

Meeting Minutes of
Board of Zoning Appeals
Held March 18, 2021

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

Also Present: Lauren Oley (Assistant to Building Director), Mark Barbour (Law Director)

Excused: Eric Tuck-Macalla (Building Director)

Audience: Dr, Nick Gravino, Patrick Hughes, Jenna Portik, Samantha Scott, Susan Helgeson

**Full recording of the meeting is permanently available on the City of Bay Village website under Government/Board of Zoning Appeals/View Most Recent Agendas and Minutes/Media*

Mr. Norton called the meeting to order at 7:31 p.m.

Mr. Norton introduced the first item on the agenda, the approval of the minutes that were held March 4, 2021.

Motion by Mr. Bruno, **second** by Mr. Burke, to approve the minutes of the meeting held March 4, 2021 as prepared and distributed.

Motion passed 7-0.

Nick Gravino 650 Dover Center Rd	Applicant is seeking a 3 ft. or 30% variance to section 1370.06 to install a generator within ten feet of a property line.
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Mr. Norton introduced the next item on the agenda as 650 Dover Center Rd. and advised that the board has had an opportunity to visit the site and review the application.

Ms. Scott advised she is here to represent her mother, who is trying to join the call, who has concerns about there being a generator for a business within 30' of her front door. She then inquired as to the location of the existing generator.

Dr. Gravino remarked that it was a natural gas generator and it is going in a better place than the existing location and it will be quieter than the existing unit. The existing location was approved 11 years ago by Mayor Sutherland and our current Mayor Koomar. He went on to advise that it

is on the north side of their building hidden between the landscaping, which is what he plans to do with the new one.

Mr. Norton inquired if it was on the east side of the sidewalk?

Dr. Gravino clarified that it is on the north side of the building.

Mr. Norton advised that he had seen a big green unit which he believed to be a transformer.

Dr. Gravino confirmed that is a big electrical box and confirmed that the existing generator is to the west of the electrical box.

Mr. Burke inquired if it was on the parking lot side of the transformer?

Dr. Gravino replied that he can't see it because it's hidden by the landscaping. He advised that his building is one of the nicest buildings in the town.

Mr. Burke inquired how the existing one compares in size to the replacement unit.

Dr. Gravino advised that it's probably about double the size.

Mr. Saurman inquired why Dr. Gravino isn't proposing to place it where the existing unit is.

Dr. Gravino replied that it is a lot cleaner and closer to the gas line at the proposed location. This one sticks out a bit into the parking lot. There was an old tree that was starting to die and he had it removed which allowed a perfect spot for it right up against the trash dumpster and building. It will be less obtrusive and not next to the sidewalk. It will be 4-5' closer to the building versus where it is located now.

Mr. Burke inquired if the existing unit was also natural gas.

Dr. Gravino confirmed that it is.

Mr. Bruno remarked that the documents he was provided has a line through the decibel rating of the unit. Could someone clarify the db rating? He's curious because sound usually his biggest issue with the location of the unit.

Ms. Young advised that it's hand written in the application its hand written that its' 60 db.

Mr. Patrick Hughes, contractor for Dr. Gravino, confirmed that the replacement unit is 60 db. The existing unit is probably about 64-67db. The one that is existing is an older model and he doesn't know the exact decibel, but this generator is considerably quieter because it runs at half the speed of the old generator.

Ms. Young confirmed this was the case even though it's double in size?

Mr. Hughes confirmed that even though it is doubled in size it's quieter. He went on to explain that every 6 decibels doubles the sound of anything. Any time you change the sound rating by 6 decibels you're essentially doubling the sound.

Mr. Bruno remarked that when they look at air condensers they're looking for somewhere in the range below 75 db for an AC condenser or below. So if this one is 60 decibels at 23' and 10' from property line relatively speaking. He went on to say that the engineers present on the call can present some contradictory discussion, but this seems relatively reasonable to be next to a residential plot next to this commercial property.

Mr. Barbour confirmed that Dr. Gravino's property is commercial.

Mr. Bruno confirmed that he feels it's reasonable to have this decibel rating in a commercial zone next to a residential.

Ms. Young inquired how far the existing unit is from the property line.

Mr. Hughes replied that the existing unit is probably less than 7' which is what they're proposing for this one. It is fairly close to the sidewalk. He advised that he wasn't exactly sure the distance for the existing unit.

Dr. Gravino added that the existing unit is 3'.

Mr. Barbour remarked that the building director's memo advised that the current generator did not need a variance.

Mr. Gess thanked Mr. Barbour for his comments. If the previous one didn't need a variance perhaps it was because it was a smaller footprint. Since 10' is the magic number maybe it didn't cross that point and need a variance.

Mr. Barbour replied that is what it appears on the memo.

Ms. Young clarified that it's actually the opposite. The new generator is closer to the property line than the proposed one.

Mr. Hughes remarked that he may be wrong, but 11 years ago he doesn't believe there was an ordinance on generators in Bay Village which is why there was no need for a variance.

Mr. Norton replied that Mr. Hughes is correct. There was no ordinance because generators were not a popular thing as they have become over the years.

Mr. Burke remarked that one thing they always consider, as a board, is if a variance is needed. In this case, he's questioning if the trash container can be moved to the right possibly to the spot where the current generator is and the new generator be turned lengthwise closer to the wall of the building and possibly not need a variance?

Ms. Young replied that she might argue that bringing the trash containers closer to Dover Center is more of an eye sore.

Mr. Burke replied that what he is suggesting puts it further away. Possibly where the existing generator is.

Mr. Miller remarked that he believes that would still require a variance due to the trash enclosure's proximity to the sidewalk.

Mr. Norton inquired if the transformer would be in the way of moving it far enough over assuming the drawing is to scale.

Mr. Hughes advised that the drawing is not to scale.

The board proceeded to continue discussing the location of the existing generator, transformer, trash container, gas meter and lines, existing sidewalk and existing building to determine the potential and practicality to revise layout such that a variance would not be required for the new generator. They also discussed potential for new screening whether that be landscaping or a decorative fence.

Dr. Gravino remarked that he feels they are splitting hairs. The bottom line is that this is a very important part of their business. He has been in situations with patients where they've been under anesthesia and the power has gone out and their dental work is unconstructed. He has been struggling to find a better way to do this and Mr. Hughes has come up with a way. The generator they have is limited in capacity and he also has tenants, taxpayers in our community, and he likes to keep them going on a regular basis. He doesn't see where all the nonsense with where this is going to go is going. He is going to put it in a very nice place and he's going to make it very attractive just like the rest of his building. His building is probably one of the better landscaped buildings in all of Bay Village. Bottom line? It's going to look nice, be functional, and it's not going to bother anyone – just like they have now.

Mr. Burke advised that no one is disputing the need for a generator in his practice and certainly it's good for his tenants. He don't think to suggest its nonsense to see if they can place this generator in such a manner to avoid a variance. The board tries not to give variances if they're not necessary and he does have concerns whether this is really necessary.

Ms. Young remarked that she is wondering if this was previously approved, before there was an ordinance, would this not be grandfathered in.

Mr. Gravino remarked that he had to get approval for it. He doesn't know what they're talking about. He had a problem with the building department putting it where it was at and Mayor Sutherland and then Councilman Paul Koomar worked through the details.

Mr. Bruno added that he wants to ask, to Ms. Young's point about grandfathering, the boards precedent and their operating procedure has been that they grandfather based on the current position of the existing unit, whether that be a generator or an AC condenser, as opposed to a universal variance for any location on the property. He feels that's been their operating procedure as long as he's been on the board.

Ms. Young remarked that the generator is almost in the exact position as the old one? It's on the same side and its closer to the building than the existing one. It's still within the scope of where the original one was approved.

Mr. Bruno added that he doesn't have a problem with the placement. He understands the considerations and concerns – they are very relevant. To that point - hard questions and our dialog is very relevant. Because the variance exists with the property regardless of your current

ownership and use of the property. If there is a different use and installation of a generator that is much louder they could make the arguments in future years. They could create a situation where that generator may not be in the best interest to the residential properties. He went on advise that he doesn't have an issue with the current db rating and maybe we can quality, if they do pass a variance, that the generator have a certain sound rating and proper screening. If we do move at some point we want to make sure that the db rating is appropriate considering its' near a residential property.

Mr. Norton remarked that one thing the board has tried to avoid, over the years, is giving a variance to a property since it lives with property and can't be revoked. The board looks for a solution that solves the need without needing a variance. It seems pretty simple to spin this unit 90 degrees and no variance needed unless Dr. Gravino's electrician could tell us some reason why that would complicate life.

Mr. Hughes advised that it would definitely have to be revisited because of the working clearances around the utilities as far as the gas meter and CEI transformer. He is not sure they can maintain the proper working clearances. He would have to visit the site with the idea that the trash enclosure was to be removed and re-measure everything and maintain the proper working clearances around the utilities and the proper working clearances around the generator itself. He knows the way it sits it was designed to cover those issues, but he can't say 'just saying spin it' is going to solve that problem. The transformer has doors that have to open on the front of it. He believes they are facing north. CEI does require certain working clearances that which is something that would have to be reassessed.

Mr. Burke remarked that given there are questions that have to be researched that Mr. Hughes just came up with, and he doesn't want to put Dr. Gravino or Mr. Hughes on the spot to instantly change their drawings, would it be appropriate to table this and give them time to consider what has been discussed on placement and see if it can be placed in a different fashion so the variance is not needed. If it turns out it absolutely needs to be a variance to come back with a revised drawing.

Mr. Bruno replied that he would be supportive of that plan.

Mr. Hughes inquired if the board is talking about putting a trash enclosure closer to the street, egress of the public parking lot, and sidewalk in public view.

Mr. Burke replied that as he looks at the property he believes they could move the trash enclosure across the left sidewalk - there seems to be sufficient room there.

Dr. Gravino inquired if Mr. Burke was talking about next to where the side entrance door is?

Mr. Burke replied that it's next to the entrance door now, but he's saying just on the other side of that sidewalk.

The board, applicant, and contractor continued to discuss the various potential layouts for the proposed generator to avoid the need of a variance, but limit the need for the movement of gas lines and extensive excavation.

Mr. Hughes advised that almost anything can be done mechanically, but some of the suggested layouts would complicate matters by causing major excavations in regards to the sidewalk.

Mr. Burke remarked that he believes that a new layout may actually move the generator closer to the gas and electric.

Mr. Hughes remarked that he would like to see that option if they have to do one, but thinks both are reasonable ideas. The generator moving east, it can be done, but they'd be excavating where they incoming gas lines and tunneling under the sidewalk. He believes both ideas are valid.

Mr. Burke inquired if Dr. Gravino would be amendable to tabling it so that it gives him and Mr. Hughes time to discuss the possibility of moving the generator as to not require a variance.

Dr. Gravino replied that he would prefer to get an answer today.

Mr. Burke replied that they can certainly put his proposal to a vote tonight if he'd prefer.

Mr. Norton provided one point of warning. If, by chance, the board does not feel comfortable with the plan as presented and they do turn it down then there is a requirement in the ordinances that a 'substantial change' has to be made in order to bring it back before the board.

Dr. Gravino replied that he believes moving it would be a substantial change.

Mr. Norton advised that if Dr. Gravino concludes that he really can't or doesn't want to relocate the generator and he has already been turned down and he really wants the generator as he's presented it then there would need to be a substantial change. If they simply delay the decision and determine if any of the other layouts are appropriate then there is no problem with coming back with this exact plan and seeing if the board agrees. He doesn't want the applicant to trap himself. If this item is added to the next agenda it gives the applicant time to see if he does, in fact, need a variance.

Mr. Hughes advised that he thinks Mr. Norton's statements are reasonable.

Motion by Mr. Burke, Second by Mr. Bruno, that this application be tabled until the next meeting in order to give the applicant and Mr. Hughes an opportunity to review it and see if the arrangement of the equipment can be designed so as to not need a variance.

Roll Call Vote:

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

Nays -

Motion Passed 7-0

Mr. Norton advised that we can put this on the next agenda or they can let Ms. Oley know their final decision and analysis. He then inquired if inquired if Ms. Helgeson had any questions that weren't answered during this discussion?

Ms. Helgeson advised that she was mostly concerned with the sound because she lives right across the street from where they plan to put it. Which puts it right at her front door, but if they are going to do it without changing the rules then she doesn't have anything to say about it.

Mr. Barbour advised that he'd like to make her aware that this generator can only run during power outages and it can only run once a week for 20 minutes for testing between 9am-6pm Monday through Saturday. This is not a generator that is going to run continuously unless power is lost.

Mr. Miller added that 60 decibels is less than the average conversation sound.

Ms. Helgeson advised that she was interested to learn that it was less than what was there currently. Is that correct?

Mr. Miller replied that is what Mr. Hughes advised, but it was undetermined exactly what the current unit output is. 65 decibels is your average conversation level so this is a very quiet unit.

Mr. Norton thanked her for joining the meeting and advised that if this item is back on the agenda they will ensure that she is notified.

Jenna Portik on behalf of the Bethesda Child Care Center 28607 Wolf Rd.	Applicant is seeking a Special Permit section 1121.41 or a 1 ft. variance to section 1163.05 (d) to install a 4' high fence in the front yard of Bethesda on the Bay Lutheran Church where a 3 ft. 4 in fence is permitted.
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Mr. Norton introduced the next item on the agenda as Bethesda Child Care Center and advised that board has had an opportunity to visit the site and review the application.

Mr. Burke inquired if is the fence being required by family services.

Ms. Portik replied that during their latest ODJ inspection, last summer, they reported that they are no longer allowed to use natural barriers, as they have in the past, like trees and cones.

Mr. Burke asked if the recommendations from family services require the higher fence that is being proposed or do they not specify height?

Ms. Portik replied that they do not specify. In their lack of data provided, they advised that it has to prevent the age group of children that they serve from being able to exit the space. They have up through 7th graders and a 3' fence, even for some of their younger kids, is not ideal. They are hoping to add to the look and feel of their property, not take away from it, with the type of fencing they are proposing to use. That iron black ornamental fencing is much much much more costly at 3' rather than 4' and it is also backordered so they would be looking at a very long time before it can be put in.

Mr. Burke replied that she may have just answered his next question regarding the style of fencing. Usually the board likes to see the style of fencing that is proposed and incorporate that into any motion. Could she describe or does she have a picture of the particular fence they're proposing?

Ms. Portik replied that she doesn't have a photo, but it's the black iron fencing with spaces between the pickets. If they visited the site the same fencing surrounds their playground that they currently have on the east side of the building.

Mr. Norton confirmed that the style fence is open and that there is no visual barrier.

Ms. Young remarked that it doesn't seem as if they've had a problem with kids running away in the past and that this is more of a family services request. So then does it really need to be higher since that doesn't seem to be the issue?

Ms. Portik replied that they have, unfortunately, had kids leave the space. Their younger kids that play in that space are 3 years old and they have had them go outside the boundaries and been very close to the road. They have also had issues with older kids making that same choice. It is an even mixture. While it's not their choice to put up the fencing, especially as a small non-profit in the middle of a pandemic, they have to do it. If they have to spend the money on it they want to do it right.

Ms. Young inquired if the space has to be that large?

Ms. Portik replied that it doesn't technically need to be that large, but they feel it will look worse if they cut the space in half to save money. The church also uses that outdoor space for their purposes so it would become an issue for them to put the fence through the middle part of the front yard.

Mr. Saurman noted that he saw some posts and ropes on the property. Is that the location of where the fence is going to be?

Ms. Portik replied in the affirmative.

Mr. Burke inquired if the signage would not be enclosed inside the fence, but rather on the outside of the fence?

Ms. Portik replied in the affirmative.

Mr. Burke remarked that he, for one, sees the concern regarding how busy Wolf Road is. Having small children that could be running out there – he understands the concern.

Mr. Bruno confirmed that he did as well. He's had a child who attended Glenview, across the street, the activity and amount of children there and the proximity to Wolf he feels that the fence is a necessary. The fence will be able to be seen through. He doesn't have an issue.

Mr. Norton remarked one thing to consider is that this was announced as a special permit rather than a variance application. Mr. Tuck-Macalla mentioned that it would be better as a special permit because then restrictions can be tied to its use as a daycare center and if that ceases to be than it could be requested to have it removed. So it makes the use specific to the request. They might want to include that in the motion.

Mr. Bruno inquired, to Mr. Burkes point, do you have a photograph of the style of fencing?

Ms. Portik advised she doesn't have a picture, but if they're familiar with the fencing that lines the sidewalk at Bay Middles School that separates the field, where the kids put their bikes, it's the exact same fencing, but she'd be happy to provide them with a photo at a later date if they'd like.

Ms. Young advised that it looks like a black iron fence with a blacktop.

Mr. Gess inquired if a special permit is what the board did for the group home.

Mr. Burke remarked that it was. They put the limitation on that one that if it ever ceased to house certain uses than it would have to come down.

Mr. Gess remarked that he feels they did more studies and finding of facts for that special permit. He advised he is fully in support of this, and he understands the need and thinks it's important, but he struggles since it's related to the use. Unless it's something that is a fair housing thing that the City has to comply with.

Ms. Young inquired if this was a new change by family services? This wasn't something discovered at previous inspections?

Ms. Portik replied that it was a new change.

Mr. Miller added that the playground always had to have a fence, but now the play area has to be included as well.

Motion by Mr. Burke, **Second** by Mr. Bruno, that 28607 Wolf Rd. be granted a special permit per ordinance 1121.42 for the placement of a fence 4'-4" in height of a style similar to the black metal fence surrounding the Bay Middle School football field and playground at Bethesda further provided that if the property ceases to be used as a church property and/or a childcare center that the fence would have to be removed.

Roll Call Vote:

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

Nays -

Motion Passed 7-0

There being no further business to discuss the meeting adjourned at 8:14 p.m.

Jack Norton, Chairman

Lauren Oley, Secretary