

Meeting Minutes of  
Board of Zoning Appeals  
Held May 7, 2020

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

Excused: Tyo

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

Audience: William Abbott, Jeffery Barker, Judge Barker, Mr. and Mrs. Thompson,  
Carl Frey, Basma Ricaunte, Richard Klesta, Mr. and Mrs. Stratis

*\*Full recording of the meeting is permanently available on the City of Bay Village website under City Government/Board of Zoning Appeals.*

Mr. Norton called the meeting to order at 7:32 p.m.

Mr. Barbour asked that Mr. Norton explain the procedures for the residents present at the first video-conference meeting via Zoom.

Mr. Norton introduced himself as Chairman of the Board and explained that the Board of Zoning Appeals consist of seven members. Six members were in attendance.

Mr. Norton explained that any comments or questions are welcome from the group after he gives a brief introduction of each application. He asked that when they do, they please state their name and address loud enough so that it is recorded. We like to have that as part of the minutes as to who is making comments.

Mr. Barbour suggested that the Board members identify themselves because if we had an in person meeting, they would be sitting up front and it would be clear to the audience.

Mr. Norton asked if there were any questions so far.

Mr. Norton introduced the first item on the agenda, the approval of the minutes that were held March 5, 2020.

**Motion** by Mr. Bruno, **second** by Mr. Burke to approve the minutes of the meeting held March 5, 2020 as prepared and distributed.

**Motion passed 6-0.**

Jeffery Barker  
27238 Lake Road (tabled February 20, 2020)

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 second agenda item and explained that the Board has had an opportunity visit the site and review the application. He noted that the Building Director has researched all eight addresses that the applicant had submitted as examples of this being allowed in the past. In visiting the eight properties, he noted that all of them are large lots and all of them had 75% or greater open fencing. Either all or a majority have been given a variance in the past. He asked Building Director, Eric Tuck-Macalla, if that was correct.

Mr. Tuck-Macalla explained that he had nine addresses and eight out of the nine were given variances and one never got a permit. Some were quite old.

Mr. Norton asked if there was discussion.

Mr. Burke asked if the fence was at least 75% open.

Mr. Barker said yes.

Mr. Barker clarified that the purpose of the request was for security because his wife is a Federal Judge.

Mr. Burke clarified that the applicant was seeking a variance for both the east and west side of the property based on the previous meeting when this application was discussed.

Mr. Barker explained that yes, that was the plan and that he had amended his previous application.

Mr. Tuck-Macalla explained that the variance would be for a 4' fence on the east and west side. Mr. Barker amended his application after the last meeting when the application was tabled.

Mr. Burke asked if there was any difficulty if there was a variance granted, that it would require the installation of the fence on both sides. He sensed that the Barkers have an intention to wait on the west side for a while.

Mr. Barker explained that initially planned to just do the one side for finical reasons. He planned to the one side first and then later on in the summer maybe do the other. He did not understand or know how long the permit would be valid for a second fence.

Mr. Norton clarified that once a variance is granted, the applicant has 6-12 months to utilize the variance.

Mr. Tuck-Macalla stated that the applicant would have 6 months. He explained that if a variance was granted and the Barkers did put up the east side, he believes the variance for the west side would go along with it. There would not be a time limit then to put up the west side.

Mr. Barbour agreed.

Mr. Burke asked if there was any difficulty concerning a time requirement for also the west because security really doesn't have any meaning if they are not completed at the same time.

Mr. Barbour explained that the City has granted 8 other similar variances with no record of any of them being turned down which is a significant factor in the Board's determination.

Gretchen Thompson, neighbor to the east side of the Barkers, explained that they had previously discussed fencing in their backyard, it was placed 4" in from the property line. So that if there were any damages, they would be responsible for that. He asked if the Barkers would be doing the same and placing the proposed fence 4" in as well going west from their line.

Mr. Barker explained that it will not be in 4" and explained that the law only requires that the fence be on his side of the property line. He did want to join with the Thompson's fence. He explained that they installed a fence in the back of their home/front of his to the Lake, the fence is approximately an inch away from the property line.

Ms. Thompson stated that per Mr. Barker's request, the fence is 4" inside their property line.

Mr. Barker disagreed and explained that he had the stakes out there and it might be an inch at the most. What he wanted to do was abut it to the post and start going over to his property diagonally heading for his column. So when it gets to the column it might be approximately 2" -3" in. It would look nice if they butted it to the existing post and then started doing a beeline towards his column.

Ms. Thompson stated that the Barkers do beautiful work to their property but her concern is that they had respectively gone in on their side specifically to make sure they would take care things in case there were damages and they wanted to make sure it would also be done on Mr. Barker's end. If it is connecting, and the Thompson's are internal, that would not make sense to them. She feels that it would just have to be on their property line. They did not have an intention on having a fence in their front yard and blocking that view which is a concern to them.

Mr. Norton explained that the BZA's position is that they can only give a variance to a property that is requesting it and it has to be for a change on the applicant's property. The Board cannot allow the fence to be on a neighboring property. If Mr. Barker put the fence up as he has proposed, then the first part of it would actually be on the neighbor's property.

Ms. Thompson stated that that is not something that they would have happen.

Mr. Norton agreed and explained that as the BZA they cannot agree to let Mr. Barker place his fence on a neighboring property. The fence needs to be on the Barker property and it is the only thing the Board can deal with. If it does not meet the existing fence exactly and they have to jog it over 4" to close a little gap, then that is how it has to be. It is not okay for the Board to say the Barkers can put a fence on a neighboring property. It would be made clear in the motion, that the approval of the variance is only for fencing that is on the applicant's property.

Mr. Barker stated that the previous 4" discussion has no validity, all it has to be is on his property. He would have to start the post side by side instead of coming up to it and adjoining it. The post would be placed up against the other one. So they would be side by side and then it would go down the Barker's side of the property. He clarified that it only has to be on his side of the property.

Mr. Norton agreed and stated that no part of the fence can be on somebody else's property. If the motion is made to consider this, it would automatically be part of the motion.

Mr. Norton asked if there was any other discussion or a motion.

**Motion** by Mr. Burke, **second** by Mr. Bruno that whereas the United States Marshal's Office has requested certain security around the subject property due to the applicant's appointment as a Federal Judge that the Board grant a variance for a 4' high fence designed as previously submitted to the City along the east and west lot line from the front to back existing fence provided that it will only be constructed within the confines of the applicant's property and further that the fencing on both sides of the property be completed within 8 months of this date.

Mr. Norton said that normally that the dimension of 4' or section of fencing is referred to an additional 4" to allow the fence to be raised above grade. He asked if he would be comfortable making the motion 4'4" instead of 4'.

Mr. Burke agreed and amended the motion accordingly.

**Motion** by Mr. Burke, **second** by Mr. Bruno that whereas the United States Marshal's Office has requested certain security around the subject property due to the applicant's appointment as a Federal Judge that we grant a variance for a 4'4" high fence designed as previously submitted to the City along the east and west lot line from the front to back existing fence provided that it will only be constructed within the confines of the applicant's property and further that the fencing on both sides of the property be completed within 8 months of this date.

Judge Barker asked to speak and explained that she did not want to use the influence of her office in any way. This was why she was not on the application and why she has not participated up until now. She explained that she knows Law Director Barbour from working with him at the State Court. She saw he was on the call and she was present as more of technical assistance for her husband. In terms of starting on the east side and looking to do the west side later was for financial reasons but feels Ken Thompson would agree, as a State Court Judge she has had threats. There was a specific threat that the Bay Village Police Department were involved in. A car pulled up in the Thompson's driveway and shone its lights into the Barker's home. There is more opportunity for somebody to do just that. The primary consideration was to avoid another situation like that where according to Ken, they sat there for several minutes at 4:30 a.m. They would like to be able to close it and lock it each night. They plan to complete the west side when they are financially able to but the primary concern is for the east side of the home.

Mr. Norton appreciated her comment and called for roll on the motion.

**Roll Call Vote:**

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

**Nays-**

**Motion Passed-6-0**

Carl and Christine Frey  
418 Longbeach Parkway

The applicant is requesting two variances per C.O. 1153.02 (side yard set-back) and 1153.03 (building line set-back) of 10' on the side-yard (33% variance) and 6'8" to the front building line (20% variance).

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

Ms. Young stated that according to the application the original lot was oriented to the other street not to Longbeach. When the house was built it was put sideways.

Mr. Norton agreed and he was not sure how the plating was done but it could have had the address on either street. The way it is addressed on Longbeach, they have a very wide side yard on the north side of the house and that could be interpreted as almost like the backyard.

Mr. Norton explained that as he toured the area it did not seem to be any problem. The distance from Longbeach only adds about 5' in front of the garage bump out. It makes that porch more useable than the very narrow porch they have now. He asked if the property owner and any neighbors were present.

Ms. Young stated that there were two neighbors who had emailed there approval of the proposed plan.

Ms. Young explained that in general, the neighborhood has undersized lots. The house itself does not seem overly big. (1,900 sq. ft.) Having the porch to the side would add some breathing room.

Mr. Bruno explained that in the past the Board has granted similar variances to corner lots. Given the fact that the Board takes into consideration the uniqueness of properties such as ones that are on corners such as this seems like this is a reasonable request.

Mr. Frey wanted to mention on his original application he had acknowledged and anticipated asking for only one variance. Only after his application was submitted and in talking with Eric Tuck-Macalla, did he learn that two would be needed. Within the zoning line that has been marked on the zoning map and what he saw were marked and identified on the original subdivision plat, there may be some gray area on the Longbeach frontage whether that was intended to be a 30' setback or just a 10'. It does not change the site plan at all although it is

probably sensible for the Board to make an affirmative decision on it. Either agreeing with his interpretation of the setback lines and intent as they are marked on the plat or the Build Department's.

Mr. Norton explained that with the address on Longbeach, it almost looks like the side that faces the side street would normally be considered a side yard but the rules for a corner lot are expected to be more than that minimum since it is not a side yard. That is why the requirement is more, simply because it is a corner lot.

Mr. Frey stated that he understood and stated that it is a unique condition that the house fronts on the long side which probably was originally intended to be a side yard.

Mr. Frey stated that there are probably a lot of other lots in their subdivision that are also similarly nonconforming.

Mr. Norton understood and when touring the neighborhood there were other examples of this throughout.

Mr. Norton asked if there was further discussion.

**Motion** by Mr. Bruno, **second** by Mr. Burke that the application at 418 Longbeach Parkway be granted two variances from the requirements C.O. 1153.02 (side yard set-back) and 1153.03 (building line set-back) of 10' on the side-yard and 6'8" to the front building line per the drawings and application as prepared and submitted.

**Roll Call Vote:**

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

**Nays-**

**Motion Passed-6-0**

North Depot, Ltd.  
On behalf of Basma Ricaunte  
31676 Lake Road

The applicant is requesting a variance per C.O. 351.16 (restricting paving of the front yard to 40%) a (50% variance).

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

Mr. Norton explained that the Board was not given a drawing. The rational was to not have to back out onto Lake Road which can be busy at times but the Board had no idea what was really requested. The way that the request has been submitted, the Board is not able to make a decision at this time. It would require a 50% variance. He suggested that the Board table the request until the next meeting so they can have a drawing of the proposal. He asked if there was discussion.

Secretary Vincent explained that it was her fault in that she did not include the drawing in the Board's packet.

Mr. Norton explained that the Board could discuss the application as a Board but he felt it would be better to discuss after the Board has had a chance to look at the drawings that should have been with the application. Without seeing what the applicant wants to do, it would be hard to imagine granting a variance for a 50% variance.

Mr. Norton asked if the applicant was present and if he had anything to share.

Ms. Young asked if he could show the drawing and explain what he wanted.

Mr. Norton suggested that they table the item.

Mr. Burke agreed and stated that he would like to see the drawing before voting on it.

Mr. Miller clarified that in the application they were talking impervious concrete paving.

Mr. Tuck-Macalla asked Mr. Barbour if he could email the Board the plans the following day and if it was possible, have the Board reach some kind of decision before the next meeting. He knows the applicant is anxious to finish the new house and to get a decision one way or the other. Putting it off another two weeks would be a hardship.

Mr. Norton explained that they would have to hold a special meeting via Zoom. It did not appear that the house that far along and that a two week wait would matter.

Mr. Tuck-Macalla explained that the inside is almost complete and that he has completed the final inspections. The last portion of that is the driveway.

Mr. Barbour explained that they have to have a 24 hour notice. He did not believe the Board would be able to accomplish a meeting tomorrow at all. The issue would be if somebody would challenge the decision and they did not have notice. A special meeting could be held the following week if that is what the Board decides to do otherwise we would have to wait until the next meeting. Due to the fact that the Board was not going to do the meeting via Zoom, there were some shortcomings in getting correct documents out to the Board. It is inadvertent and he apologized for the inconvenience. It is much safer to have everybody meet this way instead of in person. We could not just circulate it and have a decision made. There would have to be a meeting held.

Mr. Miller would be in support of holding a special meeting the following week.

Mr. Norton queried the Board as to holding a special meeting this time next week.

Everyone agreed to hold a special meeting the following week as long as there was sufficient time to send out notices and for the Board to receive the plans.

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Mr. Barbour clarified that there was not another meeting the following week.

Mr. Norton stated that the case will be tabled until May 14, 2020 at 7:30 via zoom.

Mr. Klesta, contractor for Ms. Ricaunte, asked if anyone from the Board is against the proposed plan at this point.

Mr. Burke explained that it would be hard for the Board to make a decision without have the drawings in front of them.

Mr. Norton agreed and explained that he may be against it due to the fact that it is a 50% variance request. But that is not to say that he would vote against it if he saw the drawing and if it was the only reasonable way to get a turn around. It is a valid request in gaining access to Lake Road without having to back into it but without the drawing, there is no way of knowing if there is an alternative to that.

Mr. Klesta asked if there was anyone else present in the meeting in regard to their application.

Mr. Norton asked if there were any neighbors present.

Ms. Ricaunte explained they are requesting this variance in order to be able to back out of the driveway and also have plans to make a combined garden between their house and their neighbors. The combined garden looks nice design wise and will look nice from both sides. She did talk with both of her neighbors and both were okay with the proposal.

Mr. Norton explained that they understood and will try to minimize the hold up with the special meeting.

Michael Khmelnitsky  
535 Upland Road

The applicant is requesting a variance per C.O. 1153.04 (rear yard set-back) of 6' to the rear yard set-back to build a new home (20% variance).

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

Mr. Norton noted that the house to the south of the applicant in the backyard sticks out 6'-8' further than the present house which would be somewhat in line with this request. It would still have a pretty reasonable backyard and this would not be very unique.

Mr. Bruno noted that in visiting the property and per the notes given by the Building Department, the lots behind the property would make it difficult to build and develop on because they are landlocked. Those factors go into contributing to the uniqueness of the property. He would be inclined to consider the variance favorably.

Mr. Miller asked if there were steps that they planned to have come off the back of the building or a deck going to be attached to the building.

Mr. Khmelnitsky, property owner, explained that yes, they plan to have steps leading off the back of the house. They are planning to add a small concrete patio as well.

Ms. Young clarified that they do not own the property that is landlocked behind them. She asked who owned that property.

Mr. Khmelnitsky explained that those lots are owned by the neighbor to the right of them and a resident on Wolf Road. He had reached out to the owners to see if they could possibly purchase land from them but they never heard back from one neighbor and the other they could not reach an agreement.

Mr. Miller asked how high the front door is above grade.

Mr. Khmelnitsky stated that it will be between 2'-3'.

Mr. Miller clarified it will be about 3-4 steps.

Mr. Burke explained that normally when they have a variance request for construction of a new building, they would get a drawing of that proposed construction. He is somewhat concerned with not have having one.

Mr. Tuck-Macalla explained that this house has gone through several variations trying to make it fit on the lot. In talking with the applicant he actually advised him not to submit a set of plans and to just give the Building Department a site plan. He asked if the property owner even had given the Building Department building plans yet.

Mr. Burke asked approximately how many feet they planned to request.

Mr. Khmelnitsky stated that they need around a 6' variance for the right side of the home. The left side would only need around a 3' variance. So the official request would be a 6' variance for the entire house.

Ms. Young stated that it was depicted on the site plan.

Mr. Burke asked what the square footage of the actual house they are building is.

Mr. Khmelnitsky stated that the house will be approximately 3,200 sq. ft.

Mr. Burke said he is still concerned granting a variance without seeing the building plans.

Mr. Norton explained that the Board may want to consider that the house to south already encroaches into the backyard the same amount as this request. Also per the memo, the lots that are behind this are unbuildable. They will not have a structure to the rear of the lot.

Mr. Burke asked Mr. Miller's opinion on granting a variance prior to seeing building plans.

Mr. Miller explained that the broader implications are not what the Board has seen in the past for rear yard considering the landlocked parcels that are undevelopable. The adjacent property with a similar backyard condition is not as unusual as you look around the City. He did not really have any objection with the site plan that was submitted.

Mr. Burke explained that his concern is not as much to the back but asking more for the sides of the structure as opposed to the ones up and down the street and the neighborhood.

Mr. Miller stated that per the line drawing it is about 62' deep. He does not think it is much bigger than anyone else.

Mr. Miller clarified that the 3,200 sq. ft. is the entire house so the first floor would be 1,600 sq. ft. or less plus the garage.

Mr. Tuck-Macalla explained that without the variance there will still be the same mass of house. The variance being in the back is not going to give you any different of a look than a house if it sits on that street.

Mr. Burke thanked Mr. Tuck-Macalla for the good point.

Mr. Gess asked if there were any side yard variance needed.

Mr. Tuck-Macalla explained that there are no variances needed on the side yard. They have been working on it over the last few weeks to figure out the best plan for him to be able to use this lot.

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

**Motion** by Mr. Burke, **second** by Mr. Gess that the application at 535 Upland Road be granted a variance from the requirements C.O. 1153.04 of 6' from the rear yard setback requirements to permit the building of a new home on the property as per the line drawing and application as prepared and submitted.

**Roll Call Vote:**

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

**Nays-**

**Motion Passed-6-0**

Michael and Katlyn Stratis  
484 Columbia Road

The applicant is requesting a variance per C.O. 1163.05(h)(3) (privacy shall not exceed 32' in any direction screen) to install a 6' fence around the complete perimeter of the back yard, a total of 190 sq. ft.

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

Bill Abbott, backyard neighbor, introduced himself. He stated that he is all for the fence. The only issue would be getting rid of his fence. He asked if that was part of the plan.

Ms. Stratis stated that the current plan from talking with the fencing company and based on the ordinances, she thought they had to put the fence 4" in from the property line. They would love to replace the fence on the exact fence line that currently exists. They need to figure out if they can even have the 6' fence and also figure out where the placement of the fence has to go.

Mr. Norton explained that whatever fence that is owned by somebody must be on their own property. He asked Mr. Tuck-Macalla if there was a rule that it had to be a certain distance onto their property.

Mr. Tuck-Macalla said that it has to be wholly on the property owner's property but there is no specific distance from the property line that it has to be.

Mr. Norton explained that if they have an accurate survey, they could go right up to the property line but it must be on their property. In this case, the much bigger issue is the height of the fence. If you trace the history of this ordinance it is clear that when it was enacted, Council wanted to avoid having backyards turned in corrals. They wanted an adult to be able to see over the fence as to knit the area together. You could see a much broader area than your own lot. They conditioned it with that homeowners could have a limited amount of 6'4" fencing to act as a privacy screen. As soon as you enclose the entire yard, it becomes a corral and it has broken up the view for everybody. In being on the Board for quite some time, he couldn't recall ever having this request of this nature approved. From a protection standpoint, a 4'4" fence continues to allow the neighborhood to have a free flow view and it acts as a somewhat as a security barrier.

Mr. Norton opened up the discussion to the Board.

Mr. Miller explained that the Board has often counseled the applicant's use of the 6' fence of 32' in one direction. If there is a particular view they are trying to obstruct, the Board often gives counsel on how to best use the 32' of 6'. He concurred with Mr. Norton in that he does not recall ever granting a variance for a 6' fence for the whole yard. They might want to creatively think how to best use the 32'.

Mr. Bruno has often counselled year round ever green or arborvitae to help obstruct the views with this type of request. Based on the significance of this request he is not inclined to consider this a hardship or a reasonable request.

Mr. Norton asked if there was further discussion or questions.

Mr. Burke explained that before a motion is made and based on the discussion, the applicants may want to withdraw the request at this time or table the item pending a submission of a different request that is more aligned with the ordinance.

Ms. Stratis agreed to withdraw their application at this time.

Mr. Norton explained that if they want to submit a different request, using the approach of a privacy screen and variance is still required, they could use the money that they already paid, for that. The only requirement is that it must be a major change in the variance request. He asked the applicants if they agreed.

Ms. Stratis explained that it was less about blocking the view but more about the concern of kids and a large dog. Before they purchased the lot they were not aware of the ordinance.

Mr. Norton formally withdrew their application.

Mr. Abbott said he was happy to work with them.

Ms. Young brought up the point that if you have a neighbor that would be willing to work with you, you could get more 6' privacy screen. Each home owner could put up 32'.

Mr. Abbott discussed a neighboring property that had a variation of 6' and 4' fencing.

Mr. Miller discussed an application that came to the Board around 18 months ago. (corner of Bracken Way and Wolf) It is a corner property that gets a lot of Friday night football traffic and even traffic during the day on the western lot line. The Board worked with them to establish a length of 6' fence and then it could be stepped down and continued down to 4'. He has since noticed that they planted arborvitae on the lowers ends to further obscure the Friday night traffic.

Ms. Stratis said she knew exactly what house he was discussing.

Mr. Norton stated that it adds privacy but not security from a standpoint of an animal.

**There being no further business to discuss the meeting adjourned at 8:44 p.m.**

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Jack Norton

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Kateri Vincent, Secretary