mr. Tuck-Macalla stated that the garden structure is not in the Code and that is why you get a special permit. The 3’ rule really doesn’t apply. He sees the garden enclosure as more of a fence than a shed and a fence can be right up to the property. From his opinion, if the Board is going to issue a permit, they will issue the parameters for the permit and the structure can be 3’, 6’ or right up to the property line. Whatever they choose to permit.

Mr. Norton discussed that if this was thought of as a privacy screen, it would fall under the fence ordinance and could be built right up to the property line. He questioned if the garden enclosure was more of a privacy screen.

Mr. Bruno agreed that some of the structure looked like fencing but that there was quite a bit of wood and structure to the compartment area. He can see this being more than fencing and more of an accessory structure in the yard. He was not comfortable with the Board voting without knowing the exact property lines.

Mr. Burke stated that it looked like more of a gazebo.
Mr. Norton asked if the corner posts were sunk into the ground with concrete or if it could easily be moved.

Mr. Klein stated that they are not in concrete but stuck in the ground and he would have to take apart the entire structure in order to move it.

Mr. Gess clarified that the initial permit was for the shed on the property.

Mr. Tuck-Macalla stated that there was not a permit for the shed or the garden enclosure. They were alerted to them after the fact.

Mr. Gess discussed the proximity of the shed to the property line and if it being in line with the garden enclosure. He wondered if they were the same distance from the property line so it could help with knowing the distance to the property line.

Mr. Bruno wondered if Bob Lyons confirmed the measurements on the hand drawn map.

Mr. Tuck-Macalla said no, not that he was aware of. He stated that he has been out to the property and he couldn’t tell the Board where the property line is. He only knows that it appears that the garden enclosure is east of line of the shed.

Mr. Bruno stated that it is reasonable to request a plot survey of the property.

Mr. Norton agreed and stated that the Board has no basis to judge the location.

Ms. Hoones spoke as a neighbor and discussed the idyllic area and uniqueness of the properties in the area. She discussed the fact that a permit was not pulled and the neighbors where not notified prior. Had she been notified she could have spoken up before it was constructed. She does not feel it is right to build without a permit and after the fact, it has to be rebuked. She discussed the large shed on Mr. Klein’s property and in her opinion, the eye sore of a garden enclosure.

Mr. Norton clarified the size of the shed being within Code regulations. (10’x12’ and less than 12’ tall)

Mr. Klein stated that he built the shed without a permit because there is nothing in the Code discussing garden enclosures, so he assumed it was allowable.

Mr. Norton stated that it would be a special permit request due to that.

Mr. Norton asked if there was further discussion and if the item should be tabled in order to gather more information.

Mr. Gess agreed it should be tabled to get a better understanding of the property line and decide how it will be categorized. (accessory structure or privacy screen)
Mr. Bruno agreed.

**Motion** by Mr. Bruno, **second** by Mr. Gess to table the application at the property at 29010 Edgewood Road until such time that the Board has had more information clarifying the property line and the position of the structure on the property.

**Roll Call Vote:**
*Yeas* – Gess, Norton, Burke, Miller, Bruno
*Nays-*

**Motion Carried 5-0**

Dan Bennett  
31666 Lake Road  
(Tabled September 19, 2019)  
The applicant is requesting a variance per C.O. 1153.04-(Minimum rear yards) to encroach upon the rear yard set-back requirement of 23.75’ by 23.75’.

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

Mr. Bennett, from Bennett Builders and Remodelers, spoke on behalf of his client, Ed Yenni. He briefly discussed the variance request and the uniqueness of the property within the City. He explained that they have shifted the house south toward Lake Road by 24” to accommodate the 24” overhang and steps. The 15” cantilever is being eliminated from the proposal. The new variance request is for 21.75’. He stated that the homeowner had a few questions for the Board.

Mr. Yenni discussed the uniqueness of the property and how the view is everything. Based on what he has researched and sees in the neighborhood, there are 18” overhangs of other neighboring structures over the property line into the park. He discussed his desire to preserve the proposed cantilever and be consistent with an 18” overhang that the neighboring properties have to preserve the original design.

Mr. Norton clarified that there does not appear to be any record of the bi-laws in regard to the common property in that area.

Mr. Norton stated that whatever the bi-laws were, are the rules for that land. The Board cannot make changes because it is part of the deed.

Mr. Yenni stated that the question is not where the foundation is but is how much overhang is allowed. He discussed the neighbor building to the east of his property appears to have the 18” overhang.

Mr. Bennett discussed his concerns with the house to the east. It was constructed in 2001. Based on aerial shots, it is clear that the overhang goes over the rear property line. The neighboring
house to the west is currently being renovated and based on stakes, Mr. Yenni is concerned that they also have an 18” overhang over the property.

Mr. Norton asked if the house to the west was given a variance and if the survey stated if it was right on the line or not.

Mr. Tuck-Macalla stated that it was given a variance for the side yard. No rear yard variance was given. It was given to right up to the line and if any part of the house hangs over, the Building Department can make them cut it off.

Mr. Miller asked if the application was for a renovation or reconstruction. He discussed that the Board has been duped into approving for renovations when it turns out to be a reconstruction.

Mr. Tuck-Macalla stated that it is considered a renovation because they left most of the foundation.

Mr. Yenni stated that no walls were left up.

Mr. Miller asked that Mr. Tuck-Macalla look into it further.

Mr. Norton discussed similar situations coming up in the past and the Board throwing out the problem of not having a backyard. He stated that the Board must be consistent with what has happened in the past.

Mr. Burke asked who has the rights in this situation/who represents the rights of the park. He does not think the Board has the right to grant a property owner the ability to encroach over the property line.

Mr. Barbour discussed that even if the Board were to grant a variance to build over the property line, it still would not eliminate a cause of action by the other property owner if they decided there was an encroachment on their property.

Mr. Gess asked if the City could be held culpable because the Board affirmatively acknowledged someone building over a property.

Mr. Barbour stated that it is difficult to successfully sue a municipality related to that cause of action.

Mr. Yenni stated that in his opinion, maybe the other homeowners were more concerned about making sure the foundation was within the property line/consistency within the neighborhood and did not worry so much about the eaves hanging over.

Mr. Norton discussed 24” encroachments on side yards.
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Mr. Tuck-Macalla agreed but stated that the issue in question is discussing the backyard which is different.

Mr. Bennett discussed how they had looked into it further and were not able to find anything in writing in the Code.

Mr. Tuck-Macalla stated that on a rear yard you can have a dedicated ¼ of it as the rear yard. There would not be a reason to have it stipulated.

Mr. Norton stated that he thinks the rear yard and the front yard setback is the same as long as it is not over the established 24’.

Mr. Tuck-Macalla stated that at no point can the 24” cross the property line.

Mr. Barbour discussed the current unique issues with Eagle Cliff and other similar circumstances.

Mr. Yenni discussed his main concern of not being able to find anything in writing and they were just trying to get what they are asking for which is consistent with what has been done prior.

Mr. Norton discussed the applicant’s options moving forward.

Mr. Burke discussed the homeowners getting together and filing a Quiet Title Action to allow each owner to own the property behind their property.

Mr. Bruno asked who is paying the taxes on the property behind the applicant’s and neighboring properties in that area.

Mr. Yenni was not sure.

Mr. Norton discussed other requests that were previously granted by the Board where they were allowed to build right up to the property line without ever thinking about overhangs and steps going over the property line. If that is the case, is it reasonable for the Board to be consistent.

Mr. Miller stated that they could get the addresses for all the neighboring properties that they think are over the line and work with the Building Department to go through the files. If an approved variance was found, they could have a stronger argument for the Board of showing precedent.

Mr. Bennett reiterated that they found nothing written in the Code that states that issue specifically. (rear overhangs) He discussed a neighboring home that was built in 2001 in which the foundation was built up to the property line.

Mr. Tuck-Macalla explained that you cannot have your footer across the property. Your property line goes all the way through the earth and up into the sky. You cannot be across it, including
your overhangs. There would have to be some kind of consideration for whoever owns the property behind the applicant’s house.

Mr. Bruno asked Law Director Barbour to look into the common record/tax record of who is actually responsible and who is paying the taxes on that land.

Mr. Barbour discussed this similar issue previously coming up in that area with a similar context. He stated that a portion of the Eagle Cliff property just got a permanent parcel number in 2018 which created some issues with other people.

Mr. Bruno stated that it would be nice for the Board to have that information because it is tiresome to continue to hear these types of issues and not have all the information.

Mr. Barbour stated from his understanding by deed, certain properties have undivided interest in Eagle Cliff. There is a collection of people that own it but the issue for this applicant is there apparently no one in charge. The fact that we don’t know who exactly owns it, does not mean you can ignore their ownership rights.

Mr. Gess wondered if the Board was even allowed to grant a variance to an applicant to build over their property line even if the neighbor agreed to it.

Mr. Barbour discussed the only way it would be allowed is if the other property owner made a written agreement between the neighboring property owners permitting it into perpetuity or an easement.

Mr. Norton stated that the Board could vote on the initial variance request (21.75’) and if any other information was found about variances granted to similar properties on the lakeshore, they could bring that to the Board. The consistency of the properties can be discussed further.

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

Mr. Burke clarified that the applicant has revised his request from 23.75’ to 21.75’, the cantilever has been eliminated and no part of the structure will be over the property line.

**Motion** by Mr. Burke, **second** by Mr. Bruno to grant the property at 31666 Lake Road a variance per C.O. 1153.04 of 21.75’ from the minimum rear yard requirement for the construction of the home according to the plans as submitted and revised with no part of the structure will be over the rear lot line.

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

Avon Home Services

The applicant is requesting a variance per
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26813 Russell Road  
C.O. 1359.01-(Installation requirements) to install an Air Conditioning Condenser within 10’ of the side lot line. The variance request is 8’.

Mr. Norton discussed the fourth agenda item.

Mr. Miller clarified that the new unit is replacing the old unit. He asked how long the old unit was in place at that location.

Ms. Kandisky stated that they replaced the old unit with a new one that had been there for around 25 years. Her understanding is that there was no evidence of permits being pulled for the old unit.

Mr. Bruno clarified the decibel rating. (74)

Mr. Norton discussed that the unit is screened from the street with vegetation.

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

Motion by Mr. Bruno, second by Mr. Burke to grant the property at 26813 Russell Road a variance per C.O. 1359.01 for the installation of an air conditioning condenser that has already been installed within the 10’ side yard setback, the variance is 8’ provided that the condenser is permanently screened with vegetation or decorative fencing.

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

Anthony Hodge  
506 Fordham Parkway  
The applicant is requesting a variance per C.O. 1153.04-(Minimum rear yards) to encroach upon the rear yard set-back, which is 34.25’ by 3.25’ to build an attached garage addition.

Mr. Norton discussed the fifth agenda item.

Mr. Hodge gave a brief description of the variance request of putting a double garage on his property that extends out 3.25’. He has spoken to his neighbors and they were fine with his proposal.

Mr. Norton stated that it is a fairly minor percentage increase request.

Mr. Hodge stated that it is a corner lot.
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Mr. Norton asked if there was further discussion or a motion.

**Motion** by Mr. Burke, **second** by Mr. Bruno to grant the property at 506 Fordham Parkway a variance per C.O. 1153.04 of 3.25’ from the rear yard setback requirement for the construction of a garage in accordance with the plans submitted by the applicant.

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

Jeff Foster, Payto Architects  
25415 Lake Road  

The applicant is requesting a variance per C.O. 1179.02-(Table of basic design elements) to install new signage with a total sign area of 62 square feet, 30 square feet is allowed by Code.

Mr. Norton discussed the sixth agenda item and stated that this request was brought to the Planning Commission the night before.

Mr. Tuck-Macalla stated that the Planning Commission did not refer the matter to the Board of Zoning Appeals. The have tabled the item to get further information. It is a new item in front of the BZA. The Planning Commission is looking at a completely different set of circumstances and designating it as a special designated area. The BZA is looking at it in regards to the size.

Mr. Barbour stated that the Board is looking at it under C.O. 1179.07. The planning Commission can designate an area of special control and intact sign regulations specific to that area. The applicant made concurrent application with the BZA for a variance for the size of the sign. They are on parallel tracks. If the BZA was to grant the variance, the application to the Planning Commission would withdraw. He explained that the area of special control is not used very often and there is no record of it being done in the past. The City wasn’t sure the best way for the applicant to go forward with their request so it was recommended that they apply for both and see what may work for their unique circumstance.

Mr. Burke asked if there was any other research on the other churches or other commercial signs within the City in regards to monument signs.

Mr. Tuck-Macalla stated that he specifically looked at church signs in the City and the City Hall sign. He explained that there was a permit for the City Hall sign for the illuminated sign. (28 square feet) St. Raphael didn’t appear to have a sign permit. The sign was mentioned in the remodel. (sign total with masonry and electronics is 63.8 square feet and 33.25’ for just the illuminated portion) Bay Methodist (46.15’ total square footage) there was a permit for that
amount but no request for a variance. Saint Barnabas did not have any permits for the sign that he could find. (around 48 square feet)

Mr. Burke mentioned that the St. Raphael sign was a replacement of a previous sign.

Mr. Gess stated that the Bay Methodist sign was a direct replacement as well.

Mr. Tuck-Macalla stated that the City’s Code does not explain how to measure a sign. He measured the signs as a whole and just the illuminated cabinets to get the square footage. He measured Bay Presbyterian at 50 square feet with the cabinet and the signage.

Mr. Norton clarified that the ordinance goes back to 1975 which was long before the electronic signs were available.

Mr. Norton stated that as far as churches are concerned and in order to be consistent, this rule was never applied. He stated that it was more intended for a commercial application. The BZA does not want to stand in the way of allowing one church to do what several others have already done. It is safe for the BZA to ignore the 30 square foot ordinance when it comes to the churches.

Mr. Bruno asked if Mr. Tuck-Macalla had measured the schools and Cahoon signage and stated that this application is very similar in request.

Mr. Norton stated had this request been all electronic then it would be a little different but all the signs around town seem to have a very similar package of the electronics.

Mr. Norton stated that the Planning Commission could still have their say but the BZA does not want to stand in the way.

Mr. Barbour explained that the sign would have to go to the Architectural Board of Review if the variance is granted. He shared that the Planning Commission would not be disappointed if the BZA granted a variance.

Mr. Gess clarified that the illumination, brightness and graphics at night is part of the Architectural Board of Review and not the Board of Zoning Appeals.

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

**Motion** by Mr. Burke, **second** by Mr. Bruno to grant the property at 25415 Lake Road a variance per C.O. 1179.02 for the installation of new signage of a total of 62 square feet provided that the applicant conform to any other requirements of other Boards or Commissions as required per the Code.

**Roll Call Vote:**
**Yea**s – Gess, Norton, Burke, Miller, Bruno
**Nay**s-
Motion Carried 5-0

Michael and Kate Newman
26804 Russell Road

The applicant is requesting 2 variances per C.O. 1153.04-(Minimum rear yards) and 1149.05-(Attached garages) to encroach upon the rear yard set-back, which is 43.93’ by 18.93’ (43% encroachment) and to increase the size of the garage from the 600 square feet permitted now to 1,224 square feet. (52% increase)

Mr. Norton discussed the seventh agenda item.

Mr. Bruno stated that it is a corner lot and the percentage request is quite significant.

Mr. Burke agreed and explained that the Board of Zoning Appeals are not permitted to drastically change the Code they are only to tweak around the edges. He is concerned about setting the wrong precedent with the significant variance request.

Mr. Norton discussed how it appears to be an equivalent to a four car garage. (a total of 45’ of garage)

Mr. Esry, the designer, explained that it is proposed as a three car garage in order to fulfill the practical needs for the family.

Mr. Norton explained his difficulty with the request and feels they are over building on the lot. The percentage is very high and the Board is used to approving 5-15% increases but the proposed is much greater. There is nothing unique to this property that isn’t represented in hundreds of similar properties throughout the City.

Mr. Esry clarified his read of the Zoning Code that a house size of 2,000-3,900 square feet would allow for a 900 square foot garage.

Mr. Norton stated that they would not need a variance if they had a 900 square foot garage as opposed to the proposed 1,224 square feet.

Mr. Esry asked if they would still be encroaching on the rear yard setback and if that would be acceptable to the Board.

Mr. Burke asked what the square footage of the house is.

Mr. Esry stated that the square feet of the house without the garage is between 2,000-3,900 square feet.

Mr. Miller stated that it will be a 3.93’ of an encroachment of the rear yard with the elimination of the 15’ bay.
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Mr. Norton stated that they would be close to being incompliance and more of the parameters that the Board is used to working with.

Mr. Burke suggested tabling the application so the plans could be revised and resubmitted for the October 17, 2019 BZA meeting.

Mr. Newman stated that he is not married to a three car garage.

Ms. Newman stated that when they went to apply for the loan they were told that in order to get approval, they recommended they add a three car garage. It wasn’t something they were specifically seeking out. Whatever the Board recommends is what they will go with in regards to revisions.

Mr. Norton stated that without a formal request, the Board can’t say but the Board would probably feel favorable to a request that stays within the small percentage range.

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

Motion by Mr. Burke, second by Mr. Bruno to grant the property at 26804 Russell Road be tabled until the October 17, 2019 meeting of the Board of Zoning Appeals pending revisions to the plans.

Roll Call Vote:
Yea — Gess, Norton, Burke, Miller, Bruno
Nay—
Motion Carried 5-0

There being no further business to discuss the meeting adjourned at 8:57 p.m.

Jack Norton

Kateri Vincent, Secretary