

Meeting Minutes of
Board of Zoning Appeals
Held January 7, 2021

Members Present: Dan Gess, Clete Miller, Terrance Burke, Carolyn Young, Jack Norton, Jan Saurman

Excused: Scott Bruno

Also Present: Eric Tuck-Macalla (Building Director), Lauren Oley (Assistant to Building Director)

Audience: Allyson & Jason Kidik, Mitch Mikoletic, Ron Kaminski, Dan Clayton, Crane, Mark Gamble

**Full recording of the meeting is permanently available on the City of Bay Village website under Government/Board of Zoning Appeals/View Most Recent Agendas and Minutes/Media*

Mr. Norton explained to the attendees how a quorum works and advised if an applicant doesn't feel comfortable they can wait and request that the full board be present.

Mr. Norton called the meeting to order at 7:33 p.m.

Mr. Norton introduced the first item on the agenda, the approval of the minutes that were held December 3, 2020

Motion by Mr. Burke, **second** by Ms. Young, to approve the minutes of the meeting held December 3, 2020 as prepared and distributed.

Motion passed 6-0.

1) Clayton Heating and Air Conditioning/Dan Clayton on behalf of Macy Clayton & Mitchell Mikoletic 30225 Lake Rd.	Dan Clayton of Clayton Heating and Air Conditioning, agent for Mr. and Mrs. Mikoletic is seek a variance to section 1359.01 to install Air Conditioning Equipment closer that ten feet from the property line, The variance is for 9.5 feet a 95% variance.
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Mr. Norton introduced the next item on the agenda as 30225 Lake Rd and advised the board has had an opportunity to visit the site and review the application.

Mr. Burke advised that he has a question. The drawing that was submitted the air conditioning unit appears to be straddling the property line. Was that in error?

Mr. Clayton advised that it will be in the landscaping which is right on the boarder of the property line. It won't be outside the property line. It is in the landscaping that they will be doing. It will be close.

Mr. Burke sought clarification if it will be totally their property.

Mrs. Mikoletic advised that was correct.

Mr. Norton advised that he questioned how that is possible if the house is 2.5' from the property line – as indicated and the unit itself is 2' square.

Mr. Clayton remarked that it will be less than 2' square. The pad is going to be 2'x2' and the unit will be a little less than that.

Mr. Norton advised that the dimensions that were provided on the application are 24"x24" and from their experience most air conditioning units can't be pushed up to the side of the house they have to have a space.

Mr. Clayton advised that it must be a minimum of 6" from the house.

Mr. Norton remarked that if you put a 24" unit 6" from the house the edge of that unit is right on the property line. Is that right? So you want a 10' or 100% variance.

Mr. Clayton confirmed that is correct. His mistake – apologies.

Mr. Norton inquired, of Mr. Tuck Macalla, if the neighbor to the East who has an air conditioner on this same corridor, between these two houses, it's a little further back on their house and it shown in the back of this house. Do we have any idea if a variance was granted for that?

Mr. Tuck-Macalla advised that he didn't know there was one there. He will see what he can find out.

Ms. Young advised that she stepped it off and it seems like there is about 10' between the houses. They're pretty close to begin with.

Mr. Mikoletic advised that there is a sidewalk in between there too.

Mr. Norton noticed that the decibel rating is shown as 60-75 - if he's reading it right. Usually it's not shown as a range. It's shown as a specific db number and normally we see a good unit, from a sound standpoint, in the 70 or less range. Can we get a qualification on the db rating?

Mr. Clayton responded that from what he got from Trane it goes anywhere from 60-70 that is what their parameters are - there is no set amount.

Mr. Norton remarked that doesn't sound like the experience that they normally have.

Mr. Clayton inquired if they are worried about sound from the neighbor's home?

Mr. Norton responded that the reason that council long ago passed this ordinance is to protect the adjoining properties from the sound of an air conditioner. If during a summer day you've got the

windows open, or next to a patio area, they're not hearing the sound of someone else's air conditioner.

Mr. Clayton responded that the house in question next door it's their garage that sits next to it.

Mr. Norton responded that he'll make a mental note of that. They have to be careful about the feeling that there is no problem now because the neighbor has a right, in the future, to tear this home down and could put it in a different position on the lot that they have. That's a factor. One of the reasons he was interested in to find if the neighbor had a variance is that they appeared they are certainly not 10' away. Normally if a variance is granted, in this kind of a situation, it includes things like a sound blanket and things like year round permanent screening. And their unit is hanging right out there. It appears that the applicant is trying to make a deck. The reason they don't want to come around further back in the lot and slide around behind the house is that they're putting a deck there.

Mrs. Mikoletic confirmed and advised that they previously they had a deck that had become rotten that they removed. They then started a construction and are getting a deck put back onto the house.

Mr. Norton remarked that on the other side, the west side of the house, is there a reason why that can't be the location for the unit?

Mr. Clayton responded that the house was built in 1934 and its all plaster in the basement which is finished. There is no possible way to get the lines over to that side of the house. It would go way over the parameters of how long the lines should be for an air conditioner. It would be close to almost 200'. That is null and void the point. There is no way to get that line set over there. They have an air conditioner on the other side from the original furnace.

Mr. Norton remarked that he didn't know there was an air conditioning over there. So this is a 2nd air conditioner?

Mr. Clayton confirmed that was correct. There is no way with the existing furnace to put ductwork up the new addition. So they had to go with a new system in order to heat and cool the new addition, but the way the house is laid out and where the furnace is and the way that the house is positioned there is no way to get new duct work off that furnace to go upstairs. So they had to go with a brand new furnace and air conditioner.

Mr. Norton clarified that this new air conditioner is serving a limited area on an addition?

Mr. Clayton confirmed that was correct – the master bedroom and the bathroom.

Mr. Gess advised that he is struggling to deal with the physical size of it. Absent any literature in the application - going to the Trane website, for the 4TTR3018 condensing unit, their literature indicates that it is 29"x26" with a 12" clearance requirement from the building. Even at the narrowest dimension that is 38" off the building.

Mr. Clayton responded that there are restrictions - every equipment has what they should have. But he's installed air conditioners for 40 years and he knows that the minimum he can be is 6"

away from the house. As long as he has the air clearance around the house - three sides are going to be totally open. The 4th is going to be 6" away from the home. It won't do any damage to the unit. He know it says 12", but he has doing it long enough he knows he can get away with 6".

Mr. Gess remarked that he can appreciate that those are guidelines and if someone chooses not to follow the guidelines and it voids a warranty - that is that. But the 38" puts you more than 2.5' off the building.

Mr. Tuck-Macalla interjected that it's not going to pass code if it doesn't follow manufacturer's installation instructions. There is also as section in our code that says these condensers have to have a minimum of 1' clearance. So if this unit is 26"x29" with 1' clearance it's not's going to go next to that building. It can't go over the property line.

Mr. Clayton responded that, to be honest with them, he doesn't think it's going to go over the property line, but he can go out tomorrow and take a look at it and verify if someone wants to meet me out there.

Mr. Tuck-Macalla advised that if they're in the process of designing an addition perhaps there is better way to design the heating and cooling for the addition.

Mr. Clayton remarked that no there isn't. Just the way the house is - it's a 1934 there is no leeway in a house that old. There is just no leeway. He would have to do some major damage to the home in order to do that and the line length would be too long for the air conditioner.

Mr. Norton advised he recalled seeing a unit that was mounted, a very small unit, on the house and it stuck out 12". There may be a solution that would fit this. But right now this would appear that they'd be giving the applicant permission to mount a piece of equipment on property that they don't own. They can't do that and they aren't permitted to do that. The applicant needs to go back to the drawing board and figure this out. He can appreciate that you don't want it around the back of the house because you're putting a deck there, but they can't allow it to be mounted on neighbor's property. At this point, he thinks they have to say - unless they have more accurate information both on the nature of the Trane unit, and it appears from what Mr. Gess just looked up they don't have the right dimension, they have a range of db rating and all that means is that that particular air condition group is a range, but then you need to take the specific unit and see where it falls in that range. They don't rate them as all the units in this particular mechanical design fall with this range, but then each unit has its own actual test result. They don't have enough information at this point. They even have a guess as far as the property line is concerned.

Mr. Clayton inquired what it is that they need. The exact decibel of the unit?

Mr. Norton responded that yes, the db rating of the unit, the size, whether the db rating is different with or without a sound blanket, and the relationship to the property line.

Mr. Clayton inquired if the board were to grant him this variance, and the db points are in line, would they grant a 10' variance so he could put it on the property line?

Mr. Burke responded that he doesn't believe they can make a decision tonight without all the information.

Mr. Clayton responded that he understands that. They will get the information. But he has to figure out a different strategy if it doesn't satisfy what you're looking for. He doesn't know how he's going to do that with a house this old.

Mr. Miller remarked, to the callers question about on the property line, they would not permit them to put something on the property line. The applicant would have to be off the line.

Mr. Clayton responded that his wording was off, they won't be on the line. They have to look at the home and see there is no other place to put this thing.

Mr. Gess replied that he would encourage them to consider some alternate products. They've seen some Mitsubishi split systems that have a more rectangular/narrow profile condensing unit on the outside. That might lend itself to be able to be more compact against the side of the building. Those might be some opportunities to think about. Quite honestly this unit is probably on the higher end of that range, of 75, which is higher than what they typically see. The benefit of the Mitsubishi units is that they are down in the 40/50's from a db standpoint which is a good selling point.

Mr. Norton added that also some guidance to the design approach to this. When they do break from allowing a variance from the 10' requirement they most often also require that it be screened from both the street and the neighboring property.

Mr. Clayton replied that from the front it would have been right behind the chimney which sticks out about 20".

Mr. Norton replied that the chimney looked about 2' thick. That would screen part of it, but it also needs to be screened from the neighbor so that they're not looking at a piece of mechanical equipment. That is one of the reasons he asked if there was a variance granted to the neighboring property because their unit should be screened, both from this house and the sidewalk, because this is a corner lot and as people walk past this property they can see that side of that one. The board would have required that to be screened which can be year round vegetation or little decorative screening/fencing. In this case, you'd not even be able to screen it with landscaping because you're out of property. You don't have a way to get a plant in there.

Mr. Clayton replied that he understands and they will need to regroup and come back at a later date with a different idea.

Mr. Burke added that he would suggest they table this pending receipt of revised application and further information from the applicant.

Ms. Mikoletic confirmed understanding.

Mr. Burke went on to say that they don't need to file a new application or fee. They would table it. He inquired how much time they might need.

Ms. Mikoletic inquired if they would need to come back to the next zoning meeting, on January 21st, they can try to have information for then or they can try to have it sooner.

Mr. Norton replied that they need to keep in mind that in order to be on the meeting on the 21st - the deadline was today. The next meeting, assuming that you come up with a solution that they'd like, for the board to look at would be the February 4th meeting. They'd have to have the info into the building department on the 21st of January. That allows Ms. Oley time to prepare the package for the board.

Mr. Clayton replied they're in no rush for air conditioning.

Mr. Norton advised the timing is up to the applicant. They don't need to do it immediately – take their time to figure it out the design options.

Ms. Mikoletic clarified that the earliest they could get the board something would be for the February 4th meeting?

Mr. Norton confirmed that is correct and advised that the timing is up to them. As Mr. Burke mentioned, by tabling the item they don't have to start the process totally over and won't be required to pay a new fee.

Motion by Mr. Burke, **Second** by Ms. Young, for the property at 30225 Lake Rd. to be tabled until the first meeting in February to allow the applicant time to submit a revised application more information on the unit itself and more information regarding the lot line.

Roll Call Vote:

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

Nays -

Excused: Bruno

Motion Passed 6-0

1) Allyson & Jason Kidik 29075 Buchanan Drive.	Allyson and Jason Kidik are seeking a variance to section 1153.02(1) to build a porch on the front of their home the set-back is 50 feet. The total depth of the porch will be 8 ft. the request is for 4 ft. or 5%.
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Mr. Norton introduced the next item on the agenda as 29075 Buchanan Drive. He advised there is a reference, in the application, regarding the setback from the sidewalk. It's his understanding that this requirement is from a 75' requirement from the center of the street.

Mr. Tuck-Macalla responded that is correct, but both setbacks work out to be the same. It's the same variance from center of street or the sidewalk.

Mr. Norton remarked that they've submitted a very in depth application including an analysis of the other porches along Buchanan. He did noticed that the only one that is more than 4' in the chart is one that is a 6'x22' at 29201. For the record, that porch isn't in the front setback it happens to be a corner lot and it is that dimension, but it wouldn't need a variance because it's not in the front yard setback. The board has, in the fairly recent past, and it's not shown on your

chart, they have granted a variance to a house on this street for something that is with the new porch would be. He doesn't know if you remember that one or the board does.

Ms. Kidik advised that it was 29110 Buchanan Dr. across the street and it was a 6' variance.

Mr. Burke advised that it is the one referenced in the applicant's letter to the City – on the very bottom of the first page.

Mr. Norton sought clarification regarding what the variance was that the board gave on that one.

Ms. Young replied that it was 6'.

Mr. Norton sought clarification if they allowed a 6' porch or was the variance 6'?

Ms. Kidik replied that the variance was 6'.

Mr. Gess remarked that if the applicant's letter is correct, and he'd imagine she looked at the meeting minutes to write her letter, they allowed a 6' variance from the 75' setback.

Mr. Norton advised that he thinks it is important to know that from this standpoint, if they felt that they were basically the same circumstances and they had granted a 6' variance then they really would be hard pressed to change what these folks would like to do. If however, they granted a 6' wide porch that didn't need this much variance then they set a new precedence. He is under the impression that 6' is what you needed to have a usable porch. To allow a 6' porch makes some sense. A 4' porch is very tight.

Mr. Burke remarked that there is another question on the setback – in the applicant's letter it said the neighbor across the street was granted a 6' setback from 75' requirement. The notes say that the setback on this property is 50'. Is it correct that there is a 50' on one side of the street and 75' on the other?

Mr. Tuck-Macalla explained that he uses the setbacks off the setback maps. It matches exactly to the setback off the 75' from the center of the street. So they're both the same.

Mr. Burke confirmed understanding that they're the same.

Mr. Tuck-Macalla added that he has the application for 29110 Buchanan and confirmed that the request was for a 9' variance on the 75' building line requirement. He only has the application in front of him, not the minutes, but the one across the street got a 6' variance.

Mr. Gess inquired if he's recalling properly that the house was on the setback. So the entire porch needed a variance.

Mr. Tuck-Macalla confirmed that was correct.

Mr. Gess went on to state that there is a slight difference with this application. Generally speaking, the front of the applicant's houses is 79' back so there is 4' to build without a variance.

Mr. Tuck-Macalla confirmed that was correct. He advised that he remembers the one across the street because he went out and he measured it from the sidewalk and the street. What happened

from what he recalled, is when he measured it from the sidewalk he found that there was a 3’ difference from the setback. So they really only needed a 6’ variance to build the porch they wanted. There as an error in calculation from the center of the street. That is what happened with the one across the street.

Mr. Norton summarized that this request is for less than what was granted across the street.

Mr. Tuck-Macalla replied that is correct.

Mr. Norton remarked that he doesn’t believe they will find anything negative about it aesthetically – it’s more a matter of setting a new precedent that they’d have to adhere to in the future, but that sounds like that’s not the case here.

Motion by Mr. Burke, **Second** by Mr. Miller, that the property at 29075 Buchanan Dr. be granted a variance of 4’ from the front yard setback requirements of section 1153.02 (1) of the City’s ordinances for the construction of a porch as shown on the application.

Roll Call Vote:

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

Nays -

Excused: Bruno

Motion Passed 6-0

1) Ron Kaminski 305 Bayview Rd.	Applicant seeking a variance to section 1163 to install an 8 ft. privacy screen on the north side of the back yard to screen a hot tub. The yard has an existing 32 ft. of privacy screen on the south side of the back yard. The variance is for 8 ft.
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Mr. Norton introduced the next item on the agenda as 305 Bayview Rd.

Mr. Kaminski advised that he went out and measured his existing privacy screen and it’s only 27’ so the variance is only for 3’.

Mr. Norton inquired if the fence that the applicant is proposing is 6’ or 8’high.

Mr. Kaminski replied that it’s not even a fence.

Mr. Norton revised his question to ask what the height is, off grade, for the proposed structure.

Mr. Kaminski replied that there are 8’ posts and the center wood is made out of cedar wood and those will drop by about 12” in the middle so they it won’t go all the way to the top of the posts.

Mr. Burke inquired how high would it be?

Mr. Kaminski replied that it would be 6 boards that would make it 7’-4”. They had boards made with the kids names carved into them as a piece of art. Mr. Tuck-Macalla came on the property

and advised that it would be considered a fence. It's not attached to their fence so he didn't know they'd need a permit for this. It is up against their house it's nowhere near their property lines.

Mr. Burke advised that he has concern about the height. It's already on the upper grade, which gives you some height, and it would seem that a 6' height of this privacy screen/fence would certainly be sufficient.

Mr. Kaminski advised that they got a permit for an outdoor kitchen on the other side of the property and used the exact posts for that screen that they did in the outdoor kitchen. It's the exact same height as the other side of the property.

Mr. Burke inquired if the one for the structure was that part of the structure itself? Was it incorporated into the structure?

Mr. Kaminski replied that was correct.

Mr. Burke remarked that that was being looked at, and Mr. Tuck-Macalla can advise as well, as part of the structure as opposed to the fence code.

Mr. Tuck-Macalla replied that the structure that they are talking about is not enclosed – it's not a privacy screen it's an open pavilion.

Mr. Burke remarked that then he's not understanding the reference to a similar height screen.

Mr. Kaminski replied that it's a similar height post.

Mr. Norton spoke to the fencing on the south side. He doesn't think that's 6' high. He didn't measure, but it looked like it was a little shy of 6' and it was acting as privacy screen. Because anything over 5' is the normal person view and is blocked in to that space. He paced it off and he thought it was about 32', but 27' sounds about the right length.

Mr. Kaminski replied that he measured.

Mr. Norton went on to say that what they're really talking about is the height of this other side. The rule is 6-4" is considered a privacy screen - the post can be 2" above that, which is a typically design up to 6-6", but beyond that it's higher then you need for a privacy screen. They shy away from setting a precedent that allows it to be higher than that. Whether that is a short section to conceal the hot tub area - it almost doesn't matter how long it is.

Mr. Kaminski replied that they we were just trying to provide symmetry to the other side of the property. They already had rough cedar planks. They paid a lot of money to have each one of the kids names carved into each plank - if we cut this thing down tell me what kid doesn't go on the fence. It's not even a fence – at one point Mr. Tuck-Macalla stated that it's not even a fence variance that he'd need.

Mr. Norton advised that he wonders if this might be one they should put on the side burner for a minute and get a drawing of what they're talking.

Mr. Kaminski inquired if he could just show them a picture?

Ms. Young replied that was fine and stated she thinks it's an 8'x8' panel.

Mr. Kaminski replied that there are 2 10'x10' cedar posts cemented in the ground. In between those is going to be 2x10' rough cedar posts that will connect those two. There will be 6 boards connecting them. He remarked that they have their family name on the last board.

Ms. Burke inquired if there is a requirement that the bottom of this be up off the ground a couple inches?

Mr. Tuck-Macalla advised that there is not a requirement. There is a provisions for that in the size of the fence. 6-4" would be a 6' with a 4" space underneath, but it's not required to be off the ground.

Mr. Kaminski held up his phone to show a photo of the proposed project.

Mr. Norton remarked that there is not an opening between the boards?

Mr. Kaminski advised that was correct.

Mr. Norton went on to say that when they add those up, not the posts, but the top board how high is that top board and what is the width of each board?

Mr. Kaminski replied that it was 10" and there were 5 of them.

Mr. Norton replied that is only 50".

Mr. Kaminski replied that he's not going to put the bottom board on the ground.

Mr. Norton replied that he's got 60". So if they come up 10" off the ground and put 5 10" boards.

Mr. Burke pointed out that there are 6 boards.

Mr. Kaminski replied that was correct.

Mr. Norton corrected that it's 60" then. So then the lowest one is 4" off the ground then its 64"? The applicant is allowed to be 76" at the top of the center board – ignoring the posts for right now. It seems that the only variance it would need is that the post are higher than what is permitted.

Mr. Kaminski replied if both boards are going to be set aesthetically lower than where the top of the posts are right now – then do we really have a problem? They are going to offset it from the bottom and they're going to offset it from the top. They're going to make it look good. They will move it down as far as they can without...

Mr. Burke remarked that, as the Chairman said, it would seem if they're going up 4" off the ground and they have 6 boards at 10" each that is 64".

Mr. Kaminski replied that he really doesn't want the last board 4" off the ground.

Mr. Burke replied that it doesn't have to be. They only have 60" of height they want to use. They're allowed to have 76" they could have it 16" off the ground with the top board at 6-4" off the ground. In that case, the only variance they would need is the two posts.

Mr. Kaminski replied that the height of the two posts are 96" that is 8'. So you're telling me that you want the top board no higher than 64"?

Mr. Norton replied in the negative and replied that they want it 6-4" or 76".

Mr. Kaminski replied that they want the top of the boards to be 20" lower than the top of the posts? That won't look right. He advised that they are nowhere near the property line. To him this is an extension of the patio.

Mr. Norton advised that anything that is built like a fence, it really doesn't matter if it's open or closed – if it's built as a fence then the fence rules apply. Normally in the backyard the height requirement is no more than 4-4" for the fence and 4-6" for post. In the case of something higher than that, it's classified as a privacy screen, if it's solid and in that case you're allowed to go 6-4" for the fence part and 6-6" for the posts. If they are really only talking about leaving the two posts higher than that the board may not have a problem with that. He thinks, what the board has problem with, is taking the 8' section, of what becomes a privacy screen, and going substantially above the 6-4"/76" requirement.

Ms. Young inquired how close this screen is to the hot tub.

Mr. Kaminski replied that it is within 3' of it. If they want him to bury these boards – no one is ever going to see them. He would like to be able to set these boards at a height at 80".

Mr. Saurman clarified that the top board would be 80" from the grade?

Mr. Norton summarized in that case they would be asking for a 4" variance.

Mr. Gess advised that the board struggles, a lot, to approve a length variance of privacy screening. He can't remember a time when they've permitted a height variance of privacy screening - with the exception with abutting commercial properties or an unusual/different property. Again, remember a variance is supposed to be triggered when there is an undue hardship because your property is irregular compared to the average lot. He thinks this does open up the opportunity for creating a new precedent for a new height variance without an external/unique situation/an adjacent commercial property that would cause such a thing. That is what he's struggling with here and lacking a drawing to go through this discussion.

Mr. Kaminski interjected to say that Mr. Tuck-Macalla had said that he was going to provide the drawing for this when Mr. Kaminski left the building department.

Mr. Tuck-Macalla he advised that he was going to provide a layout of the backyard, but he thought Mr. Kaminski was going to provide a drawing of the privacy screen. He couldn't provide a drawing of the privacy screen if he never saw it. It wasn't installed when he was there.

Mr. Kaminski replied that he was under the impression that Mr. Tuck-Macalla was going to be drawing that. It's not like he intended to come unprepared.

Mr. Norton remarked that this is associated with a hot tub, which he knows are used year round even in the winter, but it doesn't sound like this is super pressing. He would suggest that they consider putting this on the side burner and get a drawing that confirms the complete dimensions of what this unit is. This is getting a little bit like a trellis type of a structure. It's not really a fence in the normal way they think of it.

Mr. Kaminski replied that he'd like to make the argument that this is a piece of art. That is how they designed it to begin with. That is why they carved all the kids names into it and everything. If they are going to tell him they can't put a piece of art in his own backyard that is nowhere near a fence – its overreach and ridiculous.

Mr. Norton replied that they have to be careful that they don't set a precedent that they then deny someone else in the future. Once a variance is granted it lives with the property forever -it doesn't live with the applicant. They may sound oversensitive, but they constantly have requests concerning the amount of fencing and height of fencing so they have to be careful that they know what they are doing. So he's suggesting that they consider a full drawing of what they're talking about. What is the height of the top board, what is the uprights, etc.

Ms. Tuck-Macalla advised that he would like to make a suggestion. Would the board consider a special permit? Like they did with the front monument signs along Lake Rd. etc. To Mr. Kaminski's point, if this is a piece of artwork it doesn't quite fit within the code because it's a lot taller than a privacy screen. Possibly it could be considered a work of art and a special permit could be permitted and then that way it doesn't fall within the variance of a fence.

Ms. Young added that she would argue that they have made exceptions in the past where a variance does not stay with the property, but would need to be taken down when the house is sold. She doesn't think any future purchasers of this house would want a privacy screen with other kids' names on it. It's not something that would necessarily need to be sold with the house and therefore the variance could leave when the owner left.

Mr. Burke remarked that they have seen a number of times over the years attempts at privacy screens, such as this, and his recollection is that they have denied them because of the precedent. He would have difficulty with this and he doesn't think referencing it as a work of art changes the intent. Throughout the application it is referenced as a screen.

Mr. Kaminski replied that is only because Mr. Tuck-Macalla told him to do it that way. He told him that it was a piece of art.

Mr. Burke replied that he would like to add that he would hesitate to characterize it. And he knows that art, like beauty, is in the eye of a beholder, but does that mean that every time someone comes in with a fence that is above the required amount if they do some sort of artwork/names/whatever that it's no longer a fence? He thinks this still comes in the definition in the code of a fence.

Mr. Kaminski replied that it is 25' from their fence.

Mr. Burke replied that fences don't need to be connected to each other.

Mr. Norton remarked what about if they get a drawing that shows better what we're dealing with. Is there any objection to putting this off and getting a drawing?

Mr. Burke advised they could table it and inquired of Mr. Kaminski if the first meeting in February would work for him.

Mr. Kaminski replied that he doesn't know. His wife is going to take a picture right now. The posts are in and the hot tub is there. They are literally talking about taking these 4' about where the hot tub sits right now. He would like to solve this right now. He doesn't want to push this off. He is half hesitant to just build it and take a picture and send it instead of giving a drawing.

Mr. Burke replied that he doesn't think that would help.

Mr. Kaminski stated that to him this is overreach. They created that is a piece of art in their backyard and then they were told that's not okay. It is nowhere near a fence, so it's not like they intentionally tried to pull one over on them. He inquired what the top edge needs to be at 6-4"?

Ms. Young replied 76".

Mr. Norton clarified that the posts can go 2" higher. So the posts can be 78" and the top board of what is classified as a privacy screen is 76".

Mr. Kaminski held up his phone to show a picture of the area/proposed fencing.

Ms. Young remarked that she sees his picture and asked how high the top of the board would be?

Mr. Kaminski replied that is what he's asking. He'd like to put the top board at 80" from grade.

Ms. Young inquired if the posts would then be another 16" from that?

Mr. Kaminski advised that if they want him to take some height off the posts he'd do that.

Ms. Young summarized that really he's asking for a 4" variance not a 2' variance.

Mr. Norton that is where we come back to. The only reason the board might want to consider this is that we're talking, in effect, about one section. If this was 24' or 32' of additional screening/fencing he would doubt that the board would entertain anything above the code requirement. Based on a single section the board might want to consider the 4" variance.

Mr. Burke inquired if the posts would be 82"?

Mr. Norton replied that yes, the posts would typically poke a little above the fence line from a design standpoint.

Mr. Burke summarized that they're talking boards at 80" above grade, a 4" variance, and posts 82" which would not require a variance?

Mr. Norton replied that they would both require a 4" variance.

Mr. Kaminski replied that the posts are at 96” right now and he’d be happy to take some off the posts as long as there is room for the metal caps so they don’t rust out. They would need to come down about 4”.

Mr. Norton advised that the variance would read as fence at 80” and the posts at 82”.

Mr. Young advised Mr. Kaminski that they would then be asking for 14” inches off the post not 4”.

Mr. Kaminski replied that he knows they are and that he doesn’t like that aesthetic. He’d like to keep 6” of the post above the top board so 86” on the post. 80” on the board. It is immediately next to their house. It’s nowhere near the fence.

Mr. Miller inquired if they still entertain the idea of this being a potential for a special permit rather than a variance? A special permit would only live with the occupants and not with the all. The applicant would be required to remove it.

Mr. Burke replied that he has some difficulty granting a special variance when it really does appear that this is covered by the code under the fence code. He’s concerned about precedence because he’s thinking there was one on Glen Park years ago that was an artist privacy screen and they denied that. It was a difficulty with the neighbor to the north.

Mr. Kaminski inquired if there was any negative feedback from neighbors? He doesn’t believe there was a single one.

Mr. Norton replied there was nothing in the record. The one possibility is, if the board examined a motion that was for an 80” top to the fence and an 86” top to the post. Is there further discussion?

Motion by Burke, **Second** by Ms. Young, that the property located at 305 Bayview Rd. be granted a variance from the fence requirements of the City code for the installation of a privacy screen. The boards of which shall not exceed 80” in height from grade and the posts not to exceed 86” from grade and the length not to exceed 8’. This would be a 4” variance on the boards and 8” variance on the posts.

Roll Call Vote:

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

Nays -

Excused: Bruno

Motion Passed 6-0

There being no further business to discuss the meeting adjourned at 8:38p.m.

Jack Norton, Chairman

Lauren Oley, Secretary