

Meeting Minutes of  
Board of Zoning Appeals  
Held August 05, 2021

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

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

Excused:

Audience: Michael Smith, Stephen Schill, Brian Knauer, Gene Lustik, John Hudec, Julie & Val Kaiser, Jennifer & Seth Wamelink, Mike & Wendy Wagner Walker, Martin Reuben.

*\*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.

Mr. Norton introduced the first item on the agenda, the approval of the minutes that were held July 15, 2021

**Motion** by Mr. Bruno, **Second** by Mr. Burke, to approve the minutes as prepared and submitted.

**Motion passed**

1) Brian Knauer agent for Wagner Family 24734 Lake Rd	Applicant is requesting a variance to section <b>1163.05 (h) (3)</b> to install a privacy screen over the permitted 32 lineal feet. The request is for a <b>50 ft.</b> a variance of <b>18 ft. or 56%</b> . 10% of the perimeter of the property is 110.2 feet, though the fence is all in one direction.  <i>Item tabled 7/15/21</i>
--	---

Mr. Norton introduced the first item on the agenda as 24734 Lake Rd. The board has had an opportunity to visit the site and review the application this item was tabled from 7/15/21. The applicant has changed their request reducing the amount of 6' fence requested.

Mr. Knauer introduced himself as the agent. He said that based on the previous discussion it seemed like 50' may be considered appropriate by the board. Depending on how the design turns out it may be prudent to word the request for a combination of 6' fence not to exceed 50' with two sections of 5' fencing/transition panels and the rest of the fence will be 4'4".

Mr. Norton clarified that his request is to have a 50' section of 6' and then drop down to the two sides to 5' and then 4'.

Mr. Knauer advised that was correct.

Mr. Norton advised it is to be noted that the lot is somewhat unique in that it 500' deep and 75' wide. It's a very long skinny lot. The present house has some uniqueness in that it is very old and it was built to have a connection to the lot next door as a carriage house. It's oriented in an unusual fashion.

Mr. Knauer advised that the front door faces the side property line 14.5' from the line. All the windows face that direction. They do plan to put trees that should provide some coverage for the 2<sup>nd</sup> story windows. He understands the board is concerned with setting precedence, but quite frankly he's not sure if they could recreate this situation if they tried.

Mr. Saurman inquired if the fence that was there now, and he knows it's in sections, but front to back how long is that fence?

Mr. Knauer advised that it was 3 panels 6'x8' long.

Mr. Burke advised that, in his mind, when you're looking out the first floor especially from the 2<sup>nd</sup> floor the difference between a 4' and 6' fence is not significant and if it is going to block whatever goes in next door...the second floor you'll see right over it.

Mr. Knauer advised that yes, in the 2<sup>nd</sup> floor you would see over it, but they've tried to accommodate that with greenery. He advised that the front door is about at grade.

Ms. Wagner remarked that she thinks 4'4" would put your eyes right over the fence and 6' would put your eyes right into the fence. 4' vs. 6' would make a huge difference especially on the first floor.

Mr. Norton inquired if the 6' section is oriented to the front porch?

Mr. Knauer remarked that they're still moving it around a little bit. It has to do with the final fence design. The original plan was having the whole area covered with 6' so we're still sort of moving sections up and down. A little comes into how they finalize the detail of the fence – whether they're using 6' or 8' panels.

Mr. Norton clarified that is why he requested 'not to exceed 50'.

Mr. Burke advised that typically they will often give transitions in addition to the 32' allotted so this is quite a jump in what is typically permitted, that being said he does agree this is a unique situation.

Mr. Bruno agreed that this is a unique situation and he is sympathetic and seriously considering the variance, but he wonders if this isn't a cart before the horse situation. They've not positioned the house on that property. To get approved for a certain amount of lineal footage when you don't know how you want to place it, but knowing you want to use that space facing west – on

the patio and have some privacy. It seems like you may need a different type of accommodation or request based on how they position their home on that property.

Mr. Knauer advised that he thinks the main key is the coverage from the main spaces wherever it may be. In a perfect world if they sit on the front or back deck they won't see next-door – that can't happen. So they switched it and moved it and that is why they are also supplementing with greenery. Plants are the new wood. They have bought the retailers and all of the 2021 stock and starting to buy into 2022. They get better plant material than anyone – there is no question. The biggest trees they can get right now are 6' and they might be able to get three or four 8' trees. It'll take 3 years, in the ground, before they really start to put on new growth. Then they're looking at 5 years before they get the coverage they want. The integrity of this house, to him, a well-designed fence that fits with the house, that softened wood with greenery.

Mr. Bruno advised he could be even more sympathetic if he knew where the structure was going to on the property next door. He's hesitant to say that they don't even know what type of privacy they're trying to accommodate for at this point.

Ms. Wagner interjected to say that their front yard is 15' to the property bounds and their house is very long. They will make good use of that 50' no matter what. It's almost hypothetical that it won't be useful to have that 50' someplace. They're not young and they don't want to wait a couple more years. It's been a hard year already and they're ready to move on and get their yard in shape and bring in some birds.

Mr. Wagner added that what happened has an impact on their house. It's been very emotional for them. So when the board says, 'why don't you wait a little longer', he can understand their perspective, but from their perspective they want to get some closure and move on with their lives. It's really been an emotional experience for them and their daughter. It's difficult to consider waiting given the anguish they've gone through.

Mr. Burke commented that from a precedent standpoint they're asking the BZA to approve a variance which stays with the property, but without any precision as to where it is going to be placed. He can't think in all his years on the board that they've approved a variance for a structure/submission where the applicant didn't have it precisely located.

Mr. Norton and the applicant clarified the approximate location of the privacy fencing.

Mr. Norton then advised one of the reasons he's sympathetic, besides what has already been discussed, is if they look at the house that is presented it's all the windows in the house. There are some on the northside – the whole use of the house is oriented to that one face. Everything looks that way – so in effect, they are trying to protect that view.

Mr. Saurman advised that the location doesn't bother him, because obviously it's privacy for the house. They're not going to put a fence up by the street and that is what the application is for. There is also a wind issue because they no longer have 25 trees to block the wind – it's a big open space over there until something is built.

**Motion by Mr. Burke, Second by Mr. Bruno**, that the property located at 24734 Lake Rd. be granted a variance from the requirements of CO 1163.05 (h3) in order to install a 66’ privacy screen 50’ of which is not to exceed 6’ height and two 8’ long transition panels not to exceed 5’ height for the purpose of screening the house from the adjacent property to the West.

**Roll Call Vote:**

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

**Nays –**

**Excused –**

**Motion Passed**

<p>2) Seth &amp; Jeni Wamelink 31003 Arlington Circle</p>	<p>Applicant is requesting a variance to section <b>1153.02</b> to encroach upon the front set back by <b>6 ft. or 12%</b> and a variance to section <b>1153.03</b> to encroach upon the required 9 ft. side yard set back by <b>4 ft. 8 in. or 51%</b>.</p> <p><i>Item tabled 4/1/21 &amp; 4/15/21</i></p>
---	---

Mr. Norton introduced the next item on the agenda as 31003 Arlington Circle. It’s to be noted that the numbers in the agenda are in some dispute as to how they were formulated. What it comes down to is the building director has an interpretation as to the location of the front yard setback, but it is different than the applicant interpretation of the front yard setback. The applicant’s version has been construed based on a recent survey of the property. Unfortunately, the building director is not here and we were hoping to have him zoom in and that’s not going to happen. The applicant’s interpretation is that they need no variance on the front yard and just a side yard and that’s in contrast with the building director. The laws for Bay Village are such that if you disagree with a ruling of the building director you are allowed to bring it to this board and then this board can override the building director’s decision. They could also approach this a little differently in saying, in either case – what the applicant is asking for as it relates to the neighborhood and the property rights and that sort of thing. It’s easy to see that the property is somewhat unusual in that it’s a truncated lot. It’s also easy to understand the need for front yard setbacks to maintain a uniformity between the fronts of buildings and residential. Obviously on a circle you don’t have that aspect of it – the houses aren’t lined up. The side yard setback seems, to him, to be much more important than the front yard. He imagines you can’t even notice the front yards setback in that sort of situation.

Mr. Bruno commented that the subdivision has granted a release of the deed setback restrictions set forth by the father of the person who signed this release. To Mr. Norton’s point about this being on a cul-de-sac there is a uniqueness to the situation of the positioning of the primary structure and the garage and what’s happening. He has less of a concern unless it was a straight part of the roads in Huntington Woods. To the Chairman’s point he agrees with the amount of space on the side yard. He usually brings up the front yard setbacks for this neighborhood.

Mr. Wamelink commented that the side yard setback is what it is. The amount changes based on how it's calculated, but at the end of the day it's going to be in the same spot either way. There are, on their street, instances of other homes that are less than the side yard setback on straight parts of the street. They have an irregular pie shaped lot. The only way they can do a 3 car garage is to come out so when they come out you get closer to the other side yard. They do certainly have one of the biggest factors when it comes to the uniqueness of seeking a variance. They've spoken with their neighbors and they've gotten signed letters – they have no neighbors that are objecting to the variance. So given that and the benefit that it will have – not having cars parked in the driveway and being able to keep them in the garage. One of the things, frankly, on their street is that there is always cars parked in the driveway. He thinks that is a hazard especially when they're parked over the sidewalk. It can attract crime. It's a benefit to the house and neighborhood.

Mr. Burke clarified that their present position is that they only need a 1'9" variance on the corner of the garage and you do not need a front setback variance. Since giving this survey to the building director have you had any further conversations with him on that?

Mr. Wamelink clarified Mr. Burke was inquiring about the front setback. He went on to say that ordinance 1153.02 (2) says that their building line is 75' from the centerline of such street. They're at the top of a cul-de-sac. The iron monument pins run in a straight line all the way down the street and stop directly in the center of the cul-de-sac. There are no pins- once the cul-de-sac starts – the only pin in the cul-de-sac is in the center of the cul-de-sac. When they had their surveyor come out he found the pin and that is what he used to create the buildable line which does not require them to have the front yard variance. That is what they maintain is the proper measurement. The city put a pin there by which to note the center – they could have continued the pins around the cul-de-sac themselves if that was how they wanted to measure, but they didn't. As you are probably aware, the Supreme Court of Ohio has said any ambiguity at all any questions in the interpretation of the ordinance is to be construed in favor of the property owner. So here they have the city putting a single pin in the center of the cul-de-sac and a legally approved surveyor use that as the basis by which to measure that and he feels that it should be used. It also decreases the side yard variance that is needed to 1'9".

Mr. Norton commented, to go further with that, it is agreed by all that this is a 50' radius on the circle. That is not in dispute. In other words, from the pin to the pavement from the survey it's basically 50'. The ordinance then says, what as to the setback of the street. If that is the starting point – the ordinance is for 75' from and parallel to the centerline of the street. He summarized that they basically have 60' to the circumference of the line so the front corner of the proposed garage is 60'.

Mr. Gess advised that what he thinks Mr. Norton is saying is that the front corner of the proposed garage is roughly 56' from pavement, but what he thinks he's understood the applicant to say is that 75' is from the pin in the center of the cul-de-sac and by these measurements they are well back of 75' – if that's the interpretation of how to determine and define the setback. Which has caused you to say that you don't need a front yard setback.

The Wamelinks agreed.

Mr. Bruno added that they already have a release from the association within the division which is why, again, he's not as concerned about that front yard set back despite any difference between the building director and property owner on the front yard setback. He does believe they should have some discussion on the side yard setback.

Mr. Wamelink advised the amount of that variance does vary depending on whose interpretation you use.

Mr. Norton inquired if there seemed to be any dispute as to the required side yard? That increases depending on where you establish the building line. In this case, their interpretation is that it's 6' – is there any dispute there?

Ms. Wamelink answered that the Building Director thinks it's 9'.

The board had a sidebar discussion on how side yard setbacks are calculated for a cul-de-sac.

Mr. Wamelink advised that because they are a pie shaped lot – where you place buildable line is where you calculate the width to determine the side yard variance. That is why the interpretation of the ordinance effects the side yard variance request. If they use their interpretation then the buildable line is closer to the street which is not as much of a width (44' wide) which creates a 6' side yard setback, but if you use the building director's interpretation, moving that buildable line further away from the street the lot gets wider which creates a 9' side yard setback.

Ms. Young summarized that it seems that their first step is buying into the pin in the center of the cul-de-sac and determining the 75' and the next step is to set the buildable line and the narrower width which then changes the side yard setback.

Mr. Miller remarked that the result of the second analysis is always going to have that front form within the setback.

Mr. Norton stated that it's also to be noted that before the ordinance was changed, relatively recently - a few years ago, what is now a either a 6' or 9'(depending on interpretation) used to be 5'. The old ordinance was a minimum of 5' for this lot before they changed it. It went from 25% total to 30% total and then they based it on the width of the building line. Then they went from 6' all the way up to 10' on a 70' lot. Under the old rules this request for 4' 3" would be against a 5' requirement so they'd only be asking for a 9" variance. He hates to disagree with the building director, but using that pin that was found has some substantial meaning in the whole affair.

Mr. Miller stated that they often don't get enough evidence of and here they have very clear evidence.

Mr. Bruno remarked that it would be nice to have Mr. Tuck-Macalla represent, in quorum, that he agrees that is the sole pin.

Mr. Saurman inquired that after they presented this to the building director and you had discussion with him as to why he thought these numbers weren't correct. The tough question is, do you want to present the argument he made?

Ms. Wamelink advised that it was through email and he talked to Ms. Oley about it.

Ms. Oley advised that it was her impression that Mr. Tuck-Macalla was of the opinion that the 75' is a number that is to be used from the center line and then there are front yard setbacks for every street in addition to that which is always measured from the right of way. The 75' is to be measured from the center of the street/paved roadway as opposed to the grassy area in the middle of the cul-de-sac.

Mr. Bruno remarked that to him that brings him back to the release of the deed restrictions.

Mr. Miller stated that in this case, the subdivision is stricter than the city, but if the city is more restrictive you need to abide by the city.

Mr. Bruno stated that it seems that the issue of the neighbor's permission as well as the declaration from the company seems like more of a title issue...

Mr. Bruno stated that in past discussions he remembers numerous times previous board members stating that the deed restrictions supersede any City...

Mr. Burke stated that he would disagree with that. Deed restrictions are no enforceable by the city, but rather the developer. He thinks the City would take precedent.

Mr. Bruno advised that it was just the opposite. To that point, that is why he keeps bringing up the release.

Mr. Norton summarized that he believes they are talking about the same thing. If the city says it is okay, but the deed says it is not then the deed prevails.

Mr. Burke advised they often avoid getting involved with deed restrictions – for example certain areas along the lake edge.

Mr. Bruno remarked that he'd still like to have the building director to represent very clearly his position and opposition to the application. They're not trying to kick the can down the road.

Mr. Wamelink advised he appreciates them. Obviously they want to keep it moving, they got the survey, but there are clear markers on this street that is how they create the centerline. They use the pins to create the building line and the only pin in the cul-de-sac is right in the center and that is the end of the centerline in the street. That is what the surveyor does to create the building line. And when you factor in that any ambiguities need to be issue in the property owner's favor...

Mr. Norton advised that the majority of cul-de-sac that he's familiar with the whole circle is paved. They don't usually leave a big enough circle to have a landscaped area in the middle. In

that case the pin would be right in the middle of the concrete circle and that would be the centerline. The only reason that it's not is because they left part of that as landscaped based on the design of the circle. It's hard to interpret that because the line changed because they put landscaping in. If that is the interpretation of the board then it leaves the front yard setback moot because it's well past the requirement – so that puts us back to the side yard. He wouldn't object to giving Mr. Tuck-Macalla a chance to defend his interpretation. Another aspect of this, is that he doesn't have the previous submittal in front of him. They're attempting a 3 car garage. The total width is shown as 16' do you know the existing space?

Mr. Wamelink replied that it gets flipped so that gets a little confusing, but right now you drive straight into the garage from the street and now it will be a side entrance with the new addition. You take the length of the car garage and then you add the 16' to determine the width of the garage that would be 36', but it's important to note that their house has a vestibule entryway that comes out 6'. So 6' of that 36' are not usable for driving directly in – so it's 30' of usable space for cars.

Mr. Norton advised that 30' for a 3 car garage is certainly adequate maybe even slightly generous. What happens if they only come out 14' as opposed to 16'.

Ms. Wamelink replied that it doesn't work with door sizes. They're at the minimum currently. When they take the 8' for doors and 2' for the allowances – it's pretty tight.

Mr. Norton remarked that he thought the 2' might get them to 6' clearance if that was shortened.

Mr. Wamelink replied that it doesn't.

Mr. Burke advised that he'd hate to tie up the board owners anymore time, but at the same time he's still a bit unsure about what Mr. Tuck-Macalla is saying vs. the homeowner.

Mr. Gess inquired if they were considering a variance or an appeal? Has he flat-out rejected this approach? Or is it a variance?

Mr. Wamelink replied that it sort of both.

Mr. Norton advised that they are dealing with two separate issues. An appeal of Mr. Tuck-Macalla's decision to not use the pin as it relates to the front yard setback and as a separate issue they're dealing with the side yard setback. They're considering overriding his decision on whether it's 6' or 9'.

Mr. Burke advised that he read in the materials that the Law Director declined to rule on this, but given that this is an interpretation of the city ordinance it seems that they should look to him for an interpretation and that is not representing a private party.

Mr. Saurman commented that Mr. Norton advised earlier that the BZA Board is the one that make the determination. It's the boards opinion how to interpret the zoning law and where to measure lots.

Mr. Wamelink advised that they requested that from the law director and he told them that he couldn't do that and to appeal here.

Ms. Young advised that Mr. Barbour stated that would include a determination from the building director of the centerline and the necessity of the variance for them to rule on. Do they need Mr. Tuck-Macalla?

Mr. Norton commented that it would definitely fall to BZA to rule on Mr. Tuck-Macalla's interpretation.

Mr. Saurman summarized that they have three choices 1) they can make a determination if Mr. Tuck-Macalla's or the homeowner interpretation is correct 2) they can vote on the variance according to Mr. Tuck-Macalla's determination - both the front and side setback 3) or they can kick it over for 2 weeks and have Mr. Tuck-Macalla come in and give his argument. He then asked the applicant if they had a preference? Would they like them to vote as is and if it's granted then they're done?

Mr. Miller advised that his recent memory in disagreeing with Mr. Tuck-Macalla may have only been the one instance when he interpreted it one way and we did another. He can't think of anything other than one instance. He doesn't recall the exact specifics.

The board discussed that time it had to do with the 6' fence and 32' in any one direction regarding the 10% rule.

Mr. Bruno advised that in Mr. Tuck-Macalla's interpretation he would have the centerline of the street not measured from the middle of the cul-de-sac, but rather the middle of the paved street. He might suggest that if that was the case what would be the point of having it in the middle of the street?

Mr. Miller remarked that even on a boulevard you'd still have pins delineating where the lanes are.

The board continued their discussion and agreed it sounds like they're in general agreement and should start with a finding of fact.

**Motion by Mr. Gess, Second by Mr. Burke**, that, as a matter of finding of fact, the board has reviewed the survey prepared by the registered surveyor for the property at 31003 Arlington Circle and determined that the pin, found in the center of the cul-de-sac, is to be used for determining the buildable line setback and is the originating point from which the 75' setback requirement should be calculated. The proposed addition does not encroach upon that so there is no need to consider a front yard variance.

**Roll Call Vote:**

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

**Nays –**

**Finding of Fact established**

**Motion by Mr. Bruno, Second by Mr. Burke**, to grant the property at 31003 Arlington Circle per CO 1153.03 a variance of 1’9” beyond the required side yard setback per the site plan and drawings prepared and submitted with the application. Provided that the variance applies only to the area that is necessary and not the entire length of the side lot line.

**Roll Call Vote:**

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

**Nays –**

**Motion Passed**

Mr. Norton commented that he believes in this situation the board has served their duty and it will turn out fine. In Mr. Tuck-Macalla’s defense he’d like to say that if a builder was designing a subdivision and the land was construed in such a way to make a 80’ radius circle because they’ve got the land – lets do the survey and put a pin there and make an 80’ circle. If the building line is 75’ then the houses are right up by the pavement. In this case, it wasn’t the case, but he could appreciate Mr. Tuck-macallas viewpoint that you can’t just keep making it bigger and bigger and now the building line closes in on the center of the circle which could be a disaster. He understands his thinking, but he believes they did the right thing tonight.

<p>3) Gene Lustik agent for John Hudec 23724 Cliff Dr.</p>	<p>Applicant is seeking a variance to section <b>1359.01</b> to install Air Conditioning equipment closer than 10 ft. to a property line. This would be on the west side of the house 24 ft. from the front of the garage. There is an existing variance for the generator and A/C on the same side of the house. The variance will be for <b>3.5 ft. or 35%</b>.</p> <p><i>Item was tabled 6/15/21 – Additional information to be provided by Building Director prior to meeting</i></p>
--	---

Mr. Norton introduced the next item on the agenda as 23724 Cliff Dr. The board has received information from an April 2016 memo from the existing building department, at that time, to the owner of the property asking to have a matter that was before the city adjudicated and that has not happened at this point.

Mr. Bruno clarified with the owner, Mr. Hudec, that he purchased the home, a year ago, from the Herricks who had purchased the home from the O’Donnells and that at the time of the purchase he was not made aware of the pending order regarding the concrete.

Mr. Hudec confirmed that there were no disclosures in this sale or the prior sale.

Mr. Norton inquired if the city had communicated to him at all in regard to this?

Mr. Hudec replied in the negative.

Mr. Norton inquired if he is now aware of the issue and the details of the issue? Did he receive copies of the documentation that the board received?

Mr. Hudec replied in the negative.

Mr. Lustik confirmed he received an email copy earlier today.

Mr. Norton remarked that the city can't, he doesn't believe, provide an honest disclosure when they sell the home. The city doesn't enforce that even if the law requires it. It doesn't change the fact that when he and the previous owner bought the property – the property had a form of a lien on it in the nature of a city requirement that had been brought to the attention, emphatically, to the owner when this violation occurred. He is having trouble ignoring the fact that it has been five years and this has not been addressed and corrected. The system to have this recorded so that a potential buyer is made aware of it is not the city's responsibility – he's not sure if it's a title search responsibility – he's not sure. They're still faced with the fact that there is an existing violation that has never been addressed.

Mr. Bruno further clarified the Chairman's comments by advising that at least three of them were on the board when they had five meetings with the O'Donnell family. They ignored their ruling and litigation ensued and the current state of the matter is that no remediation has occurred on the concrete board in the front of the property that he owns now. It's hard for them to consider a variance when there is this outstanding matter that was contentious and clearly there is a situation where it needs to be remediated.

Mr. Burke advised that the Herrick's were aware of it.

Mr. Hudec commented that the Herrick's advised him they were not aware of it.

Mr. Burke remarked that there is a letter to the Herricks, in April 2016, from the building official pointing out the violation.

Mr. Norton stated that he believes the city may have taken the offending homeowner to court, but he could be wrong. He thought he recalled that the building director told them that they had taken it to common pleas court and that common pleas court had ruled that the city could enforce that. The two issues – the pavement came right up to the fire hydrant and that had been remediated. The other was the percentage of pavement and basically the city doesn't want the whole front yard to be a parking lot- that's the bottom line. There was even discussion of rather than forcing the homeowner to physically remove that paving that as long as it was not able to be used as a parking lot the city may encourage BZA to accept that as remediation. Until we can resolve this he believes their hands are tied in regards to granting further variances.

Mr. Burke suggested tabling this until they can get more information from the legal department on where exactly this stands now and go from there. He's certainly reluctant to grant an additional variance when there has been a violation for more than 5 years.

Mr. Hudec commented that it may have been outstanding for 5 years, but he's applied for an air conditioning unit that is no bigger than the size of a suitcase that the adjacent homeowner has on his house in the same exact place that he's asking for it.

Mr. Burke replied that he's not suggesting that his request for the variance for the air conditioner in and of itself – it might easily be granted, that's not the point.

Mr. Hudec inquired how these two items were related? The violation happened 6 years ago and the city did nothing about it.

Mr. Norton replied that the city did – they took them to common pleas court and the homeowner at the time, in effect the property, was found to be in violation and was told to remediate the violation. That still stays. He isn't quite sure why both original owners, Herricks, or the applicant as an owner want to keep sticking their finger in the eye of the city – why not just get this remediated?

Mr. Hudec advised that he just found out about this two weeks ago. No one is sticking their finger in the eye of the city. It's not his intent – he just moved to the city and this is his welcome.

Mr. Bruno commented that the applicant's real estate agent may have failed him.

Mr. Burke advised that he understands his frustration since he was not informed of this, but he believes his frustration needs to be directed against the seller who failed to inform him of this. The state law does require this to be disclosed.

Mr. Norton remarked that in April '16 the building department communicated directly to Mr. Herrick that this had to be remediated and in October '16 Herrick applied for a variance to put the standby generator in the side yard, where it was not allowed, and the board granted that variance. They granted it on the basis that they were working on resolving that issue. Once he got the variance he chose to ignore it. It's not fair to the rest of the people who don't violate ordinances to have a legitimate order to do something and then just ignore it. That's telling everyone that they just have to stick their head in the sand and the city gives up.

Mr. Bruno gave his copy of the paperwork to the home owner.

**Motion by Mr. Burke, Second by Mr. Bruno**, that the application for a variance at 23724 Cliff Dr. be tabled until the law director has had an opportunity to provide the BZA a complete copy of the papers regarding the existing order of violation of the hard surface in the front yard.

**Roll Call Vote:**

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

**Nays –**

**Motion Passed**

<p>4) Julianne &amp; Valerie Kaiser 24004 Wolf Rd.</p>	<p>Applicant is requesting a variance to section <b>1163.05(e) (h)</b> to install a privacy screen or fence above 4'4" for 70 ft. where 32 ft. is permitted. The variance is for a total of <b>38 feet or 54%</b>. 10% of the perimeter is 44.5 ft.</p>
--	---

Mr. Norton introduced the next item on the agenda as 24004 Wolf Rd. The board has had an opportunity to review and visit the site.

Mr. Burke advised that when he looked back into their yard there was a shed that blocks some of what they are trying to block. He inquired the measurement between the sheds and the other side. He advised that he was wondering if they worked with the shed they might need less of a variance.

Ms. Valerie Kaiser advised the applicant isn't sure if she wants to keep the shed.

The applicant provided additional pictures to the board members.

Julianne Kaiser advised she is the owner and Valerie is her mother.

Ms. Valerie Kaiser advised that there is a rickety chain link fence that falling down and she just wants to make it look nicer. To only put 6' only along the back to keep the big dog away.

Mr. Norton advised that they get this kind of request with some regularity. He has sympathy in this situation even though it's very common – so it's not unique to this property. To have a fence changed to go from 6' to a lower height to be in sync with the law they propose a tapered fence. He further explained the meaning behind the fencing ordinance, how they try not to set precedence, and how they suggest tapering.

Ms. Juli Kaiser advised that the reason she'd like the fence is because there is currently a 4' chain link fence that is falling over. There is a large dog that lives behind her that can easily get over the fence. Someone always has to be outside with that dog and she's concerned about the interaction with her smaller fence. It makes her nervous she'd like her dog to be able to be in the yard safely.

Mr. Burke remarked that one of the things they need to look for is if the property in and of itself is unique. Over the years as request for longer fences often has to deal with dogs which has to do more with the use of the property. He has a difficulty finding something unique with the property.

Ms. Valerie Kaiser advised that her daughter has spoken with the people that live behind her because the fence contractor suggested that the neighbor's fence may fully fall when the applicant's current fence is removed. The neighbor advised they were fine with that happening. The fence that is existing may be 6' high...

Mr. Bruno advised that sometimes they suggest that if they want to approach a neighbor and combine the 32' allowed for their property and 32' permitted for the applicant's property then

can maximize their privacy screening. It's possible they'd permit an additional 8' or a transitional panel so that it could close the entire back line. The board may be comfortable discussing something around 40'.

Mr. Burke advised that it may not be that complicated if both neighbors put up 32' then they'd be at 64' so they may just need 6' extra feet.

Ms. Young added that their neighbor would need to get a permit.

Mr. Bruno commented that he'd still be comfortable giving a variance on her side of the property regardless of the other property owner.

The board and applicant continued to discuss their fencing options including working with the neighbor, transition panels, and what might work best for the applicant's property and what would require a variance.

Mr. Norton advised that the applicant is welcome to amend their application this evening if they'd like to.

Mr. Bruno clarified that they could go 32' with 6' fencing and then perhaps 2 - 5' transitional panels.

Mr. Norton advised that they could revise their request to that this evening and still approach the neighbor. They'd always be welcome to come back and revise her request if necessary.

Mr. Juli Kaiser confirmed that she'd be able to revise her request this evening and she'd like to do that tonight.

**Motion by Mr. Burke, Second by Mr. Bruno**, that the property located at 24004 Wolf Rd. be granted a variance from the privacy fence height restrictions of 1163.05 (eh) to allow for two 8' in length and 5' high transition panels in addition to the 32' permitted of privacy fence. Further that a variance be granted from the maximum allowable length under the parameter rule to permit a total of 48'.

**Roll Call Vote:**

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

**Nays –**

**Motion Passed**

5) Prakash Vemulapalli 31408 Narragansett Dr	Applicant is requesting variance to section <b>1153.02</b> to build a 4'5" porch to the front of his home. The setbacks on Naragansett are 50 ft. from the Building Line. The request is for a <b>4'5" variance or 9%</b> .
---	---

Mr. Norton introduced the next item on the agenda as 31408 Narragansett Lane. The board has had an opportunity to review the application and visit the site.

Mr. Saurman inquired if the contractor for the applicant, Mike Smith, was going to take down the oaks?

Mr. Smith advised that he believes there is only one in question and it's on the southwest corner and it is going to have to come down. He provided a schematic that was not included in the packet and apologized that the imagery was so small. The piece that they're looking at is the shaded section and shows the proximity of the properties next to it. The only change to the application is that original drawings show the porch going straight across however on the new schematic there is a small 2'x7' gable bump out.

Mr. Bruno remarked that this division has a setback and they've been pretty hesitant to grant anything beyond that as the applicant has seen from the earlier agenda item this evening. He wanted to make sure that was clear.

Mr. Smith remarked that currently they are going to be putting a sizable addition on this property about a 2,000 sq. ft. addition. Ripping off the lid and adding to the back. The property has a pretty flat front and this gives the property some dimension and it's just a porch it's not living space. The porch is going to be build deck style in keeping with Bay Village that Nantuckety kind of look. The function and use of this porch for this family is that they have a huge family and they want to be on the porch and have a swing.

Mr. Norton commented that they do regularly get requests for porch additions and porches are encouraged – he believes that everyone on the board feels their positive addition to neighborhoods. The board traditionally discuss a 4' is not enough to be used as a porch. You can put a chair on there, but can't get past. They've ended dealing with that by saying at least 6' maybe 7' or even 8' and he's asking for 10'. At a 7/8' you can walk around and really at 8' you can have chairs facing each other.

Mr. Smith replied that the applicant would like to put a bench swing in and it takes up a little more space. On his own house, on Vineland, he has an 8' porch and he loves it. This one is 9.5' when you add the pieces up when the except of the bump out that creates a gable.

Mr. Gess commented that they need to take into account the proposed adjustment of an additional 2'.

Mr. Norton inquired if the extra 2' would be decking or just an overhang?

Mr. Smith replied that the deck would jet out – it creates the 2<sup>nd</sup> step. It creates some architectural interest.

Mr. Burke inquired how far forward would this porch be in comparison with the houses on either side?

Mr. Smith replied that the house to the west is interesting because optically it's fairly close in line with it, but it's a corner house. The kind of line up. The house to the east it comes out further, but the house to the west doesn't.

Mr. Bruno added, for the record, that the consistency of the setbacks in this neighborhood. Style is one thing, they're not there to rule on style, but from a variance set back he's just not comfortable with what is proposed in any shape or form. The uniformity of the subdivision character. He's been on record with that every time they hear something in this subdivision. He would love for this neighborhood to be more in line with it, but it seems out of character.

Mr. Burke inquired if the applicant has any renderings of what this would look like?

Mr. Smith replied that he does, but not with him – it's a spectacular elevation. He can appreciate not wanting to set a precedent in this subdivision, but there are irregularities in there. The house to the west is one of them. He could submit them for consideration. The applicant has had their heart set on a porch all along, but he advised them that it's not a guarantee until it's approved. Prior to him taking them on, they had met with a designer who drew up a big front porch and he caught it when he started working with them.

Mr. Burke advised that if he has one he'd like to see it, but in addition the drawing tonight is microscopic and he'd like to see it blown up and what the comparison is to the adjacent properties. He's uncomfortable with something that will be a substantial amount past the other properties.

Mr. Norton commented that Mr. Bruno's hesitancy is that this would come under the Huntington Woods Subdivision restrictions?

Mr. Bruno replied in the affirmative.

Mr. Norton advised that the homeowner might want to address that. They can't override that. Someone could come back and say you can't do that regardless of what the board says. As the previous applicant did tonight they went back to DiBenedetto who still is involved in the association.

Mr. Smith inquired if the deed restrictions were on file.

Mr. Bruno commented that a release was given to the previous applicant in Arlington Circle because of the uniqueness of that lot.

Mr. Norton remarked that the owners might want to rethink how big of a variance to request. When you need to violate the ordinance then they look for little steps and in order to help somebody get around a restriction so they can have a usable porch. A 5'5" porch that they're allowed – everyone agrees that is a little too tight, but a 10' porch is not necessary to have a usable porch. They may want to consider reducing the request to the 6-7 range. It's not to say that is what the board would approve because he doesn't know, but this is a big ask.

Mr. Bruno added that they also have to consider the deed restrictions and remarked that it's a little out of character too. Opinion and style is not in their purview, but it's not a front porch sitting neighborhood. He thinks that is why the deed restriction was placed there.

Mr. Norton suggested tabling it and then he can rethink it. They can bring back the exact same request to the board with no additional paperwork or they may want to modify the request based on the conversation tonight.

Mr. Smith clarified that the homeowner can resubmit information to the board for the next or future meeting. He advised that it was unfortunate he couldn't get the architect or the homeowner here tonight.

Mr. Gess added that some enlarged documents would be helpful so that there would be clarity in the numbers. He's not sure they have quite the need for a stamped license survey, but a drawing that also includes the setbacks – something that would help frame the conversation and the context. A site plan that would show the required set backs and the variance on that plan would be helpful to evaluate these things.

Mr. Smith replied to Mr. Bruno's comments even so – there are deed restrictions?

Mr. Gess commented that he thinks that's a question for the Law Director. Should they just ignore those? He doesn't quite know what it means to say 'there are deed restrictions'. It's important to know what they are. He doesn't know if they vary from street to street, but the fact that they exist should be understood by the homeowner and that should be transferred to the drawing as well to the extent that it would apply.

Mr. Burke replied that they've had differing discussions.

Mr. Smith advised that he isn't quite sure where to obtain a copy of the deed restrictions?

Mr. Bruno suggested approaching the Huntington Woods association or Gary Ebert the previous Law Director.

**Motion by Mr. Saurman, Second by Mr. Bruno, to table the matter involving 32408 Narragansett Lane until the next available meeting.**

**Roll Call Vote:**

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

**Nays –**

**Motion Passed**

6) Stephanie Hayden on behalf of John Dudas 28115 Osborn Rd.	Applicant is requesting a variance to section <b>1153.02 (2)</b> to build a garage addition on the front of the home. The setbacks on Osborn
---	--

	are 50 ft. the requested variance is <b>12 feet or 24 %.</b>
--	--

Mr. Norton introduced the next item on the agenda as 28115 Osborn Rd.

Mr. Stephen Schill introduced himself as Stephanie Hayden's father and her employer at Schill Architecture. She isn't able to be here this evening. His request for this family is for a two car garage addition in the front of the house. If they went over to look at the property they'd notice there is a one car garage. Mr. Dudas is a fireman so whether he is home or on duty there is always two cars parked in front and they think it's a detriment to the neighborhood and they'd like to have both of their cars in the garage. This house was built in 1951 when one car families were the norm. He did a neighborhood context plan and there are a couple houses in the neighborhood that were built around the same time and one had a garage addition in 2007 that was 40' off the right away and another one that in 2010 that was 36' off the right away. So it's not going to be the only person in the neighborhood that has this type of addition. If you look at the renderings the front elevation is more than just a block of a garage – it's got carriage style doors on it and a little shed metal roof. The additional space in the garage will be used for all the stuff that everyone accumulates.

Mr. Norton remarked that it is to be noted that they talk a great deal about precedent and a pretty strong precedent has been made right along this street for 13' and this request is for 12' so the board would be hard pressed to turn this down.

Mr. Bruno commented that on the south side of Osborn there is a variety of structure positioning there is precedent already set. He comes to this meeting tonight in a favorable view of this.

Mr. Burke remarked that for the record the variance to which the chairman refers is 28521 Osborn.

Ms. Young commented, as far as the numbers for the setback, that she doesn't think the overhang is included?

Mr. Schill replied that it isn't – the little roof hang is about 3'.

Ms. Young inquired if that needs to be considered as part of this?

Mr. Norton replied that normally when you're dealing with a side yard setback certain bump outs like bay windows, chimneys, up to 2' are not considered to be encroaching into the side yard setback so this may fall into that situation.

Mr. Schill remarked that if anyone has a problem with it he can certainly take it off. He just thought it was a nice feature for the presentation of the home.

Mr. Norton replied that it doesn't change what the house is really doing or where the face comes forward 12'.

Mr. Burke commented that the request that they got was for 13'.

Mr. Norton replied that the other one in 2006 was a 5' variance and this one in 2010 was a 13'.

Mr. Burke inquired if the variance for 28521 was granted?

Mr. Norton replied in the affirmative.

Mr. Gess commented that in the spirit of preferring less, if at all possible, is the depth of 22.8' is that as tight and compact as possible?

Mr. Schill replied that includes the front wall and veneer of the back wall so the inside of the garage is really less.

The board continued to discuss the depth, overhang, and previous variance requests in an open forum.

Mr. Burke stated to be clear the applicant is actually asking for a 15' variance with the gable.

Mr. Norton replied that he'd refer to it as a 12' with a 3' gable so that they haven't inadvertently granted a 15' variance all along.

**Motion by Mr. Burke, Second by Mr. Bruno, the property at 28115 Osborn Rd. be granted a front setback variance of 15' which includes a 3' overhang for the construction of a new garage on the front of the property in accordance with the drawing submitted with the application.**

**Roll Call Vote:**

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

**Nays –**

**Motion Passed**

Ms. Young remarked that she'd like to clarify that in Mr. Tuck-Macalla's memo, to the board, that it does say that the two other properties that encroach upon the setback 28521 Osborn received a variance of 15' in 2010 and the neighboring property at 28529 Osborn was granted a similar variance in 2006. As such, part of the motion requiring confirmation of variances was removed.

The board discussed various other projects and overhangs.

There being no further business to discuss the meeting adjourned at 9:40 p.m.

---

Jack Norton, Chairman

---

Lauren Oley, Secretary