

Meeting Minutes of  
Board of Zoning Appeals  
Held May 20, 2021

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

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

Excused:

Audience: Julie & Mr. Michelson, Mary Margaret, Mary Deutschman, Patrick McGinty, Michelle McGinty, Andrew Seger, Debra's iPad, Ryan and Janine Little, Andrew Eggeman, Judy Brody, Dave's Iphone

*\*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 7:31 p.m.

Mr. Norton introduced the first item on the agenda, the approval of the minutes that were held May 06, 2021

**Motion** by Mr. Burke to approve the minutes of the meeting held April May 6, 2021 as prepared and distributed.

**Motion passed 7-0**

1) Michelle & Patrick McGinty 28042 Lincoln Rd.	Applicants are requesting a variance to <b>Section 1163.05(h) (1)</b> . The allowable fence over 6 ft. 4 inches above grade is 32 feet. The McGinty's are asking for a <b>total variance of 28 ft. or 87%</b> . 24 panels are 5 ft. 4 inches above grade and one panel of 6 ft. 4 inches. 10% of the perimeter is 68.7 ft. the fence panels over 4Ft. 4 inches are all in one direction along the Sutcliffe Rd.
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Mr. Norton introduced the first item on the agenda as Michelle and Patrick McGinty at 28042 Lincoln Rd. For clarification the way this ordinance has been interpreted in the past there is two parts to the ordinance as to relates to fences. One says that in the front yard you can have a fence that is 3'4" high and in the side yards, after you pass the front of the house, you can have a fence that is 4'4", and for a privacy screen you can have 6'4". They go on to say that the privacy screen can be no longer than 32' in one direction, but a second part states that the privacy screen

can be and cannot exceed 10% of the perimeter of the lot. So there's two factors involved in that. In this case, all of the fencing request is in one direction. So the 32' rule would apply in this case. A second part of their request, is to have two arbors and the arbor would require a special permit simply because it is not listed in any of the ordinances as a permitted structure.

Mr. Burke remarked that he is concerned about the amount of the variance it is 87%, which is certainly very, very high.

Ms. McGinty interjected that she was confused about the 87% is coming from.

Mr. Norton commented that she is requesting a total of 10 panels that are over 4'4" correct?

Ms. McGinty replied that was correct, but the one side of the lot is not 87% of the yard.

Mr. Norton advised that the requirement says 32 feet maximum, over 4'4" inch? If you have 10 panels that are 6' panels then you're requesting 60', when it's allowed us 32', so it'd be 28'. Not of the parameter. In this case, he doesn't believe they will exceed the 10% rule.

Ms. McGinty replied that it's definitely less than 10%. In fact, it's less than 10% of the one side of her lot. It's 10% of the total perimeter and 10% of that one side of our lot.

Mr. Norton advised that the 10% rule only applies to when you take the total perimeter of the lot, put it on all four sides. And, and then it's not to exceed 10% of that. But she doesn't have a problem with that. In order to provide some privacy to the patio area, where there is an entertainment area, it seems like you don't need anywhere near that in order to gain the privacy if you had the 3 - 6' sections or 18' and then you had the same 18' that you have further back in 4' in order to accomplish that. So you would provide privacy both for the swing set area and the patio.

Ms. McGinty advised that is true. The reason that she asked for the other 5'4" panels is for aesthetic purposes. She believes that the fence is going to look kind of funny if it's at six foot and then all of a sudden just drops down to the four. For the benefit their neighbors and the people walking by, there's only actually one panel by the swing set that is the 6'4", and then on either side, there would be a panel of 5'4" inch so it kind of goes down nicely. And the same thing with the part by the patio. There's actually 30' of the 6' fence. So not even the total amount and on either side, there would be a panel of 5'4" inches. Once again, to make it look nice, she had looked around the neighborhood of Bay, and there is one on Bracken Way that is similar to that, that has a transitional piece in it. And she thought that it looked aesthetically pleasing and that the neighbors and everyone walking by would prefer that rather than this like disjointed looking fence.

Mr. Norton remarked that the idea of staggering it, like that is a good one, but the fences that are 5'4" come under the same 32' requirement. Anything over 4'4" is considered a privacy screen.

Ms. McGinty remarked that their choice would be to 32' feet at 6'4" and then they'll just drop down to 4', but she thought it would be nicer for the people that live around us if we made it look nicer and added a transitional piece to it.

Mr. Norton remarked that he may be misleading her. He went on to explain his suggestion of how she could use transitional panels to achieve her goal.

Ms. McGinty went on to explain that she's had a couple experiences that have led her to feel this way. They've had a swing stolen off our swing set. They've had people that she does not know playing on their play set with our children that are strangers, multiple times. They have garbage in their yard every single day from the bus stop nearby. She just really feels like they have three young children in their house that people are walking by talking to constantly. She does feel like it's a safety concern for their children that they have a fence there. And honestly, the 4' fence isn't going to stop people from throwing things over and talking to them. Their youngest is 4 and she doesn't want him talking to a random men walking down the street and she has two young daughters as well. She really feels strongly that the board would, you know, grant them this leniency. The swing side so much like free access. It's not a public playground for any kid in the neighborhood to just come on. It's a liability for them with people playing on it that they don't know, God forbid one of those kids get hurt on it. They also have those ninja courses which are attached to two trees and they have little things that kids can hang from and climb on. They've also had people that she does not know playing on that and she's uncomfortable with it. It only takes one kid to fall off that and say well, it's on your property. She just think there's too much access to the street also, you know, kids balls rolling the street these kids are little cars are zooming by this as a cut through that all the streets use go know all the streets like West Oviatt and all those streets back there. Everyone who lives down there comes down the street and they drive fast. God forbid a ball go in the street and hit one of them. She has some serious concerns about it.

Mr. Norton inquired if the plan was to have that whole side fenced with 4'4"?"

Ms. McGinty replied that it is, but 4'4" does not offer privacy for children who should be entitled to be able to play without being pestered by neighbors.

Mr. Miller remarked that the arbors are not fenced and they're just a structure. Correct?

Ms. McGinty replied in the affirmative. The one arbor would actually face Lincoln, and it's just an entrance into the backyard and then the other one is down at the back of our property and it's smaller. She also doesn't want to just put up a big straight wall going down there, she'd like it to look nice. And so that is a smaller opening, that if the kids are walking out the back or you know, whatever that they can go out.

Mr. Miller stated that those wouldn't prohibit somebody from walking onto your property, though.

Ms. McGinty replied that none of this will prohibit anybody, the back of their property will still be open. They're not fencing all three sides of it in. So no matter what people are going to be able to walk back there. There's no preventing that. But she does think making a barrier along Sutcliffe will be helpful. The second arbor is way in the back where it's wooded.

Mr. Saurman inquired if there will be gates on the arbors?

Ms. McGinty replied in negative.

Mr. Norton remarked that those facts seems to defeats her argument that this is necessary from a security standpoint. The other thing that they have to keep in mind is twofold. One is a variance lives with the property, not with the property owner. And so as her family evolves, sooner or later, their situation changes, and then a new owner ends up with the house and they have their own situation. So they have to keep that in mind that the variance is a permanent part of that parcel forever. And the second thing is that when they grant a substantial change to the ordinance, they are making new law. Their mission is only to tinker around the edges of that, that law, the council is the one that the people that got elected to make the laws, and they frown upon our stepping over our bounds. And, and in effect, setting a precedent because once we allow something to happen, then every citizen in the in the City should have the same right to do the same thing. And so they tend to be very careful about variances that are very, very substantial.

Mr. McGinty inquired if there any consideration taken into the fact though, that the property is significantly longer than it is wide? It would make sense to have those restrictions for the width of the property due to the fact that the width isn't very long, but that area along Sutcliffe is over 200' long. So he thinks there should be some consideration taken into the fact that the length of the property is so much different than the width, which accounts for much more space.

Mr. Miller replied that the disproportional argument to that is, then when the board is faced with a property owner that has a much smaller footprint, whether its width or depth to the property, they too, would want to argue that the benefit is to them to have 6' fence run the whole length, because they're only 75' deep. So it's again, it's trying to be judicious and apply it to the city wide.

Ms. McGinty inquired if it matters that they're on a corner? Because most houses are not on a corner and their backyard is their backyard. Someone can't just see in it or walk in it. They do not have privacy because they are on the corner. If our house houses was a couple houses in they would not be putting up a fence.

Ms. Young advised that the applicant referenced the property that's across from the high school there that has a nice transitional fence. They came before the board about a year ago and they worked out a solution where they may have been allowed slightly over the 32' using the transitional sections and plantings to give them privacy from cars that were parked on that street that were waiting to pick up students at high school. There's a lot of corner properties and Bay there's a lot of streets in Bay. So it's not unusual to be on a corner property, but you do have a very deep lot and does concern her that people are coming into their yard but she believes that putting a fence up, whether it's a 4' or 6' fence, does it prohibit them. If that still happens, she thinks that becomes a police issue or a ring camera system type of thing, but people should not be, of course, playing on any of your equipment.

Ms. McGinty advised that she agrees that some barrier will help.

Mr. Bruno remarked that there are hundreds of corners within the city. So that in and of itself, doesn't meet one of the uniqueness deficiencies that they take into consideration from hardship. He will second the comments about placing a 4'4" fence someone trying to get in kids are one thing, adults, you know, legally are supposed to know better at that point. And you can place no trespassing signs and other things or arborvitaes. He has planted Arbs on the east side of his property and over time he plans on planting more.

Ms. McGinty advised that she thought of arborvitaes. They have 166' she's asking for privacy and that's a lot of arborvitaes. And it takes years to grow to actually provide that kind of privacy.

Ms. Young remarked that she's really only looking for 18' by the swing set.

Ms. McGinty advised that she can't plant arborvitaes due to the mature trees in that area of her yard and the cost is extreme.

Mr. Gess advised that he agrees with the concerns, and the ask is far in excess of any grant variance, he thinks they've given before for this type of request. He would just challenge the applicants to maybe consider how effectiveness of the 18' by the swing set. Is that going to do so much? And if the priority is the patio, which he fully understands, maybe that's the place to, you know, kind of stake your claim, in a sense for the, for the variance, and maybe make it meaningful, where, you know, you have living space on the back of the house, that that's where he thinks, you know, and the request probably gets down into if you're not talking about that 18', are we talking then 10' over? He thinks its 2 6' panels, but they're only 30 in the middle. So are they talking about 10' of variance there potentially?

Ms. McGinty replied that is correct.

Mr. Gess advised that it may be something worth considering as the applicant gets a feel for how the board is feeling.

Mr. Norton advised that there are two good ways to consider this that the board may feel more comfortable with and that is to say if you take 36' or 42' so that if you if you use the every anything that was functions that has a privacy screen which is includes the 5 4" as well as a 6'4" panels, so if you either concentrated as Mr. Gess has suggested, on the patio and the security are of people talking to the kids back by the swing set is not going to be materially improved by having anything back there. But if you really want something back there, you could do the 18' combination that you show and you could do the 18' combination up by the patio and in that case, you would just need a 4' variance. Which is, again, more modest. What Mr. Gess has suggested you would need a 10' variance which the board may consider that still within reason. He advised she can revise her decision or table her request.

Ms. McGinty advised that would then be the 42' that she proposed for by the patio with nothing by the swing set and then can she still have the two arbors?

Mr. Norton remarked that he doesn't believe the board is going to have an issue with the arbors, but they can vote on that as a separate issue. In the past the board hasn't considered arbors a privacy screen issue.

Ms. McGinty replied that is definitely not what she wants, but that would be the second best for them.

Mr. Gess advised that he was looking at the sketch that talked about, if he understands correctly there is a center section of 30' (5 - 6' panels) and two transitions on either side. While it's still a variance he does think those transitions help. He advised that he's okay with it especially considering the length of that run on the property. He would be okay. With the 42' of privacy on that property line. He advised that they could be even a little more clear that they're not expecting that to be 42' of 6' fence, but 30'.

Ms. McGinty replied it would definitely be two transitional panels. She doesn't want it to look like it's just thrown up there and like very disjointed. She wants it to look nice.

Mr. Norton confirmed that the applicants approve to revise their request to a 42' stretch to include two panels of 5'4" and 5 panels of 6'4"?"

They both confirmed they were okay with that change.

**Motion by Mr. Burke, Second by Mr. Bruno** that the property located at 28042 Lincoln Rd. be granted variance of 10' from the maximum allowable privacy fence in one direction under section 1163.05(h1) along the west lot line of the property to permit the installation of five 6' long and 6'4" tall panels and two transitional panels height 5'4" for a total of 42'.

**Roll Call Vote:**

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

**Nays –**

**Excused –**

**Motion Passed 7-0**

**Motion by Mr. Burke, Second by Mr. Bruno** located at 28042 Lincoln Rd. be granted a special permit for the installation of two arbors the location and width of which is described in the drawings as prepared and submitted.

**Roll Call Vote:**

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

**Nays –**

**Excused –**

**Motion Passed 7-0**

2) David Reinker 317 Saddler Rd.	Applicant is requesting a variance to <b>Section 1370.03 (c)</b> to place a Generator less than 10 ft. from the property line. The unit, when installed, will be 6 Ft. 6 inches from the
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	property line. Pursuant to section 1370.03 (d) the Building Director does not have objection to this placement. The requested variance is 6ft. 6 inches or 35%.
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Mr. Norton introduced the next item on the agenda as David Reinker at 317 Saddler Rd. He then sought clarification if this unit is going on the North or South side of the home?

Ms. Kooney introduced herself as the neighbor at 323 Saddler Rd. and advised it is going on the South side of the home.

Mr. Tuck-Macalla advised that it is going to be on the north side of the house behind the fence that the neighbor has.

Mr. Norton clarified that the neighbor may have been under the wrong impression. He advised that it is going on the north side of the home.

Ms. Kooney advised that they received a letter which is why they thought it was going on the south side of the house.

Mr. Tuck-Macalla advised that everyone whose property abuts someone that is seeking a variance is gets a letter. It is just letting you know what is going on at your neighbor's house.

Mr. Norton does this address your concern?

Mr. Kooney thanked him.

Mr. Burke clarified that the variance amount is going to be 3'6".

The board confirmed this is correct.

Mr. Kooney advised that they would like it confirmed that it is going on the north side of the house.

Mr. Norton advised that they confirm that it is going on the north side of the home.

Mr. Burke does the drawing, submitted with the application, does it have a marking as to where it is going to be placed or was that added?

Mr. Tuck-Macalla advised that the applicant gave them the drawing as provided. The photos that came with it were on the north side of the house.

Mr. Saurman also advised that the application states that the generator is going to be on the north side of the house.

Mr. Bruno remarked that the decibel rating is outstanding for this unit. Given any variance, which he sees as minor, this should be noted for the record.

**Motion** by Mr. Burke, **Second** by Mr. Bruno, that the property at 317 Bradley Rd. be granted a variance of 3'6" from the side yard setback requirements of 1370.03 (d) for the placement of a generator on the north side of the house as indicated in the application.

**Roll Call Vote:**

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

**Nays –**

**Excused –**

**Motion Passed 7-0**

<p>3) Debra Blauman 24920 Sunset Dr.</p>	<p>Applicant is requesting two variances. The first is <b>1153.02(1) is for a Building Line encroachment</b>, the new deck encroaches into the 22 Ft. front set back by 5 ft. The request is for 5 Ft. or 22 %. The deck is 22Ft. from Sunset, the builder inadvertently did not take into account the Right of Way which is 5 Ft. inside the edge of the road. The <b>second variance is 1163.05 (h)(1) length of privacy screen</b>. The allowable fence over 6 ft. 4Inches above grade is 32 feet, the Ms. Blauman is asking for a <b>total variance of 12 ft. or 33%</b>. 10% of the perimeter is 41 ft. the panels over 4Ft. 4 inches are all in three directions and a part of the deck structure.</p>
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Mr. Norton introduced the next item on the agenda as Debra Blauman of 24920 Sunset Dr. Mr. Norton remarked that one of the things that he noticed when studying this application is that the address is on Sunset, but it appears to be facing Forestview which would make this a side yard rather than a front yard.

Mr. Tuck-Macalla advised that the house that was on that property was a Sunset address just like any other corner property the address doesn't initially correspond with where the front door is. That is the front setback. When this house was being laid out there were different implications on how it could be laid out – this was the most advantageous.

Mr. Burke remarked that they've seen that a number of times over the years.

Mr. Norton went on to inquire if the address had been on Forestview what would be the setback requirement on Sunset.

Mr. Tuck-Macalla replied that it would have been 25% of 85' or 21.25'.

Mr. Norton remarked that it doesn't really matter than if it's a front or a side yard requirement and it sounds like this was a legitimate error in interpreting the inside edge of the road.



Mr. Tuck-Macalla replied that when he went out to research this if you measure from the road to the deck it is 22'. Obviously that road is very jagged and it's not exact. He went from the pins in the back property line and measured forward and that is where they came up 5.25".

Mr. Norton advised that he is aware that the houses on Sunset are tightly packed and there are a lot of different configurations. Over the years quite a few variances have been granted within this neighborhood.

Mr. Bruno remarked that he would like to agree with Mr. Norton. This entire neighborhood has so many unique characteristics. It would almost seem contrary to what their tone has been considering the percentages they're dealing with.

Mr. Saurman inquired what the consequences were if this is denied since it's been built.

Mr. Norton remarked that the consequences are not easily dealt with since it was already built. It sounds like it was an innocence mistake to think that this would not need a variance.

Ms. Blauman added that she thought she was within the numbers. She had no idea she had to take 5' more extra feet from the road.

Mr. Norton remarked that they will want to deal with these two requests separately.

Mr. Miller remarked that there as an applicant 8 or 9 months ago that inherited a home and began building a large front porch, pergola, large back deck and consequently the board asked them to revise what was already built and they were midway through the process. There is precedent to ask them to revise it. They aren't asking them to change the foundation of the structure. Sunset is very much hobbled area and nothing is very clear back there, but he's not real in favor of allowing such a distance when an innocent mistake may have been made, and the previous applicant may have been unaware as well, but the corrections had to be made.

Ms. Blauman remarked that there is no yard on the other side because of the easements that were granted. The backyard where she could have a deck or any outside space - she can't use. Plus she has to have soil put in because of the height of the road on Sunset and the elevation of the house that the house had to be built. That is her only outdoor space that she has. The house that is behind her, or to the right, is built very close on the property line. The back has the swale and the house has to be elevated. It was a legitimate mistake. There are many houses on that road that have structures closer than what she has. She had a porch on her print and she had no idea she had to add 5'. She is guilty and she thought it was okay until Mr. Tuck-Macalla advised that it wasn't.

Ms. Young remarked that lot of what they see in that neighborhood is that it was developed as a cottage neighborhood and the lots are being redeveloped and the new homes are much larger than was originally accounted for. When you add a home that is sizable onto a lot of a home that can't afford a house that size then you start to hit the infringement.

Ms. Blauman replied that it is two lots. It's long – which is why the house was built that way. When she bought she had intentions to rebuild. The house was flooded and rotten. She

previously lived on the other corner. Whenever it rain the garage filled with a foot of water. It wasn't salvageable.

Mr. Gess inquired of Mr. Tuck-Macalla if there was a permit for this?

Mr. Tuck-Macalla replied that there was not a permit for the deck. There was a patio that was with the original set of plans and a porch on that side. That was a part of the original plans. The deck wasn't a part of the original plans. He went there and saw that the deck was almost complete. That is when he stopped it and said they needed to pull a permit and most likely go to BZA.

Mr. Norton remarked that he knows that Sunset has struggled for years to get the whole drainage system worked out in that area. The storm drainage. The City needed some cooperation, on some of the easements, to solve that. Was this property included in that?

Mr. Tuck-Macalla replied in the negative. He advised that there is an easement along Forestview. There is a 10' sanitary sewer easement along the Forestview side and then area that they are talking about on the Northside there is a pretty deep swale that needs to be created to drain the lot as Ms. Blauman was saying. There was such a previous problem with the drainage. The easements that Mr. Norton is talking about are on the corner of Rockledge and Sunset not at this end.

**Motion** by Mr. Bruno, **Second** by Mr. Burke, to grant the property at 24920 Sunset Dr. a variance per CO 1153.02 for the building line encroachment for the deck encroaching into the 22' front setback by 5' which is 22% of the allowed footage. This is confirmed by the visit of the board members as well as the building director in observation of the site.

**Roll Call Vote:**

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

**Nays – Miller**

**Excused –**

**Motion Passed 6-1**

Mr. Norton introduced the applicant's second request. To comment on the way the ordinances has been interpreted in the past 10% of the lot would allow 41'. The request is for 47' and so he believes they are dealing with a variance of 6' as it relates to the 10% rule rather than the 32' rule. The longest section is less than 32' rule. The longest section is less than 32' and then it changes direction twice.

Mr. Tuck-Macalla remarked that he has a question for the board before they get started. They all keep mixing up fence and privacy screen. This is a screen on a deck. They haven't dealt with this since he's been the building director. He included this in the variance because he wasn't sure how they've dealt with screens on porches/decks in the past.

Mr. Burke remarked that is a good question. This is not a fence type privacy screen along a lot line. It's a high railing, if you will, on a deck.

Mr. Tuck-Macalla advised that the ordinance says 'above grade'. Now they have a 6' privacy screen which is 6' above the floor of the deck which is well above 6' above grade. For arguments sake if the deck was 4' or 6' off the ground would we be able to put a 6' privacy screen on there? Where do we start counting grade?

Mr. Burke inquired if this would be thought of as similar to a railing on a deck or a porch is there any ordinance that regulates the height of that?

Mr. Tuck-Macalla replied that there isn't its just building code. There is a minimum of 3'.

Mr. Burke pondered didn't they do one over in the same neighborhood two years ago? It was a second floor deck and on the west end of it - it had a wall or a screen going all the way up. Does anyone recall that?

Mr. Norton confirmed that it was in the Sunset neighborhood.

Mr. Burke replied that he didn't think the height of the west wall up on that deck was an issue.

Mr. Norton replied that his memory was similar. He went on to state that this is almost a part of the structure. In effect they've just passed a variance to allow the structure to be closer to the front setback and since this is part of the structure maybe it applies that way.

Mr. Young added that she relates this more to the one they had recently where there was a decorative structure that was elevated that was blocking side of his hot tub. It was an elevated level. From what she recalls they had him reduce the size of that structure. It wasn't a fence, it wasn't on the parameter of the property, it was more of a privacy screen within the fence which she thinks this one is more like.

Mr. Gess replied that was almost free standing. There are some similarities, but it seems like if that had been an addition or a porch like some of these you see with a fireplace or wing wall. If the porch had been partially enclosed it would be subject to permit review, but it would be walls to a structure.

Ms. Young inquired if he's saying its okay to completely enclose something than it would have been okay? So if he had added 3 more panels it would have been better?

Mr. Norton stated that it wasn't on the elevation of the hot tub. He has a hard time seeing this now, to Mr. Tuck-Macalla's comment, as not being part of a structure.

Mr. Tuck-Macalla remarked that if you put a roof on it or cross braces and then you'd call it a pergola. Are we still dealing with the same ordinances as it pertains to privacy screens? He has come across this a couple times.

Ms. Young commented that looking at precedence. She considered the house on Columbia wanted to put a porch with a pergola that was infringing on the front setback. They allowed this front setback, but they didn't want it to be a full obstructive structure. They recently had some cases where they didn't approve.

Ms. Blauman advised that the reason she put the structure around it is that the lot goes back. She was originally going to pour a cement patio, but where the house sits at that point the drop from the sliding glass doors to the ground was something like 20" inches. To pour cement – it was too high. That is why she brought the deck out. Anyone who goes down Sunset knows that everyone is out walking the beautiful area. If she walks down into her kitchen in her pajamas everyone will be able to see her because of how the home is configured. She plans to put pretty things on the fence. She believes that what she's done with the house and done nothing, but improve that corner.

Mr. Bruno remarked that one of the things – Columbia is a pretty visible area with a clear consistent setback, whereas this is more of a unique neighborhood with lots of differences in the structure lay outs. From a traffic perspective, runners, etc. that neighborhood can't get quite the traffic that he would see her being too concerned regarding the privacy screen. He can understand the setback piece, but this is the part of the application that he has more issue with... That entire neighborhood is relatively secluded. Even if you're running you have purpose to go into that neighborhood. If you're there to walk or run it's for good intention or you're a resident. To have a privacy to have that height – he has a little more of a challenge. It's one thing to find where this fits into the code.

Ms. Blauman replied that the Sunset road is high. From Sunset to her door. She lived in the house across the street previously. It was like living in a fishbowl. It's a beautiful walking area and lots of people walk around, and she loves that, but she also wants to be able to walk around her home. So when you walk down the higher road and the lower house – the line of sight. It's a very people oriented neighborhood and not just the people that live there. Everyone likes to walk the dog it's as safe little area and it's charming.

The board continued to discuss the proximity of the home and line of sight.

Mr. Burke inquired what the height of fence/wall in question – as built?

Mr. Tuck-Macalla replied that it is as 6' off the deck, but he isn't sure what it is from grade.

Mr. Burke inquired if any further research might help them on their decision regarding how to characterize it.

Mr. Tuck-Macalla replied that he could look back into old cases because that is a question that he has going forward as well.

Mr. Norton remarked that is a good suggestion to kick this down the road a bit. Because it is a new question and he would agree with some other comments. He would like to take another look at this. He was viewing it as so much 32' in one direction and 10% parameter as a normal privacy screen that you think of as a fence, and this is not that. Maybe it would be best if we pause this and give the board a chance to visit the site again and research this. And he would like to go around this whole neighborhood to see what has been granted in the past.

Ms. Young advised they are looking for a 12' variance, or 33%, and they are actually asking for a 15' variance or 47%. It seems like the privacy screen is 47' total.

Mr. Burke added that over the years there have been lots of applications for a porch and oftentimes it starts an encroachment into the setback, but as part of the resolution we would actually require that they wouldn't enclose it. He's not sure how this compares to that. He advised that he's not sure how to handle this issue.

Ms. Young & Mr. Bruno remarked that it's an attractive screen.

Mr. Gess agreed that there are a lot of good questions here and inquired if not one of the elevations is longer than 32'. Based on the way we've interpreted them previously the 32' - 47' over considering the 41' which would be 10%. 6' lineal feet would be the variance asking for over the 10% rule? Which is about a 15% variance?

Mr. Norton replied that his math is correct – if they are treating this as a fence.

Ms. Young stated that she doesn't think this is a fence.

Mr. Gess it's either not a fence, and not before them, or is it a privacy fence and is it stand reasonable based on precedent and variances they've granted in the past.

Ms. Blauman advised that she plans to add flowers and make it look really pretty.

**Motion** by Mr. Burke, **Second** by Mr. Bruno, that the application for the property at 24920 Sunset Dr. for a variance in connection with the fence/structure on the deck be tabled until the next meeting to permit the building director time to do further research and also for the board to view the property and neighborhood as part of their considerations.

**Roll Call Vote:**

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

**Nays – Miller**

**Excused –**

**Motion Passed 6-1**

4) Andrew & Ann Seger 23416 Lake Rd.	The applicant is requesting a variance to section, <b>1359.01 to install Air Conditioning</b> Equipment closer than 10 ft. from the west property line. The request is for a 3 ft. variance or 30% <i>Item Tabled 5/6/21 – Applicant to provide additional information prior to 5/20/21 Meeting</i>
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Mr. Norton introduced the next item on the agenda as Andrew & Ann Seger at 23416 Lake Rd. He advised that they have gotten additional information.

Mr. Bruno advised that the decibel rating is excellent on the unit based on what he has for the carrier unit.

Mr. Norton remarked that in going back in there he noted that the house to the west has both their air conditioning units and generator in that same corridor between. They must have a little more leeway dimensionally from the survey, although it doesn't say exactly how much, to either have allowed their units to be on that side and still have the 10' distance required. This does seem to be the utility corridor between the two houses. There is an absence of windows on the house to the west. In looking at it, this does seem like the proper/reasonable location.

The board agreed. The accommodation made by the applicant with the additional drawing and unit and demographics are consistent with the conversation that they had in their last meeting.

Mr. Norton remarked that this is referring to air conditioning equipment. Wasn't a generator also proposed in this location?

Ms. Young advised that it is not, but the house to the west has a generator.

**Motion** by Mr. Bruno, **Second** by Mr. Burke, to grant the property at 23416 Lake Rd. a variance per CO 1359.01 to install an air conditioning condenser unit within the 10' side yard setback. The requested variance is for 3' or 30% of the allowed feet from the side yard setback provided that the unit is installed in the location as prepared as submitted with the application and that the unit is surrounded by decorative fencing or year round landscaping.

**Roll Call Vote:**

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

**Nays –**

**Excused –**

**Motion Passed 7-0**

5) Old World Classics Construction on behalf of Ryan and Jaine Little 24744 Lake Rd.	The applicant seeking a variance to <b>Section 1153.04 Minimum Rear Yards the request is for 15 ft.</b> <i>Item Tabled 5/6/21 – Applicant to provide additional information prior to 5/20/21 Meeting</i>
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Mr. Norton introduced the next item on the agenda as Ryan and Jaine Little 24744 Lake Rd. It is to be noted that a communication has been received from 303 Rockledge and 24736 Lake Rd, the neighboring properties, encouraging the board to grant this request.

Mr. Little advised that he had proactively contacted both the neighbors after finding out they didn't get the mailing and walked them through the property plans and reassured them as to what they are trying to build. After they were able to walk them through they felt much more comfortable about the variance that is being requested. They also staked the property and offered to meet them on site. They felt comfortable enough that they didn't need to meet in person. They have done the best that they could to ensure that the neighbors comfortable with what they are proposing.

Mr. Norton commented that having the yard staked made a lot more sense given the amount of open land associated with this property.

Mr. Gess agreed that the staking did help, but he still struggles with the fact that this is a blank slate. This variance lives with the property. If they are going to grant a setback on a property line his preference would be that they explicitly state that it is only for a certain distance. He doesn't want this house to get leveled and a bigger house be built along that entire line. He thinks what they are doing makes sense. He doesn't want the board's good will to be misinterpreted.

Mr. Miller stated that these setbacks were to be respected. A new home design, they come in all shapes and sizes, he realizes a greater a concentrated plan gives them the advantage of efficiency, room sizes, utilities, etc. They just looked at a plan from Sunset Drive that had to contend with those setbacks and they ended up with a much longer linear property and he, personally, has a hard time reversing what planning commission, from the minutes, took a long time to discuss how they developed the setbacks and the condition that the pass it on to the BZA. It's rare that they get that kind of communication from them that's his two cents.

Mr. Norton replied that it's well received and he would like to note one factor. They could include, to Mr. Gess's point, something so they don't provide a blank slate to a new home. In our current world eventually everything gets torn down and redone – this is a legitimate concern. This is a very difficult piece of land to establish setbacks on. You could say that the house proper has a large rear setback and how the lot is setback and L-shaped and you could almost draw a line along the face of the house proper and its lined up with the side yard and you could say it's got a lot of rear yard setback. Mr. Tuck-Macalla was forced to interpret the rear yard setback lines and follow along the very unusual jigsaw puzzle of this lot. As long as, any future structure, does not change from this minor square footage corner. He guesses they are talking about a 15'x12' area that falls into that dotted line. The dotted line itself needs to be interpreted in a difficult way.

Mr. Saurman noted that he was torn by the clean slate discussion, but then when it gets to the difficulty that Mr. Tuck-Macalla, and others, had interpreting the setbacks. It's not such a clean slate. He is leaning towards this being an appropriate request.

Mr. Bruno added that he has to stand on his comments from their prior discussion that this is a reasonable request based on the improvement that the family wants to make to the property and it would not be along the entire length of the Northside of the property and just that corner, as described.

Mr. Burke confirmed that they are talking about the section on the northernmost part of the northern side of the structure. Just the very narrow spot along that spot of the house.

Ms. Young stated that her read is that it's a modest house and it's not someone trying to overbuild on a lot. It's just an odd lot that has strange setbacks and they're trying to fit a house that is modest in size onto it. It will improve the corner. To Mr. Gess' point they should note in their motion that it just includes that one corner – so he can build so no future home owners can take that all the day down to that side street.

Mr. Bruno remarked that there are so many different variances granted in this zone of Bay Village. This seems to be a minor accommodation in a high profile visible area.

**Motion** by Mr. Bruno, **Second** by Mr. Saurman, to grant the property at 24744 Lake Rd. the variance per CO 1153.04 for a minimum rear yard setback request of 15' per the drawings as prepared and submitted specifically related to the corner of the new structure to be built that faces the north and the corner of that section of the structure per the application as prepared and submitted. The corner of the structure is facing northwest. This variance specifically does not provide for the variance to extend any further to the west or the east beyond that corner of the house per the drawing as prepared and submitted.

**Roll Call Vote:**

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

**Nays – Miller**

**Excused –**

**Motion Passed 6-1**

**Motion** by Mr. Burke, **Second** by Mr. Bruno, move that the Board of Zoning appeals find, as a matter of fact, that an issue that was in support of the previously approved motion was a very unusual configuration of the actual lot itself.

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

**Nays – Miller**

**Excused –**

**Motion Passed 6-1**

6) Julie Byrne McMahan 329 Elmwood Rd.	The applicant is requesting a variance to section, <b>1359.01 to install Air Conditioning Equipment</b> closer than 10 ft. from the property line. The request is for a 5 ft. variance or 50%. A/C unit is in the rear yard.
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Mr. Norton introduced the next item on the agenda as Julie Byrne McMahan at 329 Elmwood Rd. It's to be noted that the unit is 71 decibels and it is behind the house, as is normally required, it's sort of boxed in by a patio that would be in the way of moving it. The board has had an opportunity to visit the site and review the application.

Mr. Burke remarked that this seems like a reasonable request and as pointed out it is in the rear of the building.

Mr. Norton confirmed that there is not anyone here beyond the board members for this application.

Mr. Burke advised that his reasoning for wanting a sound blanket is that if this unit is replaced down the line they don't want a loud unit there. Is there some way that could be covered at a later date when they make an application and then it isn't needed in the motion?



Mr. Tuck-Macalla replied that it's not out of the question to add that to the motion then that way when it's replaced we can refer to the motion and then it will carry over to the next unit that is placed in that unit. That way we will know when we check for a variance.

**Motion** by Mr. Bruno, **Second** by Mr. Burke, to grant the property at 329 Elmwood Rd. a variance per CO 1359.01 to install AC condenser unit with in the 10' setback granting a 5' variance or 50% overall variance above what is permitted by code provided that the condenser unit is screened by decorative fencing or year round landscaping. This unit should be equipped with a sound blanket if one is not included with the condenser as produced by the manufacturer.

**Roll Call Vote:**

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

**Nays –**

**Excused –**

**Motion Passed 7-0**

Mr. Gess inquired about if these meetings returning in person or any city meetings.

Mr. Tuck-Macalla replied that he was going to talk with Mr. Barbour about that, but he's not on the call. He thinks it may be the next or the following meeting after the 1<sup>st</sup> of June. He will make sure they get that information. As of yet, there are no applications for next week, but that could change. It may not affect the next meeting. We will be going back in person.

The board agreed that this has generally worked out well especially for those members who travel. Mr. Norton suggested that they do some sort of hybrid even if the individuals who joined wouldn't be able to vote on items.

Mr. Tuck-Macalla advised that the provision to vote remotely ends June 1<sup>st</sup>.

There being no further business to discuss the meeting adjourned at 9:08 p.m.

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Jack Norton, Chairman

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Lauren Oley, Secretary