

Meeting Minutes of
Board of Zoning Appeals
Held February 20, 2020

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

Excused: Bruno

Also Present: Eric Tuck-Macalla (Building Director)

Audience: Ben Gertz

**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 7:33 p.m.

Motion by Mr. Burke, **second** by Mr. Miller to approve the minutes of the meeting held February 6, 2020 as prepared and distributed.

Motion passed 6-0.

Mr. Norton explained that the Board of Zoning appeals is constituted of seven members and only six 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.

BDG Management
Alison Sammon
28008 Lincoln Road

The applicant is requesting two variances per C.O. 1153.03-(minimum side yards) and 1359.01-(air conditioning equipment, installation requirements) to encroach upon the required 20' side yard setback 1.5' in order to construct an addition and to relocate the AC condenser within 5' of the property line.

Mr. Norton discussed the second agenda item and explained that the Board has had an opportunity visit the site and review the application.

Mr. Norton noted the proposed addition will not increase any further on the side yard than the existing house. He was not sure if the existing house had had a variance or if it was grandfathered in. He suspected that it was grandfathered in because at one point 5' was the minimum. In general, the Board has felt that an addition that does not decrease the area of the

side yard has been allowed to be granted. He noted several examples along Lincoln Road where air conditioners were in the side yard. He assumed that the air conditioning situation was similar to what this request was.

Mr. Norton asked if there was discussion.

Mr. Miller asked if the drawing showing a 5' set-back was in line with the east face of the home.

Mr. Gertz, BDG Management representative for the homeowner, stated that no part of the structure for the air conditioner will be beyond the corner of the east side of the home. It will all be within the backyard.

Mr. Miller stated that the decibel rating of the unit is set at 74. A moderate rating.

Mr. Norton stated that because of the location, he suggested the Board include the screening requirement that has been required in the past.

Mr. Burke asked if Mr. Miller felt that a sound blanket should be required at the 74 decibel rating.

Mr. Miller felt it was pretty marginal. At a previous meeting there was a unit at a 76-78 decibel rating and the Board felt one should be added.

Mr. Norton explained to the applicant the sound blanket and year round screening requirement that is sometimes required by the Board.

Mr. Miller explained that a sound blanket is applied to the motor of the condenser.

Mr. Miller stated that it is a fairly inexpensive accessory and some of the units come with it automatically.

Mr. Tyo explained that the screening can be a fence or year round vegetation.

Motion by Mr. Tyo, **second** by Mr. Burke that the applicant at 28008 Lincoln Road be granted two variances from the requirements of C.O. 1153.03 and 1359.01 to encroach upon the required 20' side yard 1.5' in order to construct an addition to relocate the air conditioner within 5' of the property line with the understanding that there will be a sound blanket installed on the motor and year round screening so it cannot be seen from the street per the application as prepared and submitted.

Roll Call Vote:

Yeas – Norton, Burke, Young, Tyo, Miller, Gess

Nays-

Motion Passed-6-0

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Jeffery Barker
27238 Lake Road

The applicant is requesting a variance per C.O. 1163.05-(Fence Regulations) to install a 4' fence where a 3'4" fence is allowed.

Mr. Norton discussed the third agenda item and explained that the Board has had an opportunity visit the site and review the application.

Mr. Barker reiterated the variance request and explained that his hardship is a security issue. Right now the request is for the one side and he is working with his other neighbor to do the other side. He explained that his wife is a Federal Judge in the northern district of Ohio. She is protected by U.S. Marshals. They come in every year and they suggest changes in the security within the home and monitoring. The U.S. Marshals want fences to put down both sides of the property. They would like to have a 6' fence but he is a reasonable person and is only requesting 4'. He explained that the 1' does make a difference.

Mr. Barker presented a list of 8 homes near his property that have fences 4' or higher coming up the side and/or front of the homes.

Mr. Burke asked Mr. Tuck-Macalla, Building Director, if the Board has granted variances for 4' side yard fences.

Mr. Tuck-Macalla was not aware of any. This is the first time a request like this has been brought to the BZA this year.

Mr. Burke clarified that the 8 homes Mr. Barker made a list of had fences 4' or taller.

Mr. Barker gave a list of the addresses to the Board.

Mr. Barker explained that he is only asking for the east side of the yard. Some of the properties listed have fences that go across the front of the property, parallel with the street. He explained that there is a 5' fence on a home for sale across from Bay Presbyterian Church across the front. Most of the homes listed had 4' fences going down along the sides. He explained that he has nice columns and thick boxwood hedges.

Ms. Young asked if this was required by the U.S. Marshals.

Mr. Barker explained that when the U.S. Marshals come out to their home they look for weaknesses within the homes' protection. It is monitored by the U.S. Marshals and the Secret Service. They give you a list of things that could be done to better protect the homeowners. They suggested putting up a fence in order to do that.

Mr. Norton stated that he does not see a 4' fence as any form of security. A person can get over a 4' fence just as easy as a 3'4" fence. He is not sure that it would really add much security.

Mr. Norton explained that the variance would stay with the property regardless of who is using the property in the future. He discussed that the Board gets these kinds of requests and they have to be very careful about setting a precedent. Before a decision is made, he would like to have the Building Department take a look at the 8 homes on the list presented by Mr. Barker to see if the fences are taller than what is allowed and if variances were granted. It would not be fair to Mr. Barker not to grant the variance if they have been granted in the past. He does not recall ever doing that since he has been on the Board but that is not to say that it has not been granted in the past.

Mr. Barker explained that he had called the Building Department about one of the addresses on the list. One of the fences was put in at 4' and was put in for security purposes for another high profile person. There was no permit pulled.

Mr. Barker stated that he understood Mr. Norton's point but 1' is 1'. This will just keep honest people honest but it would be a lot better to have the extra 8". It gives the illusion of security.

Mr. Burke explained that normally when a variance is granted it has something to do with the property itself that makes that property unique. It is just tweaking around the edges. The BZA cannot legislate. If the Board starts to grant major variances, they set a precedent. That is why the Board is interested in the properties that were pointed out by Mr. Barker.

Mr. Barker understood and stated that one of them is a 5' fence. He said if the list he presented are in fact correct, he should not be denied a variance.

Mr. Burke explained that even if similar variances in the past were granted, it is not a guarantee but it is certainly something that would suggest a favorable outcome.

Mr. Tyo discussed from another point of view. If the Board has not granted all of the variances on the list then Mr. Barker is standing out as somebody who did come up before the Board when the others put them in without obtaining a variance. He feels in this case, this is something more needed as opposed to wanted. As far as precedent, he asked how many other Federal Judges come before the Board asking for something this.

Mr. Barker explained that the Federal Marshals make recommendations when they come to the property once a year and do an inspection.

Mr. Miller asked to have the officer/agent in charge draft a support letter.

Mr. Barker stated that he could probably have them do that but he does not want it read in the newspaper or anything. It brings more attention to the situation. He would like to keep it as low as can be.

Mr. Barker stated that when he did the docks on his property he worked with the Department of Natural Resources and engineers. They had a lot of regulations of what they could and could not do. Some of his neighbors were in violation of the regulations. He asked what they do in a situation like that and they answered that they do not do anything.

Mr. Gess stated that the Board needs to be substantially respectful of what the Board is supposed to evaluate based on the uniqueness of the property causing a hardship. He explained that not long ago there was a (group home) property on Bradley Road that had a unique housing requirement not a unique property. It was more in line of need/use. There were conversations about whether or not there was any other Federal Statutes or Federal Fair Housing Guidelines that might take precedent. There was an individual who lived at the home that necessitated a higher fence for the safety of the resident. This current request is similar in that it is a unique situation.

Mr. Norton clarified that the Board's resolution was that they had granted a special permit that was allowed as long as it was used a group home.

Mr. Gess stated that it was conditional on the change of use.

Mr. Miller stated that the Board also factored in a smaller footprint.

Mr. Barker asked if it helped that his neighbor was present at the meeting and did not have an objection to it.

Mr. Norton stated that having neighbors as friends is always a positive but the short answer is no. The Board has to try and judge this property and this request. They do not want neighbors voting on the requests.

Mr. Barker assumed that because letters were sent out to his neighbors, the Board would want to hear from them and get their opinion.

Mr. Norton explained that the Board is more interested if the neighbor(s) feel very negative about something and they bring something up that the Board may not be aware of. There may be a possible solution. He agreed that there is some uniqueness to the situation but not the property. There have been similar requests by sports players in the past that have requested for security purposes but he does not believe variances were granted.

Mr. Burke stated that similarly they have had neighbors who have had issues with each other and the higher fence requests have been turned down.

Mr. Norton stated that in this case they are discussing a security interest that is somewhat unique because Mr. Barker's wife is a Federal Official. One thing they struggled with the group home case is that it was made conditional and that when it is no longer a group home, the fence must be taken down. But the City really does not have a way to regulate that to make sure it is in fact taken down when it should be.

Mr. Burke explained that with the group home request, the Board was concerned that if it was not granted they would be in violation the Federal Law.

Mr. Burke explained that the meeting is public record and the minutes will be posted online.

Mr. Barker explained that getting the variance makes the situation with the Federal Marshals feel a lot safer even if the fence is 4' high. Some people would abide by a 4' fence. Somebody would not jump over a 4' fence.

Mr. Burke discussed the western side lot line and Mr. Barker mentioning they would like a 4' fence along that side as well.

Mr. Barker explained that the Federal Marshals would like to see the entire yard fenced in. On the west side they have the illusion that it is closed off.

Mr. Burke explained that the neighbor to the west would have to come in and ask for a variance and in that situation, they would not have the same hardship/reasoning that Mr. Barker has.

Mr. Barker stated that he would like a fence on the west side of his property.

Ms. Young asked if he planned to fence the west side and not the neighbor.

Mr. Barker said he is still working that out with his neighbor to the west because that is \$20,000 fence. He is trying to get his neighbor to pay a portion of it.

Mr. Tyo explained that Mr. Barker can request the 4' fence on the west side of the home and the money portion can be worked out between him and his neighbor. The Board is not interested in that information.

Mr. Barker explained that he would come back again and request the variance for the west side of his property.

Mr. Burke explained that Mr. Barker cannot request a variance for his neighbor's fence. If that fence is not put up, it negates Mr. Barker's request based on security.

Mr. Gess stated that there are some variables that may or may not come into play. Due diligence needs to be done on the list of addresses that Mr. Barker presented.

Mr. Norton explained that on the front fences the Board has been somewhat generous because the scale of the homes/lot warranted it based on it being an architectural feature.

Mr. Barker discussed a home down Dover Center that has a higher fence going along the front and down the side.

Mr. Barker stated that a decision did not need to be made that night. The fence would be installed in the spring but he would like to get it resolved. He asked when he would come back to the Board.

Mr. Norton explained that the Board would have to have a discussion based on what the research might show. He asked Mr. Tuck-Macalla if he could check the addresses on the list.

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Mr. Tuck-Macalla said he would check the addresses on the list and he suggested that Mr. Barker ask for a variance for the whole property as opposed to the one side. Then he would not have to come back again.

Mr. Burke explained that if the neighbor on the west was going to put in a fence on his lot line, he would have to come in and request the variance.

Mr. Tyo stated that they will table his application until they can research more.

Mr. Norton explained that Mr. Tuck-Macalla will research further and notify the applicant of when they can come back in front of the Board.

Ms. Young clarified that he had to amend the application to account for the fencing on the west side of his property.

Mr. Norton explained that Mr. Barker could verbally amend his application because the Board knows what the circumstance is.

Motion by Mr. Burke, **second** by Mr. Miller that the application at 27238 Lake Road be tabled pending further investigation by the Building Department of other properties along the north side of Lake Road, especially those provided by the applicant to see whether or not the fences are 4' or more and were granted variances.

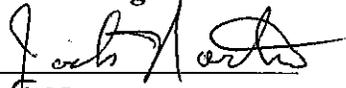
Roll Call Vote:

Yeas – Norton, Burke, Gess, Young, Tyo, Miller

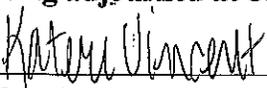
Nays-

Motion Passed-6-0

There being no further business to discuss the meeting adjourned at 8:06 p.m.



Jack Norton



Kateri Vincent, Secretary

