

Meeting Minutes of  
Board of Zoning Appeals  
Held July 16, 2020

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

Excused: Saurman

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

Audience: Residents signed in through Zoom technology.

*\*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 July 2, 2020.

**Motion** by Mr. Bruno, **second** by Mr. Burke to approve the minutes of the meeting held July 2, 2020 as prepared and distributed.

**Motion passed 6-0.**

Melissa Melon- 518 Wildbrook Dr.  
Joseph Schilens- 512 Wildbrook Dr.

Objection to installation of a fence at 30108 Crestview Drive. Pursuant to C.O. 1303.0(c), the neighbors residing at the properties adjacent to 30108 Crestview Drive object to the placement of the fence on the grounds that it will negatively affect their property value.

Mr. Norton discussed the second agenda item and explained that Joseph Schilens had since withdrawn his objection to the proposed fence installation.

Mr. Norton clarified with Mr. Tuck-Macalla that the proposed fence meets all the requirements per the Bay Village Code. He explained that the Board has had an opportunity visit the site and review the application.

Mr. Norton explained that the Board of Zoning appeals is constituted of seven members and only six were in attendance, which is enough for a quorum. There is a requirement that you have to have a majority in agreement. But you have to have the majority of the seven members that are constituted. Which means, because they were shy one member, the odds slightly changed. As the cases were discussed if the applicant was uncomfortable with the fact that the odds changed and

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made it more difficult for an applicant to receive a variance under this condition, there was no penalty at all to request that you be put on the next agenda.

He asked if there was discussion.

Ms. Young had a question about the lines that were drawn in the backyard. There are two sets going down the length of the property. She asked if one was the actual property line and one was where the fence would be placed.

Homeowner said yes. They had the surveyor come out to measure to make sure his line was straight.

Ms. Young discussed the neighbor objection being that if the fence was not on the property line, then who would take care of the area outside the fence. She asked if there was a reason why he was placing the fence in a foot from the property line.

Homeowner said that he wanted to make sure that as he was constructing it or maintaining it, he was within his property line.

Ms. Young clarified that the outside lines were set there by a surveyor.

He said that he sent the official survey into the Building Department.

Mr. Tuck-Macalla agreed and said they passed it around.

Mr. Norton explained that a variance lives with a property forever rather than with the owner of the property because the ownership changes over time. Another principle that they deal with is the concept that your view stops at your property line. The Board has to be very careful to acknowledge and protect the property rights of the individual. It is a very attractive area with nice views but this fence fits within the Code requirements. He said he was not sure that he saw a justification for the Board to change anything.

Neighbor, Melissa Melon, spoke and explained that she was under the assumption that one of the reasons that it would be brought to the Board is the effect to the property value. She asked if that was correct.

Mr. Norton said that people can make a complaint on any basis and then the Board is tasked with hearing that complaint to see if there is something very unique with the situation within the whole City.

Ms. Melon stated that it is unique. There are very few properties like this in the City that are on the creek. Her and her neighbors only put their fence so far and she has no objection to a fence but does care how far it extends. Having the fence block the view, is going to drop the property value. At one time it was Bassett Farm area which makes it unique. There are four properties that this would directly affect.

Mr. Norton introduced Mark Barbour, the Law Director for the City. In his tenure on the Board Mr. Norton did not recall ever overturning a case when it fell within the Code. He asked if the Law Director was aware of the City ever doing that based on an objection similar to this.

Mr. Barbour explained that there are no cases based on view that have been denied. He described a case that went to the Ohio State Court that had to do with a playset on Lake Road obstructing the view. It was decided that your right to your view only extends to your property line.

Mr. Burke respectfully disagreed that this property is necessarily unique. He agreed it is not common to see a large open area like that but it certainly is not unique. It would take something dramatic to cause the Board to override the property rights of the Crestview property owner through an appeal of a granting of a permit.

Mr. Tuck-Macalla said it was an objection during the ten day intent period.

Mr. Gess agreed. If this were granted, it is almost like the Board is implying that the back part of the property should be more related to the adjoining properties than the actual property owner. The property of their neighbors is not in the right to their property although he does appreciate the value and the beauty of it.

Mr. Bruno and Mr. Miller agreed with the comments stated above by the other Board members.

Ms. Melon asked the homeowner do a “less opaque” fencing material.

Mr. Bruno asked if she meant “less opaque” or “more opaque”.

Ms. Melon said “less opaque” so it is see through.

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

Mr. Burke explained that this is an appeal of a granting of a permit and the Board structures their motions in the affirmative. A “yes” vote on this would prohibit the fence permit and allow the objection and a “no” vote would uphold the permit that was granted.

**Motion** by Mr. Burke, **second** by Mr. Gess that the Board of Zoning Appeals grants the objection that was filed for this case which would thus prevent the owners at 30108 Crestview Drive from building the fence from which they have been granted a permit.

**Roll Call Vote:**

**Yeas –**

**Nays- Burke, Gess, Norton, Miller, Bruno and Young**

**Motion Denied-6-0**

Mr. Norton explained that conclusion is that the objection has been heard and denied. The fence permit, as it was granted by the Building Department stands to be legally bound.

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Francis Keating  
25825 Lake Road

The applicant is requesting a variance per C.O. 1305.03-(Installation and Location of Utility Buildings) to build a 12'x16' shed.

Mr. Norton discussed the third 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. Norton noted that the size of the request at 192 sq. ft. and the size allowable within the City is 120 sq. ft. This request is a 60% increase in size relating to the amount of variance request.

Ms. Young asked what the dimensions of the lot were.

Mr. Norton stated that on a few occasions the Board has relaxed the square foot requirement a little bit. The cases that come to mind are where the lots were unusually large. A 60% variance request is a big ask.

Mr. Tuck-Macalla stated that the property is 1/3 of an acre, 14, 400 sq. ft, 72'x200'.

Mr. Norton said it was the minimum lot size in Zone A.

Mr. Gess clarified that the intent is to use the shed for vehicle storage.

Mr. Keating stated that he has a two car garage and he cannot really get two cars into it because of the amount of lawn care and snow removal equipment he has. A 10'x12' shed seems small to him and did not think an extra 72 sq. ft. was that much of a hassle to build.

Mr. Norton said that that is an understandable feeling. As a Board of Zoning Appeals Board they have to be careful about setting precedent. Council is the Law maker and the BZA is charged with tinkering around the edges. The Board may want to consider some relief in size.

Mr. Bruno stated that he would be willing to consider a slight modification to the application if the applicant was willing to make the request for 12'x12'.

Mr. Norton asked Mr. Keating if he was formally requesting that the application be changed to 114 square feet.

Mr. Keating agreed and formally modified his request.

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

**Motion** by Mr. Bruno, **second** by Mr. Burke to grant a variance at the property at 25825 Lake Road per C.O. 1305.03 for the installation and location of a utility shed not to exceed 144 square feet in the location of the south east corner of the property per the drawing as prepared and submitted the application that has been modified accordingly.

**Roll Call Vote:**

**Yeas – Burke, Gess, Norton, Miller, Bruno and Young**  
**Nays-**

**Motion Passed-6-0**

Allison Sammon  
28008 Lincoln Road

The applicant is requesting a variance per C.O. 1370.05(c)-(Residential use location requirements) to place a generator in the side yard, 2'-3' from property line.

Mr. Norton discussed the fourth 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. Norton noted that there is an air conditioner unit in close proximity to the area that the Board had recently approved. He mentioned that there is also an opaque fence that conceals the air conditioner. There is also specific regulations as to when the generator is allowed to be tested. He suggested that the Board also require that the generator be concealed as well for any future owner.

Mr. Burke asked the Building Director if they had a more precise measurement other than 2'-3'.

Mr. Tuck-Macalla explained that he went out to the property and measured it and he did not have the exact dimension of the generator, how far it was going to be from the house and he was not quite sure where the property line is but it is between 2'-3'.

Mr. Burke clarified that the Board is talking about a maximum 8' variance.

**Motion** by Mr. Burke, **second** by Ms. Young that the property located at 28008 Lincoln Road be granted a variance not more than 8' to the side yard setback requirements of section C.O. 1370.05(c) for the installation of a generator in the location as designated on the application provided that in the event the current wooden fence that blocks its view from the street or the neighbor at any time removed that fencing, other year round screening be installed.

**Roll Call Vote:**

**Yeas – Burke, Gess, Norton, Miller, Bruno and Young**  
**Nays-**

**Motion Passed-6-0**

The contractor representing the applicant had a question. The original request was to have the generator behind the chimney but the new request would the placement would be hidden more towards the front of the fence. He asked if that would make a difference on the variance. It would still be the same distance away from the property line.

Mr. Norton said no as long as it is still no closer to the property line than 2'.

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Bailey Lawrence  
24715 Wolf Road

The applicant is requesting a variance pursuant to C.O. 1127.03(a)-(Right to Appeal). This appeal is in regards to a letter dated June 29, 2020, notifying the homeowner that there is a violation of C.O. 1349.01 and 1349.04 in respect to the above ground pool in the backyard.

Mr. Norton discussed the fifth 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. Burke clarified that Ms. Lawrence was never given the proper documents that were needed to be filled in this matter and installed the pool anyway.

Ms. Lawrence said she reached out to Shawnee Schuller, Building Director Assistant, on May 13, 2020 asking about the above ground pool ordinances. She was told that she needed to fill out the survey, location, application permit, etc. She emailed all of that information back to her and all she received back was an "intent to build" permit that was to be printed and posted for ten days. She was never given a specific understanding if the pool was too big or too small. She wished she would have done her own research on the size. She never heard from anybody and they installed the pool. She did ask Ms. Schuller if she had sent the information on the objection to the size of the pool and she could not find an email. Not to say that she was right but now they know they needed a permit to build.

Mr. Norton explained that the Board is in charge of tinkering around the edges and as of right now Bay Village residents are not allowed to have above ground pools above a certain size. City Council would need to change the ordinance. He suggested that the Board might want to consider simply extending the time the Building Department allows somebody to have in order to come back into compliance with the ordinance. Typically that is 30 days.

Mr. Gess asked how the City found out about the pool and how the resident received a letter.

Mr. Tuck-Macalla said that the City received a complaint from a resident and one complaint from a Councilperson. When it was investigated by the City he saw that there was another pool adjacent to the property who were also sent a letter. This has been a hot topic all summer. Under the rules of the Code the City has been allowing above ground pools that are under 10' in diameter/under 100 square feet of water surface. Anytime an applicant comes in, it is explained to them. This permit was never issued. Typically when a resident comes in with a set of plans they are immediately given an intent to build to get the process started. The City was still waiting for drawings and a size for the pool so that he could look at it. An intent was issued and the permit was never completed.

Ms. Lawrence stated that she did send over all the paperwork that Ms. Schuller had asked her for via email on May 14, 2020. She then responded with the intent to build to print. There was no further discussion and they never heard back from anyone.

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Mr. Miller asked Mr. Tuck-Macalla about the email correspondence between the resident and Ms. Schuller.

Mr. Tuck-Macalla said that he did not have any information on the email but he will talk with her and see what was received. Typically if something comes in it is immediately uploaded to the permit application and nothing is uploaded as of now. When the complaint came in he had asked Shawnee about it. Ms. Schuller said that the application had been started and that the Building Department was waiting for information.

Mr. Barbour suggested that the Board leave the terms of enforcement/time frame up to the Building Department rather than placing in their order. In this particular kind of scenario another resident could also construct a pool and then point to the fact that the Board gave the last applicant 45 days to take it down and they may need 50 days, etc. The Board may be heading down a slippery slope. The Building Department can determine based on each case whether the some flexibility is needed to comply with an order if they need to remove a pool.

Mr. Miller asked that the Building Department go back and try and find the communication from Ms. Lawrence and Ms. Schuller or that Ms. Lawrence forward the original email correspondence.

Mr. Burke clarified that Mr. Barbour is suggesting that the Board just give a thumbs up or thumbs down on the appeal without additions and that being left to the discretion of the Building Director to work with the homeowner.

Mr. Burke clarified that Mr. Tuck-Macalla was good with that.

Mr. Tuck-Macalla agreed and said that they will dig up any paperwork that may have been misplaced.

Ms. Lawrence clarified that her application request was to have the flexibility on when to take the pool down. (end of August/beginning of September)

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

Mr. Bruno clarified that the application states that she was hoping to keep it up until Labor Day.

**Motion** by Mr. Burke, **second** by Mr. Burke that the owner of the property located at 24715 Wolf Road her objections to the order of the Building Director to remove the above ground pool that has been constructed on the property be granted. Voting “yes”, means the objection is granted and allowing the pool to stand and voting “no” would be to uphold to order of the Building Director to remove it.

**Roll Call Vote:**

**Yeas – Miller**

**Nays- Burke, Gess, Norton, Bruno and Young**

**Motion Denied-5-1**

Zoey Sebastian  
27913 Rexford Ave.

The applicant is requesting a variance per C.O. 1163.05(h)-(Fence regulations for privacy screens) for an additional 16.5' of 6' fencing and an 8' transition portion.

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

Ms. Young asked how big the swim spa is.

Mr. Tuck-Macalla said the water surface area is under 100 square feet.

Mr. Norton clarified that they want 15.8' in the north west corner of privacy fence and then turn the corner and head south for another 16.6' and then have a final tapered 8' transition section.

Ms. Sebastian stated that she has an existing 6' fence that is in front of the swim spa. They are asking for 16' by the side of the swim spa. They bought the house last year and it is totally fenced in but there is a 4'11" fence by the side of the garage.

Mr. Norton clarified that if the 4'11" fence was only 4'4" then they would not need a permit. He assumed it met the 10% rule. He asked if the fence would be fairly easily remedied by modifying the 4'11" section because if they changed that section, they would not need a variance at all.

Ms. Sebastian said she cannot change that side because there is a gate system there and there is an issue with her husband and the neighbor's dog.

Mr. Burke asked how long had the fence been there.

Ms. Sebastian stated that it had been there for years.

Mr. Norton asked if there was discussion from the Board members.

Mr. Burke discussed the 4'11" fence along the left hand lot line. He asked what the length was.

Ms. Sebastian stated that it is 16'6".

Mr. Norton stated that the Board typically looks favorably on a section of transition fencing. It is architecturally more pleasing.

Mr. Bruno added that the 4'11" was a previously placed fence and they are adding additional fencing that would be out of compliance based on the application. Given that, the City Code and setting precedent, the property owner does have control over whether or not they can adjust the 4'11" fencing. An 8' transition portion is about as much as he would consider in the one

direction but outside of that, he felt the Board would be outside the spirit of the Code. There is nothing unique about the property that has not been created by the previous or current owner.

Ms. Sebastian discussed what she feels is unique about their property and mentions her neighbor on the side where they are placing the swim spa. There other option is to take down the fencing on that side and put plantings in. But their neighbor is in need of fencing in that area. If they were to take it down, a 4'4" fence would need to be put up. The neighbors have already run out of their 6' privacy screen runs on their property.

Mr. Norton stated that some relief can be given by allowing the 8' transition piece but it is not a real big ask to have the 4'11" side modified. He explained that the variance lives with the property and it does not matter who lives next to you and the individual circumstances. The Board has to guard against setting a precedent. Based on the 10% rule they may be able to go more than the 16' down the west property line.

Mr. Bruno asked Mr. Tuck-Macalla if he had the lot size.

Mr. Miller said he did a quick calculation based on the dimensions that were shown and it may be just short of the actual property lines. (31.4' at 10%)

Mr. Burke asked if the section of 4'11" was brought within Code, would a variance be needed for the proposed fence along the west lot line.

Mr. Bruno stated that he believed they would be in compliance.

Mr. Tuck-Macalla agreed.

Ms. Sebastian clarified what was said and stated that they will have to just remove the fence and do plantings there.

Mr. Norton clarified that they would rather remove the fence rather than modify the 4'11" area.

Mr. Tuck-Macalla said the size of the property is 332'. (total perimeter)

Mr. Norton explained that based on that, the applicants are allowed 33.2' of privacy screening.

Mr. Bruno said that if the Board goes with the 33.2'/10% it would be within the spirit of allowing an 8' transition piece of fencing.

Mr. Norton clarified that Mr. Norton was basing that on the modification of the 4'11" section.

Ms. Young suggested working with her neighbor to combine both properties of 6' fencing.

Mr. Miller said that their neighbor had already exhausted their 32' of 6' fencing.

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Mr. Bruno asked what the requirement was between the home and the swim spa and is there any way the swim spa could be moved closer to the home so plantings can be planted at the one corner of the pool. That way there can be more privacy.

Mr. Tuck-Macalla did not recall the exact measurements but he did know that they ended up moving it 3' from the fence but it is a tight spot.

Mr. Norton said the cement pad is already poured.

Ms. Sebastian said that Mr. Tuck-Macalla was wonderful and helped with the placement and making sure they were in compliance.

Mr. Gess said per Google Earth and the County GIS website but he came up a different total property boundary. (363')

Mr. Tuck-Macalla said that he just pulled it up and he got 32'.

Discussion of possible fencing placement and plantings ensued.

Mr. Miller discussed the 4'11" section of fencing and the fencing on the north side. There seems to be some compromise needed. If the Board does grant the request, it puts it way above the allowable. He suggested modifying the 4'11" fencing to 4'4".

Mr. Bruno and Mr. Burke agreed.

Ms. Sebastian asked for clarification.

Mr. Burke explained that if the 4'11" fence was brought into compliance, then they would not need a variance.

Mr. Norton said that the only variance she would need would be for the 8' transition piece of fencing as long as the 4'11" section was brought into compliance.

Ms. Sebastian asked if they needed a permit to take a fence out.

Mr. Tuck-Macalla said no.

Mr. Burke asked how many feet of a variance is needed to the maximum 10% rule.

Mr. Bruno said he came up with 3'2".

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

**Motion** by Mr. Burke, **second** by Mr. Bruno that the property located at 27913 Rexford Avenue be granted a variance from the requirement that the length of 6' high privacy screening on a property shall not exceed 10% of the perimeter of the property for the construction of a 6'

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privacy fence along the west lot line. The 16.6' fencing will be attached to an additional 8' transition section down to 4' as per the drawing submitted provided that the length of fence along the east side of the property that currently exceeds the 4'4" height allowable is reconstructed so that it complies with the height ordinance.

**Roll Call Vote:**

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

**Nays-**

**Motion Passed-6-0**

Ms. Sebastian clarified that if they shorten the one fence along the driveway, she is getting 3.9' to complete a step down and that it is not needed but visually more appealing.

Mr. Norton agreed and said that the step down is a transition to go down to 4'4".

Ms. Sebastian said she thinks it is impossible to have a step down with the existing type of fence. She clarified that she does not need a permit to remove a fence.

Mr. Norton clarified that the Board members were in agreement to continue to hold BZA meetings via Zoom for the foreseeable future.

Everyone agreed.

**There being no further business to discuss the meeting adjourned at 9:10 p.m.**

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Jack Norton

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Kateri Vincent, Secretary