

Meeting Minutes of  
Board of Zoning Appeals  
Held September 17, 2020

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

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

Audience: Ed Yenni, Noelle Sayles, David (Builder for Noelle Sayles), John and April Dudas, Andrew Segar, Andrew (builder for Andrew Segar).  
Additional 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 September 3, 2020.

**Motion** by Mr. Bruno, **second** by Ms. Young to approve the minutes of the meeting held September 3, 2020 as prepared and distributed.

**Motion passed 6-0.**

Ed Yenni  
31666 Lake Rd

The applicant is requesting a variance per C.O. 1359.01 to install an AC condenser in the side yard, 2' from the property line. This would be a variance of 8'

Mr. Norton discussed the second agenda item and explained that the Board has had an opportunity visit the site and review the application. He went on to advise that it should be noted that the house in question is somewhat unique in that the area behind the home is a common area owned by homeowners that are along that entire strip. The homes are built right up to the rear property line and they cannot then put the AC condenser behind the home because of the size of the lot and the commonalities of the back yards. He then reopened for discussion.

Mr. Miller advised that there was a similar air condensing unit opposite of this location as well. So the precedent has been set with the neighbor.

Mr. Norton noted that this is common with those homes along that particular strip. He went onto explain that the one thing that is suggested is that the unit be concealed behind year round

vegetation or a decorative fencing to conceal the industrial nature. Further sometimes the board suggests a sound blanket be included as a requirement.

Ms. Young noted that she doesn't see where the neighboring property has a condenser. She went on to explain that she took a picture of between the houses and didn't see one (showed picture).

Mr. Norton advised that he did not see a picture of that area and advised that he thought that we had given the neighboring property for a variance for a side conditioner.

Ms. Young thought perhaps it could be on the other side of the property.

Mr. Norton asked if when she looked at the property did she notice the property to the west?

Mr. Miller clarified that he believed it was behind evergreens unless it's on the opposite side.

Mr. Norton clarified that it may be on the west side.

Mr. Tuck-Macalla clarified that it may be on the west side. He advised he added the note regarding the previous variance, but he may have been incorrect. After further review he clarified that the board did give a 2' variance for the East side of the neighbor's home. He thought it was for the a/c, but could have been mistaken.

Mr. Norton advised that the house to the west has a notch which could be hiding the AC in the picture that Ms. Young provided.

Ms. Young advised that the notch is where the rear door is and she does not think there is anything on the side of the home at all.

Mr. Tuck-Macalla advised his memo may have been incorrect.

Ms. Young requested clarification from Mr. Tuck-Macalla that the neighboring house had a 2' variance and this homeowner is requesting an 8' variance?

Mr. Tuck-Macalla advised there was a variance on the east side of the western neighboring home for a bump out. The house to the west was ultimately given three variances before the house was torn down and rebuilt which is making it a bit confusing.

Mr. Bruno noted that the dba rating is reasonable and in line with what the board likes to see, around 73. He clarified that this request wouldn't be out of the ordinary and it seems consistent in the zone that it is in.

(Jan Saurman rejoined meeting after getting kicked out of Zoom)

Mr. Norton asked if there was further discussion of this item.

**Motion** by Mr. Bruno, **second** by Mr. Burke, to grant the property at 31666 Lake Rd. a variance, per the application and per codified ordinance 1359.01, to install an AC condenser in the side yard 2' from the property line which would be a variance of 8' from the side yard setback requirement. Provided that the condenser be placed in the location per the application as prepared and submitted and further provided that the condenser be screened with yearlong

evergreens or decorative fencing and also that the condenser be equipped with a sound blanket if is not equipped with one as manufactured.

**Roll Call Vote:**

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

**Nays-**

**Motion Granted-6-0**

Noelle Sayles  
559 Forestview Rd

The applicant is requesting a variance per C.O. 1153.03 to add an attached garage to the south side of home. This would be a 6' variance or 23%.

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

Mr. Saurman advised that the plans called for the existing garage to be changed so that it is a front loading garage which would seem to elevate the problem of the sharp turn that currently exists to the side garage. Which leads me to his question – is such a variance necessary if the plans already include adding concrete and making the existing garage a front load?

Mr. Norton clarified that would appear to end up as a 3 car garage. One two car garage and then a single garage. He then asked Ms. Sayles to confirm.

Ms. Sayles Builder, David, advised the spirit of what is happening here was that this was a concept that they wanted to present. Instead of taking so much of the front façade for the garage their intention was to try to get as close to the property line as possible. They would like to get a feel for what the max the city would give them as a variance and what the bottom line minimum side yard setback would be. He went on to explain it is difficult for them to understand how a 15' drive into a side load garage and the current home layout was approved by the City to begin with. He reiterated that he would like to find out what the minimum side yard setback would be in this instance.

Mr. Norton advised that it appears that if they changed the existing garage to a front load it would be about 20'?

David advised it would run a little larger than at about 23' with a 16' or 18' double door.

Mr. Norton advised they still have about 6' on the south side. He advised the applicant could have a 29' wide garage and not need a variance. In other words a super generous 2 car garage and not need a variance.

Ms. Sayles advised that David was the builder that helped draw up the plans. She advised that the more she reviews the situation she realizes she is just trying to see how close we can get to

the line and maybe just do a 2 car garage instead of tearing so much of the house and landscaping that was put in. She clarified that she doesn't necessarily need a 3 car garage, but the goal is to get a usable 2 car garage in the most cost effective way possible given the home itself was already very expensive.

Mr. Norton requested that Mr. Tuck-Macalla provide guidance regarding the fact that it appears they have 6', or a little bit more, that they could put on that side of the house and be within the requirements.

Mr. Tuck-Macalla confirmed that was correct.

Mr. Norton went on to explain the applicant could expand the garage and it doesn't necessarily matter where the double door is. Ms. Sayles could go 6' out on the south side of the home without needing a variance and preserve the vegetation.

David questioned if there is a 10' side yard requirement on each side of the home, yes?

Mr. Tuck-Macalla clarified that the side yard requirement for this lot is 25.7 divided between both sides with a minimum of 10' which leaves the other side at 15.7'.

David confirmed that the 15.7' is on the North side of the home, correct?

Mr. Tuck-Macalla advised he didn't believe that was correct, but that he didn't have the plans in front of him at this time.

Mr. Norton advised that if they want 12.75' they could get the majority of the 12' that they are wanting without the variance.

Mr. Tuck-Macalla jumped in to advise that the side yard on the north side of the house is 10' and as such they will need to maintain 15.7'.

David clarified that the existing south side yard is currently 21.75 correct?

Mr. Tuck-Macalla confirmed that was correct.

Mr. Norton so you can go about 6'.

David went on to advise that a 2 car garage on an \$800,000 home may not be the smartest investment to make which is likely why a 3 car garage was put on despite the difficult layout. If they put a 12' bay on the side it would be taking them into the 10' side yard requirement. Has the board seen or would you consider approving a 3' or 4' side yard? If they decided to go down to an oversized two car kicking it closer to the property line without making it all front facing garage doors.

Mr. Norton advised that the board has to find something that is unique to the property that justifies it being allowed something that the others are not allowed. That it forms an undue hardship or takes away an applicant's property rights. And the fact that they can have a very generous 2 car garage with a front load design makes it difficult for the board to find undue hardship.

David advised that he sees two hardships. One is that they are diluting the number of garages from a 3 to a 2 which is a devaluation of the property. Secondly if you could stick with the 3 garage it helps with the usability of the property.

Mr. Norton advised that the size of the garage is somewhat in line with the size of the lot which why the city has established a minimum side yard requirement of 30% of total lot width.

David confirmed that is understandable, but the hardship is that they had a significant functional obsolescence that was approved.

Mr. Norton confirmed that the plans met the city requirements, but conceded that from a practical standpoint you would certainly have to do a lot of maneuvering to use the garage. He went on to advise that while it may be a poor design the city does not rule on that kind of thing during plan review. He then requested confirmation from the Building Director.

Mr. Tuck-Macalla confirmed that is correct.

Mr. Norton advised that the applicant has the ability, without a variance, to have a very generous 2 car garage and is able to be property utilized as a house given the size of the lot, which is an average size. He opened the discussion to the board.

Ms. Sayles interjected that David drew up the plans for her and the further she looks into the cost of the project she realizes that she really just wants a variance to encroach on the side yard setback because ideally they want a 2 car garage on the side of their property. They had put a significant amount of landscaping in before realizing this problem area. She has requested the variance to see how close the board would allow them to get to the side yard because she does not want to destroy the front of the home. The drawing was more of a concept. The applicant went on to advise that she's had so many issues with this home that they are on the verge of selling and moving somewhere else. She just wants to see if they are able to design a cost efficient usable garage before we decided one way or another.

Mr. Norton clarified that while he doesn't speak for the board if Ms. Sayles utilized the extra 6' going to the south and you moved a generous double garage door towards the south, disturbing less of the façade, you would end up with a generous 2 car garage with storage space without needing a variance at all.

David clarified that we would need to maintain 10' which gives us 11' to work with?

Mr. Tuck-Macalla confirmed the side yard on that side actually needs to be 15.7'.

Mr. Norton further clarified that the minimum is 10', but the total needs to be 30% of the lot width.

David confirmed his understanding of the side yard requirements.

Ms. Young inquired as to what is happening to the 3<sup>rd</sup> bay on the Eastern side of the house in the drawing?

Mr. Norton pointed out that the drawing doesn't really make sense because the applicant added a garage the 12.75' garage bay right flush with the existing wall of the front of the house and yet when you look at the drawing of the front elevation it looks like its pushed way back.

David responded that it's not way back, but it would set far back to allow for the roofline. He clarified that this was a rudimentary concept drawing.

Ms. Sayles clarified that it would likely be used as a mudroom.

David went on to confirm that it would be used as a mudroom or additional storage space.

Ms. Young advised that space could effectively be the applicant's 3<sup>rd</sup> car garage for a smaller vehicles as far as a selling point.

Ms. Sales clarified that the space isn't useable currently.

Mr. Norton revisited the fact that the drawing is confusing in that the elevation doesn't match the plot plan drawing and it is a confusing as a result. He pointed out that the applicant is likely getting the flavor of the reluctance to grant the variance for going past the required side yard setback past the 15.7' requirement. He suggested withdrawing from tonight's agenda so that they can rework the drawing and come back.

David asked for guidance regarding what minimum side yards might have been approved in similar situations.

Mr. Burke advised that things are looked at on a case by case basis depending on the home the side yards it's really not something the board can predict with any certainty what, if any, variance would be granted in advance.

David clarified that he wasn't looking for a commitment, but rather a feel as to what the board has granted in the past.

Mr. Norton advised that while he can't provide guidance he can advise that the board ultimately needs to find that the request meets the requirements for a variance because the board is not trying to change the law, but rather tinker around the edges when the circumstances are unique. Finding something unique about this property, as opposed to most properties, may be a bit difficult. It may be difficult to change the ordinance requirement of 15.7' side yard requirement, but if the applicant would like they could withdraw so they do not need to start from scratch re: a fee standpoint.

Mr. Gess reiterated that it is important to remember that the hardship isn't about the use of the property. He provided an example of residents that have requested a 6' fence to contain a dog that could otherwise jump a 4' fence, but that is not a basis on which the board can make evaluations regarding use. While the driveway may be difficult it is not unique to the plot of the property. It is unfortunate if that is how the house was designed and built, but that is not inherently unique to the property. He urged the applicant to ensure that the resubmission address the uniqueness as opposed to difficulty in using the property.

Ms. Sayles inquired if it would make a difference when they resubmitted if the board was aware all the neighbors are in favor?

Mr. Norton advised that if a neighbor has an objection they listen, but it is not part of the determination. They neighbors may be all against or for something, the board will look at the ordinance that the council put into law and as tinker around the edges of that. One of the requirements is that the board find something unique about a piece of property. They cannot look at how it is used, as Mr. Gess alluded to, because a property's use will change over time with ownership. The board must review the piece of property in order to make their determination that a variance is reasonable. Mr. Norton advised the applicant they can proceed and make a motion for a vote or they can table it to come up with other ideas that may be more favorably received.

Ms. Sayles confirmed that they would like to table the item this evening.

Mr. Barbour confirmed that if we are going to consider a motion later it is tabled if it is withdrawn for no consideration then it is withdrawn.

**Motion** by Mr. Burke, **second** by Mr. Bruno that the application for 559 Forestview Rd. be tabled to the second meeting of October pending receipt by the Building Department of a change in the proposal or an actual withdrawal of the proposal.

**Roll Call Vote:**

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

**Nays-**

**Motion Granted-6-0**

John Dudas  
28115 Osborn Road

The applicant is requesting a variance per C.O. 1163.05 (h) to install 40' of 6' fencing on the east side of the property. This would be an 8' variance.

Mr. Norton introduced the fourth agenda item and explained that the Board has had an opportunity visit the site and review the application. Opened to the board for discussion.

Mr. Dudas advised that their hardship is that they have a house that has been vacant for 2.5 years. It was cited by the city a year ago. At that time, the owner had two months to do something to it and nothing has been done. He has waited a full year beyond the citation not being addressed and they have been looking at this in their backyard and he feels this is the bare minimum of what is needed to cover up what we need to cover up. Mr. Dudas went on to explain they didn't want to move to Bay Village to put up fences, but they also never wanted to live next to a situation like the one they're experiencing. He advised that Ms. Young has been to the property and has seen their current vantage point.

Ms. Young questioned if this will be a fence around the entire yard or if this was just a privacy screen?

Mr. Dudas confirmed that he does not want a fence, but this is a 40' privacy screen. It was never his intention to put up a fence, but he wants to block out the section of the house that he sees from his vantage point in the backyard. To be clear, the gutters are overgrown, rooted wood, mildew all over the siding, weeds encroaching on their property. The applicant advised that he has thought about this for 2.5 years so it may sound stupid to have 8' extra feet, but he really feels this is what he needs. He advised he is not sure what happened with the City regarding the violation notices since everything should have been completed by October, but again it does not matter. He advised he just spent money to have his property assessed so he knows where to put the fence. It is decorative fence that will be really nice. He has shown the neighbors the design. He advised this is his solution to a problem that he feels he has to solve himself.

Mr. Burke advised that he visited the property and he sees the issue. However when a variance is granted it goes with the property forever. It seems that although the applicant has waited a long time for something to be done it is still a temporary issue for which the applicant is asking a permanent solution. Secondly it is about an issue that is outside of the applicant's property. The property itself is not unique. The board has had a number of situations over the years where an issue with a next-door neighbor arises, whether it is unsightly rubbish or any number of things, but they have had to turn those down because it doesn't speak to something unique about the applicant's own property. He went on to ask the Building or Law Department where things stand regarding enforcement of the citation.

Mr. Tuck-Macalla advised that the City is cutting the grass at that property. He advised he believes the property may still be in probate which could be the hold up. He advised it does take quite a while to get compliance on a home violations. It is not something that the city can rush in and take care of themselves.

Mr. Barbor advised that this is the house where there was no probate or state opened right away and there was no one to handle the citation. He went on to explain that they have had a multitude of problems and getting something to take care of the problems has been the city's problem. He apologized that it has gone on for so long and understands this is unfortunate for Mr. Dudas and the other neighbors. The city can't just go in and fix it themselves. It has been a terrible situation.

Mr. Dudas explained that it weighs on him. For the home's owner it seems to be an out of sight out of mind situation, but for him it is rotting. There is a smell that comes over the weeds which encroach. No one shovels the sidewalks and this is where the bus stop is. He advised that he has put a lot of work into it and he feels that this is the variance he needs, after 2.5 years, to get his property where he needs it to be. He advised he does understand that it is a permanent variance. He considers this to a certain extent a concession from the City regarding what is happening.

Mr. Norton advised that it is difficult for the board to create a permanent solution to a temporary problem they are setting a precedent that could be dangerous in the future. Upon visiting the site Mr. Norton advised that it appeared to him from the patio area, which was beautiful, that a 32' run of screening would shield the objectionable view if not 100%, but very substantially. He reiterated that creating a permanent lives forever variance for a problem that eventually, and

perhaps sooner than later, is going to disappear would set a dangerous precedent for the rationale.

Mr. Young advised that there are a couple more solutions that the board may consider. One is to plant arborvitae or evergreens for a natural block and for that you would not need a variance. Another thing that you would need a variance for, but something the board may consider, is having 4 sections as well as a drop down section. The board has considered those in the past. The applicant may have several sections at the 6' height and the last section drop down to a 4' as a transition, but because this is screening perhaps it would look odd. The applicant may also want to consider 4' sections and trees.

Mr. Dudas advised they have put up vegetation and have done all this work in this area, but the reality is the encroachment of the weeds that aren't maintained onto his property and the standing water issues which creates flies. There is a health issues. A higher fence will address the health issues regarding the mosquitos/bugs which attack his daughters during the summer. Additionally in the early spring late winter when the leaves are off it is fully wide open allowing him to completely see the train wreck of a house slowly rotting away. He has lived with this for 2.5 years. He has sent photos of the side of the house. He has thought about this for a very long time and 40' is what he feels comfortable with and he does not think it is that big of a deal as far as concession by the City. This may be a temporary problem, but he does not see an end in sight. He came to Bay Village to enjoy his backyard. He feels like they have been given more than a year to rectify the problems.

Mr. Norton asked if there was further discussion by the board.

Ms. Young asked if Mr. Dudas planted those trees?

Mr. Dudas confirmed that they have done a lot of work and that Mrs. Dudas, who is on the line, did all that work.

Mr. Young asked if he would you consider 4 sections plus a tree?

Mr. Dudas confirmed they could do that, but they would prefer the 40' fence. He did not just come up with this solution and does not take it lightly, but this is the design aesthetic that they need to solve the problem. If he was going to use landscaping he wouldn't have bothered with the variance.

Mr. Norton advised the board has to wrestle with setting a precedent based on a frustrating, but temporary situation. Is there further discussion?

Mr. Gess advised, that while it is not a perfect solution, it is not uncommon for the board to grant an applicant a tapered section of fencing from 4' to 6'. It may not be exactly what the applicant is after, but it could be an additional footage of some height of fencing. He noted that the applicant is not proposing a full backyard fence. Is there any reason the board cannot extend him the same accommodation beyond the 32'?

Mr. Young inquired if the applicant could put one on each side so that it looks symmetrical?

Mr. Norton advised that the board feels favorable. He went on to confirm that the board often considers a transition panel going from 6' privacy to the 4' height that is allowed. The board will allow that transition to happen over an 8' section. There have been cases when we have allowed that on both ends of the 32' run so in effect the resident has a 48' total fence area, but the 8' section on each end is a tapered transition.

Mr. Miller referenced the board back to the photo of the proposed horizontal slat fencing.

Mr. Dudas confirmed that is what they want the fence to look like. He advised that this decorative fence would be difficult to do with a taper on each end.

Mr. Miller advised he was in support of a lower transition panel despite the horizontal design, he advised he would also approve it to be broken into two sections, but he feels the entire 40' is a stretch for the board to approve.

Ms. Young reminded the board of a house on Northfield that had a horizontal board fence that included a 6' to 4' transition fence that looked quite nice.

Mr. Gess confirmed that it stepped not sloped.

Ms. Young suggested the applicant look at this property as an example.

Mr. Dudas referenced a house on Columbia with a step down transition.

Ms. Carolyn referenced a house on Wolf Rd. by the High School that had a step down. This was another house that came to the board for a variance for a step down creating a more modern look.

Mr. Dudas confirmed he would love a reference. He went on to ask if he could get a variance for 40' with a step down on either side of the fence.

Mr. Norton advised that he is a bit confused regarding the step down. If you go from 6'-4" to 4-4" you do not need a variance for the 4-4" because you can have 4-4" fence. However if you want to go from 6' to 4' and have more than 32' of fencing over 4-4" like 5' for example?

Mr. Dudas confirmed he was suggesting the standard 32' 6' fencing with 8' section on either side that would have the step down to 4'.

Mr. Norton advised he would not need a variance for the step down section because he can have as much 4' fence as he wants.

Mr. Dudas clarified that the step down would include some sections that work their way up to the 6' fencing.

Mr. Young advised that their transition sections are an average which made them 5'.

Mr. Miller confirmed that this type of transition typically works with a vertical board on board fence. The horizontal panel fence would not be as visually pleasant. You likely would not use a transition in this instance. To this point the 2 4' sections you wouldn't need a variance because it is already permitted. The applicant could then have 32' of 6' in one direction and that is

permitted as well. So if we the board opts to not give him 40' of 6' fencing he would not need a variance to put up the 4' sections.

Mr. Dudas advised he is going to leave it to the board. He reiterated that he would like to ask for the 40' and he understands if he gets voted down, but hopes that is not. If voted down he will likely do the 4' sections. He advised that he waited a year before submission and this is what he feels comfortable with.

Ms. Young clarified that she may have misspoke, but she thought the transition sections were 5' high.

Mr. Miller advised that is when it is going from 6' to 4'.

Ms. Young advised that he could ask for 32' of 6' and then drop down to 5'. He could modify his request?

Mr. Miller advised that the board has not permitted a 5' section, but rather a sloped transition. Even though the average might be 5' the intent is to go from 6' to 4', but they were permitted an extra 8' of transition. It is not the intent to elongate the entire section.

Mr. Norton clarified that the board has allowed a transition that starts at 6' that goes gradually down to the 4'. In this case, it would be a straight line from 6' to 4' which would be a little awkward with this style of fence.

Mr. Gess advised he had one more question for Mr. Dudas. Did he consider separating the 32' he is allotted into 4 8' sections with maybe a 2-3 gap filled with a tall evergreen/arborvitae? In a sense extending the use of the 32' section. This way extending the 32' to 40'? It is a different approach, but one that wouldn't require a variance, which is something the board would always prefer.

Mr. Dudas advised that his family has already filled in that area with trees and it looks very different in winter. He clarified that the fence will also be used to keep out water and bugs which are an issue for this family. The height is an issue for them. He clarified that if he does not get the variance he will build the 32' fence and on either side he would have 4' sections. He confirmed he believes it would look weird tapered. He advised that he appreciates the board and understands his options.

Mr. Norton asked if there was further discussion.

**Motion** by Mr. Bruno, **second** by Mr. Burke, to grant that the property at 28115 Osborn Rd the variance per C.O 1163.05 (h) to install 40' of 6' fencing on the east of side of the property requiring an 8' variance based on the style of fence and the application as prepared and submitted.

**Roll Call Vote:**

**Yeas –**

**Nays - Bruno, Gess, Miller, Burke, Young, Saurman**

**Motion Denied -0-6**

Mr. Dudas thanked the board for their time.

Andrew and Ann Segar  
23416 Lake Road

The applicant is requesting a variance per C.O. 1308.08 (i) to demolish a home in the riparian setback.

Mr. Norton introduced the fifth agenda item and explained that the board has had an opportunity visit the site and review the application. He went on to advise he is a bit confused regarding this variance request given the original request the board received in the past was to do construction in the riparian setback. If his interpretation is correct the drawings for the new structure is entirely removed from the riparian setback. In effect making this a request to remove the existing construction from the setback. Mr. Norton advised it was his interpretation that they need a remediation plan to protect the riparian setback. This plan would need to be submitted to the building department to assure that no damage is done as they remove the existing construction. He asked Mr. Tuck-Macalla to clarify.

Mr. Tuck-Macalla confirmed that the original application was to demolish the home and, at that time, there wasn't a proposal as to what they were going to rebuild. Originally they were going to demolish the home. If you recall, during that meeting they spoke to the Engineer he inquired that if he got an Army Core of Engineer permit and removed the riparian setback would that be possible? The Building Department confirmed that was indeed possible and the board may not be aware, but the previous applicant did get the Army Core of Engineer permit then they presented plans to the building department to build a house that would be within what is the riparian setback. It was his understanding that the original application was to demolish the house within the riparian setback.

Mr. Norton asked if they needed a variance to demolish the house.

Mr. Tuck-Macalla confirmed that they will need a variance to do any work within the setback. There is a section in the ordinance that advises the only thing that they can do with an existing home in the riparian setback is to remodel the interior of the house. They cannot change the footprint or disturb the riparian area. They cannot change the roofline. It is pretty specific.

Mr. Norton advised that in 1308.08 they refer to a developing a post construction storm water management plan. Is that what is required in order to demolish the house?

Mr. Tuck-Macalla advised it could be required.

Mr. Norton went on to clarify that getting a house out of a riparian setback seems like a good idea. It then becomes a question of how to accomplish this because the applicant could also cause damage to the condition of that land which would aggravate the stream and its protection from erosion. Mr. Norton went on to advise his interpretation of the Federal Ordinance is that if they want to build there they can't, but they can only take an existing thing and remodel the

interior and so on, but if they want to remove it entirely then it is a matter of doing so with a plan to not damage anything in that setback as far as the stream quality is concerned.

Mr. Segar advised that he wanted to point out that under 1308.08 subset B2 this is what we are talking about regarding getting a variance. It essentially says if a determination as to whether to provide a variance the board should look at whether the requested variance impairs the flood control, erosion control, water quality protection or other function of the riparian setback and that is where the determination is made by the service director using scientific data prepared by his company. He advised that they are prepared to provide a study on that so that they can show that the removal of the encroaching building will improve all of those things rather than impair them. He does not believe, however, that they are required to submit a plan to the extent that is being discussed right now.

Mr. Bruno advised that in the past they have considered incorporating natural gas wells into heating elements of the home and required an engineer study and formal reports to be submitted to the board for them to consider the appropriate permit and permission or special variance as necessary. He went on to advise he does not feel comfortable granting any variance for the demolition, considering the riparian setback, without any remediation plan submitted so that the board can have assurance that what the board moves to grant would be in accordance with such a plan that has been studied and signed with a seal.

General board concurrence.

Mr. Norton asked of Mr. Segar if a study is in the works as to the protection during demolition.

Mr. Segar confirmed they are prepared to submit a professional plan showing that what they will do during demolition will protect the area and actually approve the functionality of the water when they are done.

Mr. Norton advised he believes they have gotten ahead of themselves. The study needs to be completed and submitted to the Building Director before a variance is requested. The study needs to include protecting the natural vegetation and what % of the parcel is in the flood plain and so on. Mr. Tuck-Macalla and Mr. Barbour does that seem like the right course of action?

Mr. Tuck-Macalla advised that is something you can ask for, but would go on to request that any sort of submission and plans address the fact that the one wall and driveway are within the setback. Any sort of work that goes on with the driveway will need to be a part of the engineer review. Anything that touches the setback needs to be part of the study.

Mr. Segar advised that the existing and proposed driveway is outside the riparian setback.

Mr. Tuck-Macalla confirmed he doesn't have an issue with that and he doesn't have the drawings in front of him. He doesn't want the applicant to come with a study for just taking down the house and find out later that the driveway and any work that needs to be done in the driveway is also in the riparian setback. He confirmed he would like the applicant to just include all of it in the study.

Mr. Bruno wanted to note to Mr. Seger that the driveway does look like it may be in the proximity within, again this is not his area of expertise, but yet the board has always considered things within 5' in proximity of a riparian or waterway that may need special handling and we do need to have something formalized in the proper sequence of events. To both Mr. Seger and the cities benefit so that we are all accordingly protected.

Mr. Norton advised that the large blueprint, that he believes everyone received, done by GBC Design dated 9-4 clearly shows both the new and the structure and the drive outside of the riparian zone. It is an engineered drawing, but he could not find a stamp. It appears that the drive proposed on the large print has been kept outside. He went on to explain that it looks to be different than the small drawing and that it's kept outside the setback.

Mr. Saurman advised that when he was out at the site it appears that the driveway goes over the riparian area and creek, but that part of the driveway is not going to be changed?

Mr. Segar confirmed that they do not have intentions to change that part of the driveway and there is actually a culvert that goes under that part of the driveway so he believe that the riparian ends where that culvert begins. There is a kind of a headwall where it moves underneath there so the riparian ends to the Northside of the driveway, but he couldn't tell by how much. However if you zoom in on the driveway you can see that the driveway is a meaningful step away from where the riparian starts.

Mr. Miller advised that he would have to agree with Mr. Segar. When you have a storm culvert an actual fixed structure underneath there the riparian stops. So further to the South where the culvert begins that should be identified as a riparian area as well, but for the project it is focused on the North end.

Mr. Tuck-Macalla advised that he now has the drawings from Polaris, which are a little bit more detailed, and it does end at the driveway. He just wanted to point out that if there is anything that happens at that driveway or with the culvert, which is already falling apart some, it be included. He went request that if a variance is granted that the board include that so that there aren't any issues going forward. So that the applicant is aware if they are going to be working in that area everything has been approved by the board of zoning appeals.

Mr. Segar clarified that all they are really asking for is to take down the existing house. He believes at that point the work on the new structure will not require a variance. He advised that submitting a bit of an Environmental Impact Study on removing the 10' encroachment upon the setback should be sufficient to come back to the board again with this request?

Mr. Miller inquired where the Army Core of Engineers falls in this area.

Mr. Tuck-Macalla advised that the former/last applicant that came to the board requested the submission be withdrawn because they asked if the Army Core permit do they think they could get rid of the riparian setback all together? That way they could build across build up to as close as they wanted. That applicant did go and get an Army Core Engineered permit and was in the process of getting it approved when they sold the property.

Mr. Segar advised that permit had been approved by the Army Core. They do have it in hand, but we are choosing not to support that project and rather move forward a narrowed house which respects the setback.

Mr. Tuck-Macalla reiterated that everyone should be aware that even though there is an Army Core of Engineers permit to take that property out of the riparian setback in order to do that a variance would be required from the city. The riparian setback ordinance is a city ordinance so they would still need a variance in order to do work within that Army Core of Engineer Permit.

Mr. Gess asked the applicant on paper on plan, and I realize we are talking about the demolition right now, to think about the structure. On paper it looks like the houseline sits back, less than a foot from the setback line, but you're also proposing a 9' basement in that area which is going to have to be excavated. On top of that construction activity it is going to take 4-6' around the perimeter of the building for access for siding, window insulation. Digging a 9'+ foundation, that based on the dimensions, doesn't look like the civil plan takes into the over excavation/width of the foundation or the footers below the wall. He advised to make sure the applicant is talking to their builder about how they are going to respect that and take into consideration the proper protection of the setback during construction.

Mr. Seger advised that he appreciates that suggestion. He advised that his builder, Andrew, is on the line and he is welcome to put in his opinion as well. He went on to explain that if you go out to the property that the current house on the Eastern wall is actually a walkout basement into the riparian area. So the elevation is already low there. It is actually below the grade of the basement so there will not be digging straight down into dirt to excavate that area it is already excavated.

Mr. Norton advised they could put up the new wall in effect before they take down the old wall. The new wall would act as a protection while you are constructing the new wall and that would be part of Mr. Tuck-Macalla's review of the plans.

Mr. Seger wanted to address the earlier comment, made for the record, that the previous owner who had come before the board requesting the variance was actually, if you look at the smaller of the two drawings, they kind of had 3 different buildings overlaid. If you see the red line, which is what he is proposing, the purple dotted line which is what is currently there, and there is another line which is what the previous owner was asking for. He was asking to demo the house and put a new house that also encroached upon the variance. The applicant advised that he listened to the minutes of the prior meeting several times and there were quite a few suggestions to make a long skinny house so that is what we have tried to accomplish here.

Mr. Norton asked if there was further discussion.

Andrew, the builder, advised that they have an Engineer that they work with, Judith Mitchell that does their wetlands and riparian studies for them. He inquired if the board is suggesting that they submit something as well for the construction of the silt fence or a more elaborate plan not just for the demo, but also for the construction of the house which this next plans so that we have everything together. He advised that they will have minimal digging in that area on the right side

for a frost wall, but they are not digging for a full 9' wall there and they should be able to stay out of that area pretty well.

Mr. Tuck-Macalla advised that they would be looking for a storm water protection plan.

Andrew requested clarification if the Storm Water Protection plan is that the same as what is being referenced in subsection b2 or is there another section of the code that would outline what is required in that regard?

Mr. Tuck-Macalla advised that 1308.08 has a post construction storm water management plan which is a storm water protection plan. It's a limited storm water protection plan which shows concrete washouts, where the silt fence is going to go, show what kind of plantings will be used to hold back the riparian zone, any type of stone that will be used in the riparian zone, and all the drainage areas. The applicant is going to want their Engineer to do the full topographic on that property so that he can see how the drainage effects the riparian zone, etc. Once he gets the plan he likely will send it out to have it reviewed before it goes to the board so that any sort of issues will be taken care of. That way he has an approved set of plans that the board could vote on.

Andrew thanked him for the clarification of his question.

Mr. Norton sought clarification that the board doesn't have anything to do on this tonight?

The board agreed that they will need to table the agenda item.

**Motion** by Mr. Bruno, **second** by Mr. Burke to grant the property at 23416 Lake Road an opportunity to table their application until further time when a demolish plan/study, additional building plans, and additional storm water protection plans can be submitted to the building department for review and then further analysis and ultimately presentation with the application to the board.

**Roll Call Vote:**

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

**Nays-**

**Motion Granted-6-0**

**There being no further business to discuss the meeting adjourned at 9:00 p.m.**

---

Jack Norton

---

Lauren Oley, Secretary