

Special Meeting Minutes of
Board of Zoning Appeals
Held June 4, 2020

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

Excused: Tyo

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

Audience: Residents signed in through Zoom technology. Some residents had previously submitted comments to the Secretary of the Commission that were sent to the Board of Zoning Appeals Members prior to the meeting. Emails are on file with the City Hall Building Department.

**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 7:30 p.m.

Mr. Norton introduced the first item on the agenda, the approval of the minutes that were held May 21, 2020.

Motion by Mr. Bruno, **second** by Mr. Burke to approve the minutes of the meeting held May 21, 2020 as prepared and distributed.

Motion passed 6-0.

North Depot, Ltd.
On behalf of Basma Ricaunte
31676 Lake Road
(Tabled May 14, 2020)

The applicant is requesting a variance per C.O. 351.16 (restricting paving of the front yard to 40%) a (15% variance).

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

Mr. Norton noted this is a property on Lake Road and the structure was forced to be fronted on the property due to a common area that the houses in this area share. A portion of what would be considered the front yard is actually City property. Many years ago Lake Road was moved further south. The original request was very extensive and with the help of a design firm, they have scaled it back to a 15% variance.

Mr. Bruno clarified that the Building Department had made a note on the application that the total proposed parking submitted with the application was 864 sq. ft. which is what the original paved parking area for the house was. They are requesting the same square footage as was previously in existence.

Mr. Tuck-Macalla agreed.

Mr. Bruno stated that the request would be similar to a grandfathered situation. If it is not the exact footprint, it is the exact same square footage as was previous in place.

Mr. Norton stated that that would lend itself to a positive consideration. Technically they would still need a variance because this is new construction even if the house is built on the original footprint. The garage is configured somewhat differently and would be considered part of a new construction requirement to bring it up to Code.

Mr. Norton stated that it follows the spirit of something that would be grandfathered in and said that he did not find a problem with the request.

Ken Martin, architect for the homeowner, introduced himself. He agreed with Mr. Bruno in that it is a replacement of the existing asphalt with concrete that is about the same size in terms of square footage. The premise of the request is getting out onto Lake Road safely. All of the houses along that section of Lake Road do have some ability to turn around or have turnarounds. The lot being 49' wide cannot handle a turnaround in the front yard. The only way it can work is if they back up and do a U-turn. (as indicated on the application drawing) The U-turn allows for a car in the garage to back up and turn around. It would also allow for two other cars to be parked on the west side. There is now a landscaped area in the southeast corner that has been added to soften up the street appeal and permit the turnaround. It makes better sense to create the driveway this way because it is safer. They have affectively reduced the hard surface that the applicant originally wanted and it is a cleaner approach to a problem that over the years will afford the owner to get off of that site as quickly as possible.

Mr. Norton explained that a lot of the situation had previously been discussed at past meetings and a good faith effort had been made to minimize the request.

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

Motion by Mr. Burke, **second** by Mr. Bruno that the application at 31676 Lake Road be granted a 15% variance of the 40 percent of the front yard area maximum percent C.O. 351.66 for the installation of a hard surface driveway as per the revised drawings as submitted by the applicant.

Roll Call Vote:

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

Nays-

Motion Passed-6-0

Tamara Vesikallio
29127 Lake Road

The applicant is requesting a variance per C.O. 1359.01 of 8' to install an AC condenser.

Mr. Norton discussed the third agenda item and explained that the Board has had an opportunity visit the site and review the application. He explained that this house is somewhat grandfathered in in that the original part of the structure is only 1' from the property line. When a more recent addition was put on, it was offset from the property line by 6'. This is a similar situation in Bay Village where they were built and positioned on a lot and grandfathered in in the allowed position.

Mr. Bruno noted the decibel level rating of the condenser unit is 74 which is in the range that the Board likes to see for a unit placement.

Mr. Norton asked if he would require a sound blanket.

Mr. Bruno stated that he felt a sound blanket requirement should be made. The Board has been consistently requesting this and given the fact that this is a placement next to an existing condenser, both being positioned right next to each other, there may be a little bit more noise than usual.

Mr. Norton asked about a screening requirement.

Mr. Bruno stated that year round screening via decorative fencing or ever green should be a requirement and put in place.

Ms. Young explained that her sister is the neighbor to the west of the applicant and she has no problem with the placement. They do not even see the existing structure now and the proposed one is to be tucked in even further on the corner.

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

Motion by Mr. Bruno, **second** by Mr. Young that the application at 29127 Lake Road be granted a variance per C.O. 1359.01 of 8' to the side yard setback to install an air conditioning condenser provided that there be a sound blanket installed if the unit is not equipped with one as manufactured and also that there be year round screening upon placement of the condenser in the location provided in the drawings per the application.

Roll Call Vote:

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

Nays-

Motion Passed-6-0

Bradley Beverly
497 Walmar Drive

The applicant is requesting a variance per
C.O. 1163.01 to add 65' of 6' fence.

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 wanted to clarify the drawing that was included in the Board's packets. The drawing had two different colors. The orange shows 120' fence line and yellow shows the combination. He asked what the colors indicated.

Mr. Tuck-Macalla stated that the colors were from the Building Department. The orange color at 120' is the permitted 6' fence that is between residential use and the park. The yellow is the additional requested variance by the applicant.

Mr. Norton clarified that the ordinances does allow a 6' fence when a residence joins a public area.

Mr. Tuck-Macalla agreed that it is allowed when it is a non-residential area.

Mr. Norton noted that Iris McDonald, neighboring property to the south, had sent comments on this request and that they feel that it should not be granted. A lot of it has to do with the fence that goes along with the park side of the property and how it relates to a sort of dead zone between the small 4' chain-link fence that the City put in and the narrow space that does not get maintained. She stated that it can get pretty shabby looking. Unfortunately that is not really in the Board's purview because the 120' east side does not need a variance because the ordinance clearly allow that. The Board is dealing with the current proposed request and the area along the walkway that leads to the park.

Mr. Barbour stated that it is probable that the chain link fence will eventually come down if Mr. Beverly puts a fence across the backyard. The chain link fence is the cities and it sits off the property line a pretty good distance. In talking with Jon Liskovec, Service Director, the eventual plan is to take that out over time.

Ms. Young asked what would replace the chain link fence.

Mr. Barbour was not sure. He was not sure if it had been contemplated yet or if no fence would be put in in those areas where the resident has sufficient fencing that separates the property from the park.

Mr. Bruno commented in regard to the yellow markings on the drawing. He explained that when they are looking at the criteria of hardship for a particular property, this property in his opinion does seem to be quite unique. It is surrounded on two sides that the applicant would like to have the 6' fencing. The one permitted on the east side and the requested variance request on the south side. Based on the uniqueness of foot traffic from residents and others that are accessing the public park and given the sightlines and observing the property itself, he does not have a problem with the request. He was curious as to what type of fence they propose to put up.

Mr. Norton explained that the Board was not given any indication of what the proposed fence will look like.

Mr. Beverly apologized and stated that he plans to put up a wood privacy fence. When he had talked with the Fence Connection, they had discussed putting in a shadow box wood fence based

on other fences along Bradley Park. The two 6' sections of privacy fence at the east entrance are basically the same and recently a fence was constructed on the north side of Bradley Park. You can still see through the fence but it certainly adds a level of privacy.

Mr. Norton explained that in tallying up the fencing that is being discussed, the ordinance allows 32' in one direction. When all the fencing is added up in the one direction (north/south), it comes up to 32'. Technically the one portion is permitted. If you add up the other direction there are three areas of 5' sections and a 52' section which is a total of 67' of which 32' is allowed. The Board is talking about is a variance request for a total of 35' out of all the fencing. It would be on the south border running east and west.

Mr. Bruno agreed.

Mr. Burke explained that he spent a considerable amount of time at the property and looking at different sightlines. He believed that the property to the south lot line (52' run), is not unique or a hardship situation. The 120' across the back lot line certainly is going to block off the ball fields, stands, etc. Along the 52' run it seems similar to a corner lot. He did not see the need for it.

Mr. Norton clarified that Mr. Burke was thinking that they could enclose a smaller portion of the yard around the patio opposed to the entire yard.

Mr. Burke explained that it would be enclosing it as a corral as well which is what the Board typically discourages.

Mr. Beverly stated that he feels his property is fairly unique. Having lived there for 8 years and has seen it evolve with the dying of the arborvitae tree along the back. They love Bay Village and Bradley Park and it is a big part of why they love where they live. But as the arborvitae die and have learned over time that western entrance to Bradley Park is very busy. Anyone who comes into the Park comes in through the eastern or western entrance. The western entrance is as busy or if not busier than other entrances with police cars, residents, baseball teams, etc. There is a lot of activity that goes on within the Park. And they are hoping to gain a little bit more privacy and it is consistent with what other properties have done along the walkway.

Mr. Burke discussed a previous variance request that was granted by the Board. (Bracken Way/Wolf Road near the high school) He asked if anyone on the Board recalled how much of a variance was granted for that application.

Mr. Miller stated that the Board gave them two sections at either end of the 32' and if you were to look at it today, they basically centered the 32' section and flanked it with 2 6' sections with a sort of stockade like drop down. They have also planted arborvitae as a landscape alternative to what they originally wanted.

Mr. Beverly shared pictures of the Park and proposed fencing.

Mr. Norton reiterated that the 120' fence is allowed and not before the Board. The majority of what has been discussed is reflected positively in the ordinances that say your property as a

residence is allowed to have a 6' privacy barrier between your residence and the City Park. The Board is only talking about the amount of 6' fence that is along that south portion of the property that abuts the walkway. Mr. Burke wondered if there really is a need 6' fence all across there in order to gain reasonable privacy. He acknowledged that the walkway is busy walkway. The variance is to try and accommodate properties that are more unique.

Mr. Burke discussed the 52' portion on the south side. He asked if the wedge shaped section was Park property. If that is Park property, does that 52' come under the same section of the ordinance as the back 120' and there for not needing a variance.

Mr. Tuck-Macalla stated that yes that is Park property. The ordinance reads that you can have a 6' fence between uses and is which is why it was granted for the back because it is a Park use. He stated that it is up to the Board to interpret it as they would like.

Mr. Beverly shared another story about an interaction he had with people walking past his property and his lack of privacy. He explained that he felt his proposed fencing plan was a cleaner look and had better sightlines. He had the Service Department come to his property to survey the land.

Mr. Burke said he can see what Mr. Beverly is trying to do. He clarified that the 52' run has his property on both sides of it.

Mr. Beverly said that at some point he would like to have a shed.

Mr. Bruno stated that he is comfortable with the proposed variance request but if others are more comfortable with 32' and two 6' panels on either end that taper he understood. He suggested the use of year round arborvitae. There are compromises that can be made.

Ms. Young asked if their patio on the north side was next to a sunroom.

Mr. Norton agreed.

Mr. Gess explained that he pulled up the County webpage out of curiosity of the properties. The walkway is on the same parcel as the Park. He felt that this application could possibly not even have to be before the Board. 120' could certainly be legally extended to that area as well and wondered how this is not already permitted. The compromise of keeping it pulled back on the south end of the east lot line makes a big difference. It keeps it open enough while allowing the owner to put a fence up because of the two types of properties. He feels the walkways is an extension of the Park based on the use. He does question the necessity of a 6' fence on the north side of the house.

Mr. Norton stated that it may be in the best interest of the neighborhood to grant a variance for this to be done the way it is designed to make that entrance into the Park as friendly as possible so that you are looking through some open space as you are getting to the Park.

Mr. Miller pointed out that Mr. Burke has lost connection and was no longer present.

Mr. Miller agreed with Mr. Gess in that the use is continued around that south side portion of the property. He stated that they may be pairing up another 6' fence to a neighboring property.

Mr. Norton stated that the variance would be for a 35' variance allowing the fence to be built per this drawing.

Mr. Bruno agreed but was hesitant to move because Mr. Burke was not present. He suggested he be called.

Mr. Barbour stated that the amendment to the revised Code that allows virtual meetings, is really unclear about whether you can vote by phone. His interpretation is that they need to be heard and observed. He suggested the Board get permission from the applicant that the Board can vote via phone rather than appearing by video. They would also want to advise the applicant that if there is only 5, he would need 4/5 to prevail.

Mr. Burke joined the meeting again.

Ms. Young discussed a neighboring property owner and the small triangle piece and it being cared for. She clarified that Mr. Beverly would continue to maintain that area.

Mr. Norton discussed the McDonald's concern over the 4' property between the City's chain link fence and neighboring properties. It is not maintained by the City and is getting a little scruffy. As far as the Board is concerned, that is not part of the current discussion although he agrees.

Mr. Miller recapped the variance request for Mr. Burke.

Mr. Gess repeated his comments above for Mr. Burke.

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

Motion by Mr. Bruno, **second** by Mr. Burke that the application at 497 Walmar Drive be granted a variance per C.O. 1163.01 to add 35' of 6' on the south side of the property per the drawings as prepared and submitted.

Roll Call Vote:

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

Nays-

Motion Passed-6-0

There was discussion about the feedback coming through throughout the meeting and asking that if you are not speaking to mute yourself as to cut down on the interruptions.

Mr. Barbour explained that City Council has decided to go back to in person/live meetings the following week and other Boards and Commissions will be doing the same.

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Richard Davis
31315 Lake Road

The applicant is requesting a variance per C.O. 1163.01 to add 134 linear feet of 6' fencing.

Mr. Norton discussed the fifth agenda item and explained that the Board has had an opportunity visit the site and review the application. He explained that these type of requests come in front of the Board with some regularity. There are more deer throughout the City than is desirable and the City periodically makes an effort to address that.

Ms. Young clarified that the Board is discussing 67 yards in each direction and not feet.

Mr. Davis stated that it is 438' from the back of their house to the fence in the back. They would have to do something along the east and west side of the property and add some sort of gate across the driveway.

Ms. Davis explained that they are trying to connect the east and west side by their garage so the deer cannot come into their property as much.

Mr. Norton explained that one of the difficulties is that the Board needs to find that this property is unique to justify changing the ordinance. He struggles to find what is unique about this property versus all properties in Bay Village.

Ms. Davis explained that their property is from Lake Road all the way to Huntington Woods. There are very few lots that extend that long in Bay Village along Lake Road. They are all wooded and the deer live in their backyards.

Ms. Young asked how deep their lot was.

Ms. Davis stated that she actually has a different survey than the one the Board was given in their packets. It shows 438' from the back of the garage to the neighbor's lot in Huntington Woods. The width is 70.13'. The five lots that they have are all wooded. The deer are penetrating into her backyard garden.

Mr. Bruno stated that he has a similar situation in his yard as well and is not something unique to their property.

Mr. Davis stated that their lot is 600' deep from one end to the other.

Ms. Davis stated that she will spend money on shrubs and the deer will eat them. She asked what Bay Village is going to do if they will not allow the proposed fencing in order to protect herself.

Mr. Davis explained that the neighbor to the east just put in a 3' fence in their backyard but does not do anything to stop the fence.

Mr. Norton explained that they are allowed to put a 3' fence around the entire property. What is not allowed is more than a certain amount of 6' fencing.

Ms. Davis asked if the Board would allow 5' because that may eliminate some of the deer from jumping over into their yard. They would like to have a nice black metal fence.

Mr. Bruno stated that most adult deer are capable of jumping over a 6' fence.

Ms. Davis agreed and stated that maybe not as often as they do now without a fence.

Mr. Norton explained that the difficulty is that the Board of Zoning Appeals has very limited authority. City Council is the elected representative in the City and they like to control the process of making the Laws. They charge the Board with tinkering around the edges where there is a unique circumstances. Good points have been made but it is something that City Council would need to address. A 5' chain link fence might be a reasonable approach but unfortunately that is not in the BZA's ability to grant. He suggested that they work with their Council person. He understands that the deer population is a concern for the City but the BZA cannot write the Law.

Ms. Davis stated that she understood and thanked the Board for their time. She asked who her Councilman was.

Mr. Barbour stated that Pete Winzig was their Councilman.

Mr. Burke asked if the application was being withdrawn.

Ms. Davis stated that at this time they are withdrawing their application.

Katlyn and Michael Stratis
484 Columbia Road

The applicant is requesting a variance per
C.O. 351.66 to expand front yard parking
area. (3% variance)

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

Mr. Stratis stated that they are not asking for much, just a little wider so they can turn around and exit their driveway face first onto Columbia Road

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

Motion by Mr. Bruno, **second** by Mr. Burke that the application at 484 Columbia Road a variance per C.O. 351.66 to expand the front yard parking area by the 3% variance being requested per the application and details as prepared and submitted.

Mr. Burke clarified that they are allowing 43% rather than it is 3% of the 40%.

Roll Call Vote:

Yeas – Norton, Burke, Gess, Miller, Bruno

Nays-

Motion Passed-5-0

Ms. Young lost connection and was not able to vote on this agenda item.

Gina Crawford
26118 Lake Road

The applicant is requesting a variance per C.O. 351.66 to expand front yard parking area. (9% variance)

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

Ms. Young joined the Zoom meeting again.

Mr. Norton explained that the Board had received comments from the Novaks, the neighbors to the east with a concern about drainage. He clarified that that is not before the Board tonight. The Building Department supervises construction and follows the requirement that one property cannot drain onto an adjoining property unless it happens to be a natural and normal existing grade. The engineers' comments on how that may be addressed would be between the Building Department and the property owner so that the driveway is properly installed as to not cause a problem. The only issue before the Board is the quantity of the paving which is 49% versus 40% of normal requirement.

Mr. Norton asked if there was discussion. He explained that this home like so many has the same situation of backing out onto a very busy street. It is the issue of getting enough space to turn around and leave the property driving out opposed to backing out.

Mr. Miller discussed pulling in/backing out of the garage and there being approximately 25' of hardscape ahead of the garage door. When parking lots are designed when having an aisle between two straight head in parking stalls, you usually allow 24'. He thinks there is ample room to back out and then turn so they are headed out of the driveway face first. He would challenge the need for all the excess that has been highlighted in yellow on their packets just south of the garage.

Ms. Crawford discussed her concerns. It was not actually the cars leaving the garage but the concern is that if there is a guest that pulls in or any type of delivery person because of the way the driveway has to curve. There is also a utility pole that causes them to not back straight out onto the street. They have to angle along the driveway. She did not realize how busy Lake Road was with car and foot traffic. The two trees and the utility pole create blind spots backing out.

Brian Cowler from the Patty Group Inc. on behalf of the Novaks introduced himself. They were having technical difficulties and he was speaking their behalf. He explained that if they have been to the site there are some major potential issues with this. The original comment about runoff, they wondered where is the snow push going to go and what damage it is going to cause? Sticking solely at the 49% driveway increase, they are struggling with the physical construction

of the way the driveway is laid out. They are claiming a hardship because this is a small property but they should have built a smaller house or made a smaller impermeable percentage footprint. The maximum did not come about while the house was under construction, it existed prior to. It could have been accounted for in the planning stages. If the variance is granted, it is actually creating a hardship for the Novaks. If a car is backing out of the garage or turning around in the driveway in any way, their bumper hangs over what appears to be a curb. It is going to damage the Novak's fence. They have plans in place to have a cut in on that fence currently. It is part of a larger project of screening between the two homes to keep it more private. He is concerned amount of spillage already coming from the driveway.

Ms. Crawford explained that she likes the Novaks and wants to respect their privacy and property. She would like to do everything by Code. She does not want to do anything that is not permitted by Law. They are working with engineering to make that driveway accessible within the Code. There are two separate issues that they are working on. As far as the parking pad is concerned, they just want to make the property safe so whatever gets approved, they need a section where vehicles can exit the property properly head first. They are not trying to make it large. They just need it to be accessible and usable.

Mr. Norton explained that one of the things the Board utilizes is the size of the request. In this case at 9% it seems somewhat reasonable. The Board does not want to get into areas where they do not belong. (aesthetics, engineering, etc.) The Board has to assume that the Building Department will make sure that other requirements are made for the City.

Mr. Norton asked if the Board had further discussion as to the proposed size of the variance.

Mr. Burke had questions on the size. If the curve part of the driveway were made straight and moved over to the east side of the property with a reasonable turnaround at the front of garage (south side) would we need near as much of the concrete.

Mr. Miller discussed Ms. Crawford's point of people backing out of the driveway. It would be a bit of a challenge to back up. He discussed the first agenda item of the night and the architect suggesting a hammerhead solution. Which would allow a person to do a three point turn safely. Typically they are 17' deep and it can be between 12'-13' wide to accommodate vehicle size. The portion of drive that is on the west side, they could carve out a hammerhead out of it and not need the additional portion down below. The portion on the east side could be slightly reduced and shallower and still have the ability to drive in and back out.

Ms. Crawford thanked Mr. Miller and stated that they were not concerned about where it was located. They just want to put something that can be used and that a young driver would be able to back out safely. The telephone pole in the easement is what makes it a challenging driveway. She pointed out that there are many turn pads on many of the houses on Lake Road. She had originally thought of a circle turnaround.

Mr. Burke clarified Mr. Miller's comments.

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Mr. Miller clarified that the stem of the hammer would be to the west side of the driveway, south of the garage. It would be in reverse to the proposed plans. It would still be able to accomplish the ability to turn around safely without backing out onto the street.

Mr. Burke stated that he is concerned about the amount of concrete in the front. His understanding is that the front yard starts with the front south face of the garage. All of the concrete that would be in front of the garage opens to the east of the garage openings would not be counted. But visually when put together there is an awful lot of concrete. He suggested the current proposal be further revised to reduce the amount of concrete.

Mr. Norton suggested that they go back to the drawing board and explore some of the things that have been discussed, especially Mr. Miller's ideas. It may accomplish the ultimate goal better for everyone. It could possibly be accomplished with no variance or a smaller variance. When you add up the large expanse in front of the garage to the permitted 40% in the front yard, it is going to look like a lot of cement. If they can accomplish a safe exit without such a big variance, it may want to be withdrawn. If redesigning still requires a variance, it can be brought back to the Board.

Mr. Miller explained that the first applicant that they spoke with originally proposed a 100% variance. Their argument was much the same in regard to safety. He encouraged Ms. Crawford to lean this up and get it closer to 40%. A 49% request is a little beyond what the Board can accept.

Ms. Crawford clarified that the 40% ordinance. She stated that from the house to the street is 60' and a normal driveway would be 12' x 60' which would be 600 sq. ft. There is a little over 3,000 sq. ft. in the front yard. 40% of that is around 1,300 sq. ft. based on her calculations, would a pad at 500 sq. ft. plus 600 sq. ft. even need a variance. From her calculations, this is still within the 40%.

Ms. Crawford asked if Mr. Tuck-Macalla got the revised site plan.

Mr. Tuck-Macalla stated that he had all the site plans. Based on what he was given, he did his best to scale and calculate it up and came up with 49%. He suggested she talk to her designer and architect and they can show him the exact percentage they are going to give this and he would be happy to look at it. He also let Ms. Crawford know that the engineering did not come back approved. They will have to sit down and talk about the engineering aspect and where they will go with that.

Mr. Norton suggested that the application be withdrawn and redesigned.

There was discussion on when the next BZA meeting was and when plans needed to be submitted.

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

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Motion by Mr. Miller, **second** by Mr. Burke that the application be tabled until the following BZA meeting.

Roll Call Vote:

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

Nays-

Motion Passed-6-0

There being no further business to discuss the meeting adjourned at 9:09 p.m.

Jack Norton

Kateri Vincent, Secretary