

Meeting Minutes of
Board of Zoning Appeals
Held May 21, 2020

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

Excused: Tyo

Also Present: Eric Tuck-Macalla (Building Director)

Audience: Andrew (Steve) Dever, Gary Ebert, Jason and Christy Knapp

**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 7:42 p.m.

Mr. Norton introduced the first item on the agenda, the approval of the minutes that were held May 7, 2020 and May 14, 2020.

Motion by Mr. Burke, **second** by Mr. Bruno to approve the minutes of the meeting held May 7, 2020 and May 14, 2020 as prepared and distributed.

Motion passed 6-0.

Andrew Dever
24805 Lakeview Drive

The applicant is requesting a Special Permit-1125.02-(enlargement or change) to build an oversized temporary utility building on parcel number 204-14-043, SL 227 and a variance per C.O. 1350.03-(installation and location) to build a 180 sq. ft. utility building, 33% increase.

Mr. Norton discussed the second agenda item and explained that the Board has had an opportunity visit the site and review the application. He asked if there was discussion.

Mr. Ebert, former City of Bay Village Law Director, introduced himself. He explained that he was present because he had been involved in an agreement with the property/Sunset Improvements on behalf of the City back in 2018. The agreement was memorialized in 2019. The Sunset improvements have been on the books with the City for a long time even before he became Law Director. Nothing has happened because the cost is associated with utilities necessary, storm sewers, sanitary sewers and road improvement. Back in 2018-2019 the City decided that they needed to phase this project in to try and justify getting money based on the limited number of households in that area. When doing the engineering they discovered that the storm sewer existing down there ran under the garage of Mr. Dever, on the corner of Lakeview without an easement. During that period of time, he talked with Mr. Dever on behalf of the City

and they were able to enter a memorandum of understanding to get a temporary easement through his property. Since then Mr. Dever has completely renovated the house and built a new garage. However because of the storm sewer that existed, he had to back out the garage where it was located in order to have it not built on the storm sewer. They entered into a memorandum of understanding that basically said that during a period 2 years that the City would be able to utilize Mr. Dever's property for the storm sewer. When the new improvements concerning the storm water was ever effectuated, which is being down now, the City would abandon that storm sewer and redirect the flow of the water through that period of time. Due to the location of the storm sewer, Mr. Dever who wanted to put a utility building in the back of his house, had to move it to the lot adjacent to its house. Mr. Dever would like to build a utility shed on the adjacent lot with a special permit that if and when the property is ever sold it would have to be removed. It is not a permanent structure, it is a movable structure. It is a very attractive utility shed. Mr. Ebert was present at the meeting because he was part of negotiating the memorandum in conjunction with Law Director Barbour and City Service Director in order to get this project done. He did not have a copy of the memo because the agreement is not a public record at this point at time. The hope is that the City will abandon the memorandum of understanding in a couple of years and is the reason Mr. Dever is asking for a conditional use permit.

Mr. Dever introduced himself and followed up on Mr. Ebert's comments. He explained that he has had meetings with the Service Director and Mayor in regard to the encroachment on his property. The drain that he is talking about that encroaches on his property originates on Lake Road and goes into Lake Erie. It has been there for many, many years with no easement or condition for that to transverse his property. On top of that, the drain line failed. The City had determined that it had failed and created significant issues as far as the structural integrity of his garage that he had to take down as a result of those issues. They entered into an agreement as far as allowing the City to maintain and have that drain line for a few years until the Sunset project was underway. Originally in 2018 he had submitted plan for a three car garage off of Sunset Drive. They had to be withdrawn due to the fact of the issue concerning the drain. Surveys had to be done and he hired an engineer and come up with a new plan. In an effort to mitigate his damages, he comes to the City now to ask that he be permitted to put this temporary structure on the adjacent lot. (Amish structure shed-10'x18') It will be located on the corner of Sunset and Rockledge. It enhances that part of his property and will not interfere with anyone else's view and enjoyment. He has demonstrated his willingness to work with the City of Bay Village to find resolutions that do not necessitate confrontation.

Mr. Tuck-Macalla discussed the size of the proposed shed. He explained that if it is 10'x20 it will not be able to be built as a temporary structure it will be considered a garage with a structure and foundation.

Mr. Dever clarified that the proposed shed is actually 10'x18'.

Mr. Norton explained that there are two issues before the Board. One is that this would be a temporary structure on a lot that does not have main structure which would require a temporary permit. The second question is the proposed size of the structure. The Ordinances state that they can be 120 sq. ft. maximum and this is a request for 180 sq. ft. A storage shed is one type of building and on a lot and they have allowed to have more than one structure. For example if this

had been designed as a storage shed and a gazebo type of a structure. The part that is designed as a greenhouse is a storage shed in one sense but that may have some factor to it. As far as a structure on a parcel that has no main structure, the neighborhood has some tiny lots with cottages which are grandfathered in to be permitted to have a structure on them. Once you tamper with that and once you join two lots you cannot unjoining them. So the grandfathered clause disappears. Mr. Dever is under a situation that would be not advantageous to join the lots in order to have this all on the one parcel. (lot 227 with the lot that faces on Lakeview) Due to the unusual circumstances based on historical fact that the City ran a sewer through his property and caused him some economic hardship. If this thought out as a temporary building that is not allowed to stay once the main lot is sold or any of the other three lots are sold then he did not see much harm in it.

Mr. Norton asked if there were any comments from the other Board members.

Mr. Bruno stated that based on the uniqueness of the neighborhood and the other issues that have been discussed, this lot(s) in particular regardless of the easement issue, the neighborhood context and the permit being temporary seems reasonable. He does not have issue with the placement and has some issue with the sizing. He is relatively comfortable based on the size of the lot that are being considered collectively.

Ms. Young asked how big each of the three lots were.

Mr. Norton stated that they are between 3,000-3,500 sq. ft.

Mr. Tuck-Macalla agreed.

Mr. Norton explained that they were grandfathered because they were cottage lots so legally you can build a house on it. It would be tightly confined. Hardly any of the houses in this entire development have an adequate backyard based on Code. Most do not have an adequate setback and a lot of them do not have an adequate side yard setback because of the history of the neighborhood.

Mr. Miller discussed the positioning of the shed on lot 227. He clarified that the location is because the primary residence and property is not configurable for having a shed in the backyard within the standard 5' offset.

Mr. Tuck-Macalla agreed.

Mr. Miller discussed lot 228 and 229. If Mr. Dever chose to, he could sell those properties without having any influence on lot 227 because it has a 9' inset from the east and a 5' inset from the south. There is still plenty of room between the adjoining properties of 228 and 229. They are not sitting it in the center of the 3 of those lots, it is off to the side.

Mr. Tuck-Macalla agreed and explained that it is all on the corner on 227.

Mr. Burke discussed the temporary nature of the proposed building. If any one or all of those lots were to be conveyed to a different party the structure should be removed because if you sell off 228 or 229 that reduces what is effectively the applicant's back yard even though it is recognized they are different sub lots. If a conditional permit is granted, the condition should be any or all of the lots including the main one on Lakeview were conveyed it would have to be removed.

Mr. Miller asked if power is being provided to the shed.

Mr. Dever explained that they hope to get power out to it if permissible. Part of the building is greenhouse, so he needs to have light out there.

Mr. Dever explained that the footprint for the drain line is restricted by 15' of property. You cannot excavate or do anything. That goes from Lakeview all the way up to Sunset on the eastern section of the property. That area will never be disturbed until this easement is cancelled and the City has rerouted their drain lines.

Mr. Norton asked if there was further discussion or a motion. He explained that this would require two separate motions to accomplish the request. One would be a special permit and the other would be a variance to the proposed size.

Motion by Mr. Burke, **second** by Mr. Bruno that the property located at the north east corner of Sunset and Rockledge Drive, sub lot 227, be granted a conditional special permit for the installation of a utility shed with a greenhouse as per the specification submitted with the application provided that the unit must be easily removable and that upon any transfer of title of any of the four lots, mainly 227, 288, 229 and the main lot at the north west corner Rockledge and Lakeview Drives that upon any such transfer of title the structure must be removed.

Mr. Miller made a note for clarification that Mr. Burke mentioned that the home was at the north west corner but it is actually the north east.

Mr. Burke said the main home is the north west corner of Lakeview and Rockledge but the sub lot 227 is at the south west corner.

Edited Motion:

Motion by Mr. Burke, **second** by Mr. Bruno that the property located at the north east corner of Sunset and Rockledge Drive, sub lot 227, be granted a conditional special permit for the installation of a utility shed with a greenhouse as per the specification submitted with the application provided that the unit must be easily removable and that upon any transfer of title of any of the four lots, mainly 227, 288, 229 and the main lot at the south west corner Rockledge and Lakeview Drives that upon any such transfer of title the structure must be removed.

Roll Call Vote:

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

Nays-

Motion Passed-6-0

Motion by Burke, **second** by Mr. Bruno subject any limitations contained in the previous motion that the property described as sub lot 227, at the south east corner of Sunset and Rockledge Drives be granted a variance from the provisions of C.O. 1350.03 for the installation of a shed of 180 sq. ft. as per the drawing as submitted.

Roll Call Vote:

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

Nays-

Motion Passed-6-0

Jason and Christy Knapp
31148 Huntington Woods Parkway

The applicant is requesting a variance per C.O. 1163.05(h)-(privacy screens) to install a 6' fence, a total of 121.4'.

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

Mr. Norton explained that the house to the west was given a variance for a 6' fence along their rear yard line. The basis was that cars that are coming down Eagle Cliff would shine their headlights into their home. He assumed this is what the applicant's would also like to eliminate. The only question he has is that neighboring house has a backyard that butts up against the end of the street totally whereas this house in question is offset to the east somewhat. He is not sure that if the corner, which would be the north west corner of that property, was shaded with 32'-40' 6' fence both on the western side and on the northern side of that back corner if that would not be sufficient to solve the problem of the headlights shining in the backyard.

Mr. Knapp explained that they had looked at that and felt it was a good suggestion as opposed to running a fence completely across the back line of the property. One solution would be to run it 32' portion along the north side then a 25.4' portion on the west side of the property. The reason they requested the entire length is for uniformity and appearances in the backyard. They would be appreciative of having 32' on the north side plus 25.4' if that would be more acceptable. They currently have some evergreen trees blocking the portion of the house behind them. They thought about doing that to the area they are requesting the fence for but they had an arborist come out and they said they couldn't grow evergreens there because they have pine trees along the back of the property and they drop their needles and it would not work. Their preference would be to use the evergreens but unfortunately it is not a solution. They are making the request in terms of privacy. They have a basketball court in the corner of the yard and they have had some damage done to it because kids came through the back yard to have access to Eagle Cliff. There is a community property at the end of the street and people are walking their dogs and cars are turning around.

Ms. Knapp explained that their property is a unique situation because their backyard is the entire length of their neighbor behind them. Their driveway, house and property is in their backyard.

Mr. Knapp feels the neighbors would be happy about the proposed fencing because it would give them more privacy as well. Their basketball court is near their neighbor's front door. They were aware of that when they bought the house and their plan was to use the evergreens but unfortunately that will not work unless they were to cut down all the pine trees in the backyard which is something they would not be comfortable doing unnecessarily.

Mr. Bruno asked what the perimeter of the property was.

Mr. Norton stated that according to the notes from Mr. Tuck-Macalla, 10% of the lot is 185'.

Mr. Norton discussed the perimeter of the lot. The lot is 100' wide and at least 200' deep. The perimeter would be 600' at least. 10% of that is 60'. So having 32' on the north border and 32' on west border would be allowed under the 10% rule.

Mr. Bruno stated that that is why he wanted to check the perimeter and explained that he would be agreeable to consider that as the Board's variance. It would be an accommodation considering the uniqueness of the lot. He was curious about the community space just west on the north west corner of the their property and is still okay with considering a variance for 32' coming from the north west corner of the property.

Mr. Norton stated that that might almost be allowed under the 10% rule and in order to soften the transition, the Board has considered going from a fence that is 6' and gradually going down to the 4' fence over 8'. The additional transition pieces may exceed the 10% rule.

Mr. Norton clarified that the depth of the lot is 185' and the width is 100'. They would be allowed 56' of 6' fencing. If they had 32' on each side of the corner plus an 8' transition section on each side then they would need a variance for the 10% rule and the fact of instead of 32' they have not been counting the tapered transition pieces. They would still need the 10% variance for a small amount going from 56'-64'.

Mr. Bruno stated that he is focused on the 56' for the Knapp's benefit. They sell the fencing in 8' paneled sections so naturally that is why the Board is considering 56'. The perimeter is 570'.

Ms. Young stated that is what they are pretty much asking for as a minimum.

Ms. Knapp explained that when they pull in their driveway from the front section, you can see all the way back into their whole yard. If the fence is stopped at the 32' it is going to look awkward and as if you are opening it up to the driveway in their backyard. It would look more uniform and aesthetically pleasing if it was the entire way.

Mr. Bruno agreed and explained that is why they are suggesting they could have the fencing fade on the final two panels which would give an additional 16' on either side of the 32' on the variance. The panels would be faded down to the 4'4" fencing that the Code requires.

Ms. Knapp explained that it would just be the one fade because from the corner it would go across and you would have to fade it down. Fading it down one way would look awkward and make you wonder why you are opening it up to that area.

Mr. Bruno explained that they could fade both ends of the 32' runs.

Mr. Burke explained that he looked at the property that day from the Huntington Woods side as well as the dead end on the street behind and it does seem as if the 32' is more than sufficient. It is instructed to look at the pictures the applicant supplied. Believing that they are most likely 8' panels on the existing fence it gives the Board a pretty good idea of how far apart across the north back lot line. It would certainly block the neighbor's driveway and part of their garage. Taking it down 24' or so on the west line would block some if not all of the view of the turnaround at the end of the street. The existing limitations of the Code would be sufficient. It would just need a small variance to the 10% rule.

Mr. Norton asked if Mr. Burke would be comfortable with the 8' transition pieces.

Mr. Burke stated that he had no problem with the transition pieces and the Board has done it numerous times.

Mr. Gess touched on the uniqueness of the property but in his mind that is more focused on the north west corner. It would be a little bit of a stepping outside of what the Board is permitted to do to extrapolate that uniqueness of the request that would imply something greater along the entire property line. There are plenty of other lots in a similar position and it really does not rise to the level. He is sympathetic a little bit to the north west corner with the street right behind it.

Mr. Norton explained they would just need a minor variance to the 10% rule and if the Board is comfortable with the transition on each of those legs, so that it softens the change from 6'4"-4'4".

The Board agreed.

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

Motion by Mr. Burke, **second** by Mr. Bruno that the application at 31148 Huntington Woods Parkway be granted a variance from the requirements of C.O. 1163.05(h) maximum allowable 6' privacy fence for 23' based on 10% of the perimeter of the property for the installation of a privacy fence at the north west corner of the property, 32' across back west section and transition to the allowable amount and similarly on the west back corner with a 8' transition piece.

Roll Call Vote:

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

Nays-

Motion Passed-6-0

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Mr. Knapp asked what the length of the transition pieces were extended.

Mr. Bruno explained that the transitions at the end of the 32' at either direction, you have one panel at each end of the 32' that you can transition a total of 8' to 4'4". So they will have 32' 32' and then on the ends of it, they will have 8' to transition down.

There being no further business to discuss the meeting adjourned at 8:30 p.m.

Jack Norton

Kateri Vincent, Secretary