

Meeting Minutes of
Board of Zoning Appeals
Held May 18, 2023

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

Excused: Scott Bruno, Lauren Oley (Secretary)

Also Present: Eric Tuck-Macalla (Building Director)

Audience: Craig & Lorelei Suehrstedt, Bob Dlouhy, Mark Reinhold, Jade Kelly Haun, Elizabeth Jones & Robert Jackson, Joe & Jacquelyn Tanis, Kendra Davitt

**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 7:30 p.m. and introduced the first item on the agenda the approval of the minutes that were held May 4, 2023.

Motion by Mr. Burke to approve the minutes as prepared and submitted.

Motion Passed 6-0

Excused: Bruno

1) Jeffery Jackson & Elizabeth Jones 372 Oak Cliff Drive	Applicants are requesting three variances in order to build an addition. 1. 1153.02- Front yard setback. The setback on this street is 50', they are requesting a 23'11" variance. The new setback will be 26'1" 2. 1153.03- minimum side yard. The minimum side yard for this lot is 9' they are requesting a 3'11" variance. The new side yard setback will be 5'1" 1153.04- rear yard setback. The required rear setback is 18', the proposed rear setback is 15' 9" to the balcony. The variance is for 2'3" <i>Item was tabled 5/4/23 for contractor to research setbacks on existing homes and consider reducing variance request</i>
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Mr. Norton introduced the next item on the agenda as 372 Oak Cliff Drive. Advising that the application has been modified from their last submission and suggesting that they discuss all reviews independently. The new front yard setback request has been modified to 19'. In both the front, side, and rear yard setbacks have been modified and reduced from the original request. The cul-de-sac, in the front yard, forces the measurement to be made from the edge of the setback – which makes the lot very unusual.

The board and applicant discussed the various properties on the street and their setbacks per the drawing provided by the applicant.

Mr. Norton noted that the whole neighborhood is very dense. Many of the lots were platted as lots to be very small as a cottage type environment and over the years they've all been converted to year-round residences. He

added that the new design puts the new house behind the existing porch which leaves the southeast corner at the same position as the existing house. He clarified to say that, from the standpoint of the neighbor to the south, it won't change their situation from that footprint.

Ms. Suehrsedt commented that the east and the west sides, particularly on the second floor, is where they have an issue. The second floor is currently not as deep, it's inset on both sides, and any expansion of that will block the views that they currently have. Adding clarification that there are two windows that currently have a view of the lake one on the east and one on the west.

Mr. Norton remarked that the board often has to remind applicants that unfortunately their view stops at their property line. That isn't always comfortable, but they do have to take that into consideration from a legal standpoint.

Mr. Miller stated that he believes the drawing that was submitted, with the red dashed line, really makes light of the setbacks in the front yard especially for a cul-de-sac. The universally applied setback seems rather extreme. The drawing that includes the front yard setbacks helps set the character of both sides of the street. Some are older homes that sit very far back, one as deep as 60', others as deep as 54', the property across the street 38' – which is a different configuration. The new plan helps to stay with the existing front porch position. For him it's not overwhelming to have it that close to the street.

Mr. Gess noted that without the cul-de-sac, that encroaches in the front yard of the property, everywhere else on the street the setbacks vary greatly. He appreciates that applicants time to put the information together. The character of the street is irregular in nature. This helps support the case that 25', while on paper might be the smallest, is appropriate taking the cul-de-sac into consideration.

The board and applicant continued to discuss the front yard setbacks of other properties on the street.

Motion by Mr. Burke, **Second** by Mr. Saurman, that the property located at 372 Oak Cliff Drive be granted a variance of 19' from the front yard setback requirements of section 1153.02 of the Codified Ordinances for the construction of a new home on the property.

Roll Call Vote:

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

Nays –

6-0 Motion Passed

Mr. Norton introduced the next request, for the same applicant, regarding the minimum side yard requirements. The previous application requested a 5'1" setback requiring a 3'11" variance and the revised application requests a 7' setback requiring a 2' variance. The request has been reduced from the original application.

Ms. Young inquired if there was still going to be an overhang?

Mr. Reinhold replied that they've moved it based on the comments from the board.

Mr. Miller stated that on the redesigned plan they've moved the south wall north by a couple feet. To address the sightline issues of the neighbor, this will potentially lend itself to preserving some of those viewpoints. It may not be perfect, but because they moved it forward (north) they've got a slight advantage. He inquired why the applicant can't allow for the full 9' setback required?

Mr. Reinhold replied that it's a question of what is a happy medium so that they're not pushing it so far north that they have to immediately worry about erosion. They're taking into consideration the ODNR erosion rate of 2' every 10 years. Some in Bay Village are as little as 6" every 10 years.

Motion by Mr. Burke, **Second** by Mr. Gess, that the property located at 372 Oak Cliff Dr. be granted a variance of 2' from the side yard setback requirements of section 1153.03 of the Codified Ordinances for the construction of a new home on the property as per the revised application.

Roll Call Vote:

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

Nays –

6-0 Motion Passed

Mr. Norton introduced the last request for this application as the rear yard setback requirement. The setback required is 18' the previous application had a request for 15'9" the new revised application is for 15'10" it's been increased by 1". So, the variance request is 2'2". It is to be noted that there are quite a few properties along that street that are also below that – some as little as 2 or 3'.

Mr. Tuck-Macalla pointed out that if they moved the house further back, ultimately asking for more of a rear yard variance and a smaller front yard variance, it may be agreeable to the board and preserve sightlines for the neighbor.

Mr. Reinhold replied that they're just trying to strike a balance between the interior and exterior of the home and leave an area for the kids to play.

Mr. Tuck-Macalla commented that he's trying to think of the neighbors to the south and their view. The way that it will be constructed now their view from their perspective is pretty up in the air – probably will be non-existent or very minimal. If you were to take the house and move it back a few feet then they'd have more of a view out of the windows or visa versa moving it forward and giving them more of a view in the back.

Ms. Young remarked that she understands what Mr. Tuck-Macalla is saying. A lot of the houses are pushed to the west on that border so rather than asking for two variances, on the east and west, why not just ask for a bigger variance on the rear side.

The board, building director, builder, and applicant proceeded to discuss the possibility including the functionality of the home and potential geographical issues.

Ms. Suehrsedt commented that she likes this idea. If they had a say, moving it back and increasing the front view would be preferred and appreciated.

Mr. Reinhold stated that he's ambivalent – he defers to the applicant, but he recalls that they were discussing the kids can play on the west of the home and the parents can be on the north side of the home.

Mr. Jackson stated that was an area they had intended to be a play area for their 3 children. They've been working on these plans for years and they had made some concessions on this application. He doesn't think they're comfortable making a decision to shrink it further.

Mr. Saurman inquired if it was something they could think about before they complete the variance request.

Mr. Jackson commented that he's not comfortable making the decision on the fly.

Mr. Miller inquired about the north porch. They've talked about the various setbacks and concerns about deteriorating north yard, but the porch is of a certain scale and there isn't much of a difference from the original application. Is there a formula behind that scale?

Mr. Reinhold replied that they were trying to make it large enough to have an area to feed the family, etc. That is how they derived that north porch area.

Mr. Norton stated that there is no reason they can't move ahead and vote on the request. If they are disappointed in the results, they can always modify the request and come back, but they know it's only a small amount, but he can see how it does have some meaning.

Mr. Bruno commented that he senses that there is some feeling of the board that the movement of the house might be helpful here. He inquired if it would be a hardship for them to postpone to the next meeting to allow them to discuss.

The applicant agreed to pause the review of their items to allow more time to discuss. After all other agenda items were heard by the board the applicants came back in to finalize their variance requests.

Mr. Reinhold stated that the house to the rear of their home on the west is not the greatest kept house and it's also quite close to his client's rear yard. Also negotiating changes to the drawings, they feel like they're doing a disservice to that homeowner because they don't know it may be 2' closer. A 15'10" setback is really only about a 12' rear yard for the kids to play once you've added arborvitae and now, they're asking it to be 9-10'. It's something that's important to the Jacksons to have a place for their kids to play. They have decided they would like this board to vote as they proposed. They feel like they've compromised, but they'd like them to take it to a vote. Additionally, they feel that they've given the neighbor to the west the drawings, as proposed and she doesn't have an ability to comment if it's 2' closer. So as of today, they want to take it to a vote as proposed.

Ms. Jackson clarified that she didn't show the neighbor the plans, but they spoke on the phone and she told her where the house was proposed.

Mr. Norton inquired if there was any further discussion.

Motion by Mr. Burke, **Second** by Ms. Young, that the property at 372 Oak Cliff Dr. be granted a variance of 2'2" from the rear setback requirements of codified ordinance section 1153.04 for the construction of a new home as shown on the application.

Roll Call Vote:

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

Nays –

6-0 Motion Passed

2) Jade Kelly Haun 582 Lake Forest	Applicant is requesting a special permit to install a 6' privacy fence around her property, the total lineal feet would be 229 ft.
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Mr. Norton introduced the next item on the agenda as 582 Lake Forest. Advising that the building department has supplied the board with an exhaustive study of this topic regarding a group home that had a similar request. He notes that in Ms. Haun’s request she has provided medical recognition. The medical community has certified that this is a necessary issue. He can assume that the board, because of their past actions, has accepted the fact that this request is reasonable. The thing that they struggled, at great length with in the previous application, was how to remove that permission when it’s no longer needed. A variance lives with the property. There is no way for the building department to keep tabs on every property. If you move and there is no longer a medical need for it to exist at the property, but the city doesn’t have a way to force you to change it back – there simply is no mechanism to do that. In the past, they have made it a special permit.

Mr. Tuck-Macalla stated that he believes a special permit fits better than a conditional variance.

Mr. Norton advised, for the applicant, that what that would mean is that a future owner would be obligated to change the fence, but there is no mechanism to force that, but at some point, the fence will have to be replaced. At that point, that owner would be told ‘you can’t have all that 6’ fence’. So, it would be incumbent for you as the homeowners to pass that onto any future owners.

Mr. Burke stated that if the fence would be damaged or in need of repair while the property is still owned and used by the current owner, they’re allowed to keep it 6’.

Mr. Barbour summarized that as long as the person who is in need of the fence lives at this property it’s permitted.

Motion by Mr. Burke, **Second** Ms. Young, the property located at 582 Lake Forest be granted a special permit for the installation of a 6’ privacy fence around the backyard of the property, as shown on the drawings submitted with the application, for a total of 229’ lineal feet provided that in the event that the disabled person, for whom this is being granted, no longer resides at the property the fence wouldn’t have to be removed, but the fence is not grandfathered. If the fence needs to be repaired or replaced after the current resident no longer resides there this 6’ fence variance would not be grandfathered.

Roll Call Vote:

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

Nays –

6-0 Motion Passed

Mr. Norton stated that it might be good to have a finding of fact because they’ve not really even discussed the reasoning behind it.

Motion by Mr. Burke, **Second** Mr. Saurman, the board would like to have a finding of fact on the record that the written documentation submitted by the applicant is sufficient to show the need for reasonable accommodation under federal state fair housing laws for this property because of the disability of the resident. Secondly that the special permit has just passed is that reasonable accommodation.

Roll Call Vote:

Yeas – All

Nays –

Finding of Fact established 6-0

3) Robert Dlouhy 359 Elmwood	Applicant is seeking a variance to section 1359.01 (a) to place air Conditioning equipment in the side yard closer than 10’ from the property line. The unit would be 18” from the property line the request is for 8’ 6”. The decibel level is 71.
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Mr. Norton introduced the next item on the agenda as 359 Elmwood advising that the board has had an opportunity to review the applicant and visit the site. Noting that currently the air conditioning unit was hidden under the applicant’s deck area.

Mr. Dlouhy commented that he’s been in the house 19 years and they put the air conditioner there 37 years ago and they build the deck around it. The new air conditioners need room to breathe so you can’t cover it up that way. He’s got to pull it out of there and it makes much more sense in the proposed location. One thing to note, as you look at the plot plan, diagonally it’s 18’ from his home to his neighbors’ home. So, with this particular air conditioner it will be 15’ from their home and will be behind a fence.

Mr. Norton stated that they often request that it be year-round screened by evergreens or fencing. While there is a fence there now by including it in the motion it would ensure the new owner would replace the screening accordingly.

The board proceeded to discuss the existing screening/fencing.

Motion by Mr. Burke, **Second** Mr. Gess, that the property located 359 Elmwood be granted a variance of 8’6” from the side yard setback requirements of section 1359.01 (a) of the Codified Ordinances for the placement of air conditioning equipment at the location as shown on the application provided that the applicant provide year-round screening to screen the unit from the neighbor view and the street view.

Roll Call Vote:

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

Nays –

6-0 Motion Passed

4) Joseph Tanis 380 Columbia Rd	Applicant is seeking a variance to section 1350.03 to install a utility building (shed) larger than the permitted 120 sq. ft. The shed would be 192 sq. ft. the variance would be for 72 sq. ft.
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Mr. Norton introduced the next item on the agenda as 380 Columbia advising that the board has had an opportunity to review the application and visit the site. He also noted that this is a very deep backyard and behind the property line there is a creek and a wooded area that goes back quite a way. The yard is not only a large property, but it’s also well shielded from the neighbors. They have been trying to seek some balance between size of lot and size of utility structure. This may be similar to some of those requests because of the size of the lot.

Mr. Burke stated that they’ve used lot size to help aid in their review and this is a large lot, but this is a 60% request. Is that concerning to anyone else?

Mr. Miller replied that it is quite large. They are usually looking around 20-25% which puts them in the 140 sq. ft. range.

Mr. Gess stated that it always comes down to what is a reasonable request. They can always build it as an accessory structure as opposed to a shed.

Mr. Tuck-Macalla stated that to be built as an accessory structure it would need to have a permanent monolithic foundation with a turn down footing with a 4' curb and anchor bolts.

Mr. Tanis stated that he didn't want to do a poured foundation because he doesn't want something to substantial back there because it is a nice open area back there. There are a few barn style sheds, but he doesn't want something that is ultra-accessory structure looking.

Mr. Saurman commented that the size the applicant is asking for 12'x16' and is almost as wide as the garage he has now which is 18'x18'.

Mr. Tanis replied that he may be off on that measurement for his garage. The other thing with the garage is that it's up probably 4' higher than where the base of the shed would be based on how the lot falls into the creek. It would be even more hidden because of that. There are shrubs on the driveway and a very large addition that the neighbors have so you can't see it from the northside.

Mr. Gess inquired how he plans to access it?

Mr. Tanis stated that there is a fence that connects the left side of the garage and goes along the border of the diagram and connects to the house. It's a fenced backyard area. He stated that it's primarily for lawn equipment. They occasionally will have to rent things like log splitters, etc.

Mr. Gess inquired if there was any movement on changes to the ordinances as it relates to sheds?

Mr. Tuck-Macalla replied that there have been no decisions and it's still in discussions.

Mr. Norton stated that the nature of the lot is significant to him given the creek. Any of the houses behind that area are not impacted at all. He thinks maybe, based on past discussions, this might fit that.

Mr. Miller inquired if there could be any concession on the size of the shed.

Mr. Tanis stated that he knows he needs it to be 16' long for various tools.

Mr. Norton inquired if a 10'x16' would fit his needs?

Mr. Burke inquired if he would formally revise his request?

Mr. Tanis replied that he could make 10'x16' work.

Mr. Burke said that brings it down to 160 sq. ft which makes it only a 40' request which makes him more comfortable.

Mr. Miller stated that 160 is okay with him. If he knew council was ready to approve an increase he might feel differently, but they're not ready to do that yet.

Mr. Norton clarified that they've officially amended the request to 160 sq. ft.

Motion by Mr. Burke, **Second** Mr. Miller, that the property located at 380 Columbia Rd. be granted a variance of 40' from Section 1503 of the Codified Ordinances for the construction of a shed in the location as shown on the drawings.


Roll Call Vote:

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

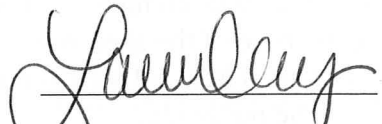
Nays –

6-0 Motion Passed

There being no further business to discuss the meeting adjourned at 8:35 p.m.



Jack Norton, Chairman



Lauren Oley, Secretary