

Meeting Minutes of
Board of Zoning Appeals
Held February 18, 2021

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

Also Present: Eric Tuck-Macalla (Building Director), Lauren Oley (Assistant to Building Director), Mark Barbour (Law Director), Lydia DeGeorge (Councilwoman)

Audience: Peter Winzig, Colby Sattler, Mary Kay Chagon, Jim Noell, JT Burke, Ross Leighliter,

**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 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 February 4, 2021

Motion by Mr. Bruno, **second** by Mr. Burke, to approve the minutes of the meeting held February 4, 2021 as prepared and distributed.

Motion passed 7-0.

Mary Kay Chagon 24430 Wolf Rd.	The applicant is requesting an appeal to section 1163.05 (h) (3) to install a privacy screen for 20 feet beyond the permitted 32 Linear feet or a 62% increase.
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Mr. Norton introduced the second item on the agenda as Mary Kay Chagon 24430 Wolf Rd. He then went on to confirm with the applicant that along the east property line there is 32' of existing privacy screen, the proposal for 20' begins at the northwest corner of her house and proceeds west until intersects with the neighbors fence, and lastly that the fence that is in question changes direction from the fence that is existing. He then noted that the lot parameter allows 48' linear feet based on the 10% rule.

Ms. Chagon advised that she wasn't sure what Mr. Norton meant by privacy screen. She advised that the fence they are proposing is not a privacy screen since it doesn't do anything to inhibit the view through the fence.

Mr. Norton advised that it falls under that category because of the height since its 6'. It meets the definition of a privacy screen since it is over the 4-4" fence which is normally allowed in the side and rear yards. In the past, the BZA has interpreted those rules a particular way and the matter has been through council and failed to be clarified from the way it has been dealt with for quite a few years. The 32' rule is one part of it and the 10% rule is the 2nd part. What it is saying is if you change the direction then you are allowed up to 10% of your parameter of your lot rather than just a flat out 32' maximum. If that interpretation is continued tonight it would mean that the 48' (which you're allowed) minus the 32' that you have would allow you to have 16' additional feet. The applicant is asking for 20' additional feet. That could be boiled down to a variance request for just the 4' additional feet. If the board wants to weigh in on this and see where we are as to this interpretation it would be appreciated.

Mr. Burke inquired if Mr. Tuck-Macalla feels that the addition of this fence from the NW corner of the property over to the neighbor's fence will not in any way impede fire equipment.

Mr. Tuck-Macalla advised that it would not impede fire equipment.

Mr. Norton remarked that one of the questions before the board tonight is how we are interpreting the ordinance compared to the way we interpreted it in the past. He then directed a question to Ms. DeGeorge. Has she found, in her experience on council which includes the time when the fencing ordinance was thoroughly reviewed, that BZA was not given a direction as to interpret it this way vs. that way. As such, he concludes that council wants them to continue to interpret it as they have been. Is it a fair statement that council did not change the past interpretation?

Ms. DeGeorge confirmed that his statement is correct. The BZA is to proceed as they always have.

Mr. Norton advised then with that interpretation that it's safe to assume that what they need to decide tonight is a 4' variance.

Mr. Burke stated that the 4' variance, as Mr. Chairman stated, is not a variance to the maximum of the 32' in one direction, but is only a variance to the 10% rule on parameter. He then asked Mr. Tuck-Macalla to clarify the ordinance section.

Mr. Tuck-Macalla advised that is correct and that he will find the code section for that for Mr. Burke.

Mr. Bruno remarked that 4' is 8% above and beyond the parameter percentage seems to be somewhat within reason and seems relatively reasonable.

Mr. Gess advised that he would agree. Often the board allows an extra 8' for a taper for aesthetic considerations and this falls within those guidelines and he certainly would support maintain constancy in the way we've been interpreting the 32' in any direction. He doesn't think we should change that especially after it has been vetted by council and they didn't provide any further guidance. He believes they need to maintain the status quo.

Mr. Burke & Mr. Bruno agreed.

Mr. Tuck Macalla provided the ordinance number as 1163.05 (h1).

Motion by, Mr. Burke, **second by** Mr. Bruno, that the property located at 23340 Wolf Rd. be granted a variance of 4' from the maximum allowable requirements around the parameter of the property for a 6' fence pursuant to code 1163.05 (h1) for the installation of a fence of the style and location as shown on the application submitted.

Roll Call Vote:

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

Nays -

Motion Passed 7-0

Ms. Chanson went on to confirm the next steps with the Building Director.

Colby Sattler 542 Vineland Rd.	The applicant is requesting a Special Permit to keep chickens which are not permitted in Bay Village Codified Ordinance 505.03 & 505.01.
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Mr. Norton introduced the next item on the agenda as Colby Sattler at 542 Vineland Rd and advised that the board has an opportunity to visit the site and review the application.

Mr. Barbour requested to make a few introductory remarks before they get into the facts of this request. This came about through a resident's complaint who knew that chickens were not permitted in the code. Mr. Barbour has since been in contact with Mr. Sattler to make it clear that the City would like to accommodate him within our legal framework. This is a case of first impression as far as anybody can remember. The initial approach was that we need to try to make an effort to accommodate Mr. Sattler due to his specific circumstances. The initial thought was that perhaps a special permit would be the best way to handle it. As you saw from my letter, we informed Mr. Sattler of that and he then made the application and provided the information that we requested. As Mr. Barbour has thought about it more, and he had a conversation with Mr. Saurman, the first issue that needs to be addressed is whether there is jurisdiction for the BZA because the code section about keeping the animals is in the general code 505.03. If you look at the special permit there is an argument that it only applies to the zoning code. We should probably start with whether this is within the BZA purview to grant this special permit or if the City needs to find another potential accommodation some other way. As such, he would suggest to the BZA that that be their first step, in their process, is this properly before you? Again, it's a case of first impression as far as anybody can tell. Mr. Saurman sent around some notes for your consideration. Mr. Barbour advised that it didn't occur to him, when he suggested to Mr. Sattler go to BZA - since they typically deal with single family homes and how they are used and the application of the zoning code, that the code section is 505. Then you might run the risk of anybody who wants an exception for one of these general codes to come before BZA. The other issue they have is does BZA even have the authority under 505 to grant the special permit.

Mr. Burke thanked Mr. Saurman & Mr. Barbour for their comments and memos. He remarked that he could think of one case regarding a fence height that has come before the board that was discussed and a special permit was granted.

Mr. Barbour remarked that it fit for the BZA because fences, and height of fences, is within their purview to handle and modify because it's in chapter 11 of the zoning code.

Mr. Burke remarked that one of the items that BZA is authorized to address, under the code, are orders from the Building Director's office. Did Mr. Tuck-Macalla issue a letter to Mr. Saddler regarding the chickens?

Mr. Barbour advised that he sent the letter. He knows Mr. Sattler from other commissions and they've worked together on the tree commission. As such, he sent him an email which is what started this.

Mr. Burke inquired if that letter would be considered a final order?

Mr. Barbour remarked that he wasn't sure if it would fit into this framework. Typically for 505.01 and/or 505.03 a citation would come from the animal control officer or the police because that is where those things are. He doesn't know where, as Law Director, he would fit into that.

Mr. Burke remarked that he feels that final order may give them jurisdiction unless that final order is limited to just the building code. Unless the board has a final order from police or animal control he doesn't believe they do have jurisdiction.

Mr. Bruno clarified that the board does not have a final order in front of them. Based on Mr. Barbour's memo, and comments, he is of the opinion that tonight they should table for further research on the part of Mr. Barbour, Mr. Tuck-Macalla, and our arm of animal control. He went on to confirm that Bay Village does have a part time animal control officer during business hours. Outside of animal control, police/law director, and possibly the county he agrees with Mr. Barbour. He proposes that they consider postponing any other discussion until they have additional clarification.

Mr. Burke agreed and suggested that they use tonight's meeting, with Mr. Sattler's permission, as more of a fact finding discussion in the anticipation that it may come back here if it is determined that we have jurisdiction.

Mr. Barbour advised that he wanted to apologize to Mr. Sattler given the unique nature of the circumstances. He wants to let Mr. Sattler know that it is the City's intention to find a way to work with him whether it is through the BZA or some other way. He wants to provide Mr. Sattler the assurance that it is the City's intention to maintain the status quo and work with him until it's worked out.

Mr. Bruno remarked that one other thing, truly for the benefit of everyone, we might need some additional research. He inquired if Mr. Barbour has talked to the county board of health?

Mr. Barbour replied that he has not consulted specifically with the board of health, but he did exchange emails with their law director on the issue, whom he knows personally. He would

suggest to the board that he is not convinced that jurisdiction is with the BZA. He doesn't believe the final order would be issued by the Building Director.

Mr. Tuck-Macalla advised that it really wouldn't come from the building department. As a knee jerk reaction it may have and then it would come to this body as an appeal and then this body would say this isn't your jurisdiction. He also noted that he has some experience with chickens in an urban setting and he knows the health department really doesn't get involved. Only if there would be slaughtering would they get involved. Just keeping chickens, essentially as pets, they don't get involved.

Mr. Burke advised that he appreciated Mr. Barbour differentiating the fence case where a reasonable accommodation was made versus this one since it doesn't involve the building code. Would his opinion be that we forgo discussion tonight until jurisdictional issue is resolved?

Mr. Barbour advised that would be his suggestion unless they have some specific questions of Mr. Sattler, Mr. Tuck-Macalla or himself. He would hate to put everyone through that if it turns out that they are not the right body to hear this.

Mr. Bruno remarked that he has one thought process as they do their research. He appreciates Mr. Tuck-Macalla's comments regarding the board of health possibly not getting involved after being approached. However based on the proximity of the coops/animals to other properties and residents – he thinks that it is a relevant thing that would need to be considered in future discussions once Mr. Barbour determines whether this would be within their purview for actual detailed discussion and discovery.

Mr. Tuck-Macalla remarked that when you go from city to city they have different conditions in which animals can be kept and they are all based on research into how far manure can be from a neighbor, etc. He is sure, as they go further into this process, they will be looking at those conditions.

Mr. Young inquired if Mr. Tuck-Macalla put together the list of 8 conditions that was sent out.

Mr. Tuck-Macalla advised that that list came from another city that he worked in. Their process was codified in their ordinances that you could keep chickens. But once you made your application then you'd have to go to planning commission for a conditional use permit and those were some of the conditions. A lot of other cities, North Olmstead for example, have a whole list of conditions that you follow in order to keep chickens or whatever else they allow. So that is where that list came from.

Mr. Miller remarked that he had a similar question as Mr. Bruno regarding the proximity and scale of the structures. Another question he has is - when did the chicken keeping begin and what breed/breeds of chickens does Mr. Sattler have?

Mr. Sattler replied that he'd like to quickly backtrack before answering Mr. Miller's question. He remarked that he appreciates Mr. Barbour sentiments and he saw this entire process as the City being accommodating in general and making every best effort. This is admittedly an odd scenario. He added that he appreciates this entire body taking the time to consider something that

is a bit obtuse. To Mr. Miller's direct question - for the scale that he has and what he is invested in now about 2 years. As far as what type of chickens, each one is different. They were all chosen based on their temperament and their adaptable to our climate. They specifically picked very friendly docile birds. He can easily give him a list of what they are if you'd like. He added that he has 10 chickens currently.

Mr. Burke advised that he did have some questions, he was going to ask, regarding the letter from Dr. Tan. Going over, on the internet, what the typical letter requirements are for a letter in support of emotional support animals there are certain things that seem to need to be in the letter. He think it will be required no matter what part of our city government eventually determines this, but in order to support a reasonable accommodation it would seem we need to make sure that the letter meets all those bullet points. Perhaps Mr. Barbour and Mr. Sattler could make sure that letter or a replacement letter meet those requirements.

Mr. Barbour replied that they would. His preliminary review is that it certainly complied with the spirit and the couple things that were missing were insignificant in his opinion. The physician license number is something that is required, but this physician is a known physician at the Cleveland Clinic. When we get to that point we will review it to make sure it complies. It seems to make a prima facia case so far.

Mr. Norton remarked that one thing that might be able to be explored, and doesn't have it in front of him so he can't quote it directly, but the way the BZA is set up and described in its' limitations and its duties he believes there is a phrase in there that goes something like 'and other matters as given to it by city council' and that might reflect on where the authority to deal with this lies. It may lie with the planning commission or it may lie with a decision by the building department that says no you can't do it then it becomes an appeal of a building department demand which clearly does fall into the BZA. Maybe to research, as it sounds like we will close tonight by suggesting, as to whether this falls to something that council uses the BZA that can't land any other place easily. Maybe we could explore that before we get together again on the issue.

Mr. Barbour resuggested that they table the issue to allow him time to further explore it. Perhaps by the time we have the next meeting he will have a decision about whether it will go forward with the BZA or whether there is some other path that should be taken.

Mr. Burke inquired if Mr. Sattler was available for the next meeting.

Mr. Sattler replied that he will absolutely make sure he is available. He appreciates that there are questions still out there regardless of the proper forum. In the spirit transparency he's more than willing to answer any questions - whether it's the type of chickens or any other specific questions. He is more than willing to answer those questions via this format or offline. Ms. Young stopped out today and he appreciates her time. To that end it's an open process and a heads up is appreciated with kids and family running around. Everyone is welcome to come out and take a peek and see for themselves.

Motion by, Mr. Burke, second by Mr. Bruno, that the matter of keeping chickens at 542 Vineland Rd. be tabled until the next meeting pending a legal opinion from the Law Director as to jurisdiction of the BZA and any other legal questions that may come up. In the meantime, to the extent that BZA can require it, there be no enforcement procedures going forward until a decision is made.

Roll Call Vote:

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

Nays -

Motion Passed 7-0

<p>James W. Noell 559 Vineland Rd.</p>	<p>Mr. Noel is seeking a variance to section 1153.03 (1) minimum side yard set-back. The minimum combined set back is 14.1 ft. The plan shows 18 ft., the minimum required for one side yard is 6 ft. the proposed north side yard is 4 ft. and requires a variance of 4 ft. 30%. (Tabled January 21, 2021)</p>
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Mr. Norton introduced the next item on the agenda as James Noell at 559 Vineland Rd. The board has heard this item in a previous meeting and it is now back before them for a decision. He inquired of Mr. Noell if there were any changes made the original application?

Mr. Noell advised that he believes his original request was looking for a 3’ border on the north part of the lot and he’s changed it to 4’.

Mr. Norton inquired if there was a reason why using some of the 14’ which he has on the south side is a problem?

Mr. Noell replied that he is talking with Steve Schill on drawing this up and he suggested a 30’ width on the floorplan of the house which would increase their options for layouts. So with that in mind he’s got a garage, over on the south border, and on his original drawing he’s got 10’ for the driveway and he’d shrink that down to 9’. He’d like to get arborvitaes between the garage area of the neighbors to the south and have a natural screen there since the kitchen window will be on that side of the house. In order to get the arborvitaes in there he’d probably need a couple feet for the bed to plant them.

Mr. Norton summarized that right now he’s at 14’ from the house to the side lot line and he has 4’ on the north side yard. The requirement is 6’. If you use the 6’ on the north side you’d still have 12’. He believes 8’ or so is an adequate driveway even if a small space was between the driveway and the house. That would still leave him several feet for plantings.

Mr. Noell remarked that his object was to get plantings along the house and the driveway and then between the other existing garage and the driveway. If he has a 30’ house, 4’ from north end, that will decrease even if he goes with a 8.5’ driveway it will decrease the two tree beds.

Mr. Burke remarked that the drawing that he saw from the last meeting shows the width of the house at 29'. Are there new drawings?

Mr. Noell replied that it was going to be 29' or 30'. The original one that he drew up was 30', but he reduced it to 29'. However after talking with Mr. Schill he thinks it would be better to go with 30' if we could make that work. There are quite a bit of distances between the properties as it is. If it was a 4' border there it would be 13' between the two houses.

Mr. Norton advised that one of the things that the board is forced to consider is that whatever is existing can be changed in the future, but a variance lives with the property forever. Once a variance is granted it doesn't matter who owns it or what they have done with the property in the meantime. If you have a home that is allowed to be 4' from the property line, and you are also allowed an overhang, then in the future the house next door could be changed and they could ask for the same thing, which would have to be granted, and then you'd end up with houses 4' apart. This is one of the problems that the BZA deals with. These things can change in the future and the variance doesn't change. It is their burden to find something that is unusual in the lot in order to grant this kind of a variance. It sounds like it is not a lot, but 2' in this kind of a situation potentially can be a lot. That is why he thinks that the board is struggling to reconcile.

Mr. Bruno added to the Chairman's comments. In this instance they are dealing with the new construction of a new structure. So it is not as if they're dealing with something that is being modified or being added to an existing structure. It's something that is a little more challenging for them to accommodate when the applicant has the option with the placement of the new structure that he is proposing.

Mr. Burke remarked that he is troubled by the same thing. Whether there really is a hardship situation here. When repositioning the house he'd still have more than adequate width for the driveway and he wouldn't need the variance.

Mr. Bruno added that the width of his driveway is less than 14' and it is sufficient for his SUV and sedan passenger vehicle.

Mr. Noell remarked that he has a rental property on Parkside and that drive is 9.5' and he has a truck and it's just really nice having a few extra inches on that driveway. So they're suggesting shrinking the driveway down?

Mr. Burke and Mr. Bruno confirmed they are.

Mr. Gess suggested he could also not have a flower bed buffer on that side of the house. He struggles with that being a cause or a reason to make a concession on the other side of the house. That is not a hardship it is a want or wish.

Mr. Noell advised that he was just thinking aesthetically it would look nice. He has to do something between his drive and the neighbor's garage and he thought a couple extra feet would help there.

Mr. Saurman confirmed that this is going to be a total tear down. How far is the existing structure from the lot line?

Mr. Noell advised it was 2’.

Mr. Saurman remarked that last time the board met the neighbors to the north, who he believes are on this call, had some comments regarding the distance from the lot line. He couldn’t recall if they were happy with moving it 4’ away or not.

Mr. Leighliter remarked that last time they were just listening for the most part. They are certainly excited that Mr. Noell is building a new house.

Ms. Leighliter advised that they did previously say that the 6’ was exciting because there is already not a lot of space between, but whatever the board decides if fine with them.

Mr. Noell advised that his house that is there now will be moved over 2’ more feet to the south.

Mr. Burke remarked that last call they established they aren’t using any of the foundation of the previous structure so it’s hard for them to grandfather the location in.

Mr. Noell advised that he wishes he could use the foundation, but it can’t be used at all. He wouldn’t be improving the property if he was trying to use the old foundation.

Mr. Burke remarked – just to clarify – what they are talking about is a variance on the side yard setback on the Northside? Which in the drawing shows 4’ and the requirement of the code is 6’ which would require a 2’ variance.

Mr. Norton remarked that he believes that is correct.

Mr. Burke added that if the home was moved over to the south by 2’ – that would suffice to the north side yard setback requirement and reduce the driveway to 12’.

Mr. Noell advised that the house to the property line would be 12’ not necessarily the driveway.

Mr. Norton added that if he wanted the 30’ width of the house he would still have room for that. He could have 30’ width and an adequate, if not generous, width of the drive and still a narrow planting on one side of the driveway.

Mr. Noell advised that he’d really prefer not to have the drive up against the house.

Mr. Burke confirmed that the applicant wouldn’t want that drainage next to his foundation.

Mr. Gess advised that he was trying to think creatively outside the box. He understands the desire for an arborvitae/buffer along the south property line, but he doesn’t have a good memory of the neighbor’s structure/driveway. Is there some way to offer to put the arborvitae on their property which might allow you to have your driveway closer to your property line which sort of voids your flower bed, but it could be on the neighbor’s property. We’ve suggested people collaborate on fence lines – maybe if you collaborated with your neighbors it would be a win win?

Mr. Noell advised that he hasn’t shot a line down that, but just by eyeballing it it’s about a foot to the neighbor’s garage from the property line.

Motion by Mr. Bruno, second by Mr. Burke, to grant the property at 559 Vineland Rd. a variance per 1153.03 (1) of the minimum side yard setback ordinance to provide the property a 2' variance on the north side of the property for the construction of the new residence, garage, and driveway per the drawings as prepared and submitted and described in the application.

Roll Call Vote:

Yeas –

Nays - Saurman, Bruno, Gess, Miller, Burke, Young, Norton

Motion failed 0-7

Mr. Norton apologized and advised that the board struggles with this kind of situation, but they have to be careful about seeing precedent.

Mr. Noell advised that he understands and thanked the board for their time.

There being no further business to discuss the meeting adjourned at 8:25 p.m.

Jack Norton, Chairman

Lauren Oley, Secretary