

Meeting Minutes of
Board of Zoning Appeals
Held August 17, 2023

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

Excused: Jan Saurman

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

Audience: Lydia DeGeorge (Councilwoman), Mike Greco (Councilman), Matthew Frank, Scott McManamon, Marnie Hayward, Ajmal Kazur, Paul Beegan

**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 August 3, 2023.

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

Motion Passed 6-0

1) Matthew Frank 29698 Norfolk Drive	Applicant is seeking 3 variances to section 1350.03 and 1149.01. 1) To place a utility building in the side yard, where rear yard is permitted 2) To place the shed closer to the lot line than 3' feet. The request is to be 1' off the property line or a 2' variance. 3) To place the shed closer to the home than 10' The request is to be 9' from the home or a 1' variance.
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Mr. Norton introduced the next item on the agenda as 29698 Norfolk Drive advising the board has had an opportunity to review the application and visit the site.

Mr. Burke stated that he doesn't believe the request is unusual given that there is a good distance to the nearest home on the east side adding that it's an unusual property and the backyard isn't very large.

Mr. Bruno and Mr. Norton concurred with Mr. Burke's statements.

Mr. Norton remarked that the application requested was for a 10'x6' or 10'x8' shed whereas the new ordinance allows almost 200' sq. ft. If they determine the request is acceptable perhaps, they could include a size limitation which would help keep it within proportion.

Mr. Bruno suggested 100' sq. ft. as reasonable – which gives the applicant a little more flexibility.

Mr. Gess and the applicant discussed the shed layout and how the 3rd variance, distance from the home, is a diminishing request.

Motion by Mr. Bruno, **second** by Ms. Burke, to grant the property at 29698 Norfolk Drive three variances per C.O. 1350.03 and 1149.01. The first to place a utility building, as prepared and submitted, in the side yard. Second to place the shed closer to the lot line than the 3’ required granting a 2’ variance such that it will be 1’ off the property line as shown on the application as prepared and submitted. Third to place the shed closer to the home requiring up to a 3’ variance so that it be no closer than 6’ from the primary structure on the property. Provided that the maximum square footage of the shed be no greater than 100’ sq. ft.

Roll Call Vote:

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

Nays –

Motion Passed 6-0

<p>3) Scott McManamon with Patriot Deck and Fence on behalf of Jeff Eagen 26223 Lake Rd</p>	<p>Applicant is appealing the violation letter sent June 2, 2023 under section 1127.03-Appeals and seeking the necessary variances to keep the existing fence as constructed.</p> <ul style="list-style-type: none"> a) 1163.08(H)(3) privacy screen shall not exceed 32’ in any direction b) 1163.05 (D) and (F) fence shall be set back at least one foot from the public sidewalk c) 1163.05(H)(4) privacy fence is closer to the neighbors dwelling than 10’ adjacent neighbor shall submit written permission to the building department. d) 1163.05 (C)(4) fence is over allowed height within 10’ of any driveway and obstructs visibility. e) 1303.03 Change in Plans, contractor added the three tall foot section without informing the Building Department or changing the plans.
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Mr. Norton introduced the next item on the agenda as 26223 Lake Rd advising that the board has had a chance to review the application and visit the site.

Mr. Burke stated that as far as he’s understood the building department had ordered the work to stop at this property.

Mr. McManamon replied that the job has been completed.

Mr. Tuck-Macalla stated that the building department advised the contractor to stop when it was noticed that the posts were too close to the sidewalk. Later the building department noticed someone was working on a 3’ fence, not shown on the permit application, and also advised them to stop. Following that the unapproved 2’ section was added to the 4’ section which was approved on the plans. There were drawings submitted with the permit showing a 4’ fence and there is no 3’ fence.

Mr. McManamon stated that he is here to help the Eagan’s, but at no point was a phone call ever made to him regarding the issues. Someone just showed up – unannounced.

Mr. Norton inquired, of Mr. McManamon, if his employee denied being told to stop work.

Mr. McManamon replied that it was 4:00 pm on a Friday afternoon.

Mr. Norton replied that the time shouldn't matter. The job wasn't finished and he was told to stop and he ignored that. The building department saw the job, before it was completed, and told an employee of Mr. McManamon to stop the project which was in violation.

Mr. McManamon replied that he was told someone called to complain and that is why the city came to the site.

Mr. Tuck-Macalla stated that his employee Jon Volle was driving by, on a Thursday, and saw that the posts for the 4' were too close to the sidewalk. Mr. Volle told Mr. McManamon's employee that he needed to move them and when he went back that afternoon the 4' fence was being installed. When he went back on Friday the top of the fence, the 6' portion, was being installed and a 3' fence was being installed.

Mr. McManamon apologized and stated that he never heard there were that many points of contact. He inquired why, if he is listed as the point of contact, wouldn't the city call him?

Mr. Norton replied that it is not the city's responsibility trace down a problem on a job site. When it's identified and they stay 'stop the job' even if it's only the owner on site. If any employee of the contractor is there then the employee is obligated to listen to the city and stop the job at that point. That is how contracting within the city works. He added that regardless of if the city had a complaint or just noticed the violation it's immaterial – an employee who was installing the fence was told to stop.

Mr. Tuck-Macalla clarified that the actions that precipitated the stopping of the job are non-factors because as a contractor he is building this fence under permit. Once you have the permit to do the job then he and his employees have the right to go by at any time to make sure that the work is being done per that permit. The permit is a contract with the city.

Mr. Gess stated that, from what he can tell, the 3' fence was clearly added up front. He continued to say that there are other portions of the fence that wouldn't have been approved, including the height and driveway proximity, by the building department. It isn't just the deviation of adding a small 3' fence, but rather a significant portion of the work completed deviated from the plan.

Mr. McManamon stated that Mr. Gess' statements are fair, but there were some things he wasn't aware of. This is a corner lot so he doesn't believe that the fence is the same as many others he's done in town. He doesn't build front yard fences that come up to a driveway often.

Mr. Gess replied that he understands, but it doesn't justify deviating from the plans that were formally submitted and approved. There is a process by which you submit for a permit. The unfortunate thing is they're now here with a fence which wouldn't have been approved and probably wouldn't have had variances granted had they come through in the normal course of the process.

Mr. Bruno stated that he would have expected the contractor to inform his client that the things they want installed would require a variance and that they'd need to apply for a variance before this board. It's completely in the inverse and that is why he was cited by the city.

Mr. Miller inquired what the total excess of 6' fencing was.

Mr. Young clarified that 53.8' is the 10% of the parameter and they've got a little more than 120', almost 139' installed, with more than 32' in one direction.

Mr. McManamon advised that he has a different definition of a privacy screen. The city has a catch all that is anything over 4', but to him a privacy screen is where you can't see through it at all – which is not what this is.

Mr. Tuck-Macalla replied that he believes Mr. McManamon does enough work in the city and lives in the city to know the rules.

The board, contractor, and homeowner continued to discuss the definition of privacy screen, the variations between what was originally approved and what was completed, as well as the nuances of the fence ordinance length requirements as it relates to the 10% rule.

Mr. Norton outlined the charge of the Board of Zoning appeals board to the homeowner as to 'tinker around the edges' of requests, but not to set precedent and change the rules set by council.

Ms. Young gave Ms. Hayward an example of another request made by a Bay Village resident who was granted an 8' variance, but also used greenery to help make up the difference.

Ms. Hayward replied that she generally loves plants. In their last home, in Philadelphia, they had no need for a fence, but rather had a whole line of trees. She feels that in order to plant trees that will provide that level of privacy her kids will be in college. Her biggest concern with being on the corner is that her kids play in the yard. She's not always outside with them and she doesn't know who is walking by and she doesn't want strangers to walk by and interact with them. Generally speaking, she doesn't like privacy fences. She purposely designed this fence so that it wasn't an ugly privacy fence which she believes can cheapen the neighborhood. She designed it so it could be private, so the kids could play, but that you can see right through. Her thought was that it's a nice-looking fence, but still keeps strangers from peeking over.

Mr. Norton stated that all the fence that she has in the side and rear yard can be 4'4" high and the posts can be 4'6" so from a child standpoint you still have a barrier to protect your children. Also, if they wanted to, a stranger wouldn't need to go around because the driveway is open. The height of the fence is a problem.

Mr. Gess inquired if they simply removed the top X portion would the fence be within height compliance?

Ms. Young replied that she believes that they'd also need to remove the top horizontal line to meet the 4'4" requirement.

Mr. McManamon stated that he was told this wasn't supposed to be adversarial. They can make adjustments and walk out of here. Of the 5 points – they've already addressed 4.

Mr. Norton interrupted to state that this is not meant to be adversarial. It is a legitimate question – why when the job was ordered to be stopped it wasn't. It sounds like the contractor has an internal problem with his employees. They ignored that and they got him in hot water and even worse they got a citizen of Bay Village in hot water. That is the point they're trying to make. If they didn't show the fence as above 4'4" on the permitted drawing and then he installed it 2' higher it makes no sense. Mr. McManamon is more than a citizen that didn't understand the fence ordinance or the city – he's a fence contractor who lives here. If he doesn't know the rules then how can they expect the citizens to know them? As a contractor, he's responsible to know these things.

Mr. McManamon replied that even though he's lived here his whole life he's admittedly not understood the fence rules his whole life. They're all different in different cities - so he's learning.

Mr. Bruno inquired, of Ms. Hayward, if when she did the design, the fence contractor explained the differences between her interpretation of a privacy screen and the cities.

Ms. Hayward replied in the negative adding that she also didn't think to ask. She never considered it a privacy fence, and still doesn't, but she now understands that the rules are different.

Mr. Norton inquired, of Mr. Tuck-Macalla, if they knew how far away the fence is from the sidewalk.

Mr. Tuck-Macalla replied in the negative advising he is not sure how far away it is, but that was the first reason the inspector stopped by the job.

Mr. Norton suggested that this could have been handled at that time with little to no pain. If it's 11" then it's one thing, but if it's a lot more than that's another...

The board proceeded to discuss how far away the finished fence is from the sidewalk referencing photographs the board took while visiting the site. Acknowledging that it's pretty tight along the side street, but the Lake Rd. 3' fence has plenty of space.

Mr. Norton addressed the additional issue that when a fence comes up to a driveway the fence can be no higher than 3' within 10' of the paved driveway to ensure the driver has visibility for pedestrians. Noting that her own children would be at risk.

Mr. McManamon stated that they could take out the portions on either side of her driveway, but he doesn't believe the pattern would look right if they were lowered.

Mr. Tuck-Macalla clarified that it is supposed to be 75% open. The 3' rule goes to the living fence section of the ordinance. A living fence can be 3', but the logic is the same. It says the fence would have to be 75% which is typically a chain link or a wrought iron. In this case, they're saying 3' because of the living fence section which allows it to be opaque.

Ms. Young remarked that she believed they'd need to be 10' from where the sidewalk and the driveway meet – there needs to be a 10' radius.

Mr. Tuck-Macalla clarified that what it says is that anything within that arc would need to be 75% open or if it's a living fence be 3'.

Ms. Young inquired at what point, after they turned in the permit and it was approved, did they decide to add two additional feet?

Mr. McManamon stated that he isn't sure of the timeline. He believes that they turned in the permit in November and they built much later.

Mr. Norton replied that the timeline doesn't matter. He knew they were building it out of compliance with the fence that was approved. Someone decided to ignore the permit.

Mr. Gess stated that the fence permit was dated April 2023.

Mr. McManamon stated that he was just appeasing his client because they changed the design.

Mr. Norton stated that it's his responsibility as a contractor to advise that she's not permitted to do that.

Mr. McManamon replied that he believes this is a unique fence, they don't build it all time, although they've had a lot of requests since, but this is a special design.

Mr. Norton stated that no one is questioning that this is a nice fence with a nice design. The questions remain regarding placement, how high, etc.

Mr. Bruno noted that they have been dealing with fence heights the whole time he's been on the board. He feels that as a fence contractor he would have had to know that fences are a hot topic. It's always all-over social media, public meetings, etc. When the changes start to become significant then he's required to circle back with the building department. These variances would be extensive. He feels that the applicant is likely getting the idea that 54' would likely be permitted using the 10% rule. He suggested that the contractor take a look at what is permitted.

Mr. Burke stated that this is listed as both an appeal as well as a variance request and he suggested that they deal with them one at a time – motion for an appeal and then motions on variance requests.

Mr. Gess inquired if it's their job to solve it tonight or perhaps the applicant, hearing their concerns, would provide a comprehensive plan that addresses these things. The good news is that they can likely safely say that they can have 54' of privacy screening so they can substantially cover the sidewalks, but they're also talking about moving some sidewalk coverage due to the driveway. There are offsetting issues – perhaps the applicant can revise their request.

Mr. Bruno suggested they vote on the appeal first.

The board discussed the best way to proceed with the request. Mr. Norton stated for the record, that a 'no' vote means they agree with the building department and they aren't granting the appeal.

Motion by Mr. Burke, **second** by Ms. Young, the property located at 26223 Lake Rd be granted its appeal as described in the citation letter dated 8/7/23 items 1-5.

Roll Call Vote:

Yeas –

Nays – Bruno, Miller, Norton, Gess, Burke, Young

Motion Failed 0-6

Motion by Mr. Burke, **second** by Mr. Bruno, that the matter of the application for variances for the property located at 26223 Lake Rd be tabled to a future meeting when they are prepared to resubmit.

Roll Call Vote:

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

Nays –

Motion Passed 6-0

<p>4) Paul Beegan Architect for Ajmal Kazmi 510 Bassett Rd.</p>	<p>Applicant is seeking 5 variances to build a new home on this property:</p> <ul style="list-style-type: none">a) The first variance is to section 1151.01 Height Limitations. The permitted height is 35' and the proposed height is 37'1" requiring a variance of 2'1". <i>*Note the proposed structure will occupy 28% of the lot</i>b) The second variance is to section 1151.01 Height limitations this refers specifically to the detached garage. The permitted height is 18' and the proposed height is 22'11" requiring a variance of 4' 11".c) The third variance is to section 1153.02 Minimum Front yard (building lines). The front set back on this section of Bassett is 50' from the Right of Way. The proposed setback is 49'4" requiring a variance of 8".d) The fourth variance is to section 1153.03 Minimum Side Yards. The required side yard is 30% of the width, this would be 32.29' with a minimum requirement of 10', the proposed side yard is 25' & 2' for a total of 27'. The two side yard variances needed would be one for 7.29' for total side yard setback and another of 6' variance from the minimum requirement.e) The fifth variance is to section 351.16 Prohibition of Parking of motor vehicles on lawns. Driveways shall not occupy over 40% of the total required from yard of the lot. The required front yard is 5332 sq. ft., 40% of which is 2152.8 sq. ft. The proposed sq. ft. per the plans presented is 2892.8 sq ft, requiring a variance of 740 sq. ft.
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Mr. Norton introduced the next item on the agenda as 510 Bassett Rd suggesting that they take the variances one by one starting with the issue of height. The request has been modified to be only 5% however section 1151.02 states that the board of zoning appeals does not have the authorization to grant exceptions to the height if the footprint of the building exceeds 20% of the lot. The proposed structure will occupy 28% of the lot as currently proposed. He went on to say that they can't rule on this one because the proposed foundation is 28% of the lot.

Mr. Tuck-Macalla added that it's the footprint of the buildings so it includes the detached garage as well.

Mr. Norton went on to say that the only height increase, that he can remember granting, was a large property on Lake Rd which was a huge lot – so they were permitted to hear that one and grant a variance based on the size of the lot among other factors they encountered during construction. In this case, this is a blank slate so this is a bit of a different situation.

Mr. Beegan relayed frustrations that this wasn't explained to him clearly before the meeting adding that the rest of the variances can't be reviewed if the first one can't be heard.

Mr. Norton stated that in his opinion some of the other requests might be considered reasonable – the stoop for example, but it’s up to the applicant if they want them to be discussed.

Mr. Beegan replied that they made substantial changes to the plans following suggestions from their last meeting.

Mr. Gess stated that in his opinion, there is still some uncertainty about the size of the lot. He went back and looked at the county auditor’s site, their GIS system, and documents, and there is some confusion as to whether the lot width, as shown on the drawings provided, is accurate. The plans show the lot width as 107’, but the county auditor’s website shows 123’ – which includes the 16’. The recorded documents seem to show that past filings and recorded documents were recorded with boundary survey information consistent with 123’ frontage. He doesn’t know if that information is correct, but if it is it certainly changes their ratio discussions and north property line variances.

Mr. Kazmi replied that they bought the property with the understanding that it was 123’.

Mr. Tuck-Macalla commented that they have represented the width to the building department as 107’ – if it’s not that then it needs to be updated with a survey adding that they’re going to need a survey to build a house regardless.

The board, applicant, and architect continued to discuss the potential discrepancy with the lot width. The city now owns the 16’ of property to the north of this parcel and there is an easement on that property.

Mr. Beegan represented that he feels fairly certain that the lot is the smaller number. When they started their design, they did so with the understanding the property was 123’, but the surveyor advised that it is 107’. As such, they made revisions to accommodate the smaller lot. It is possible there is a mistake, but they modified the design already to the smaller size.

Mr. Norton summarized that multiple variance requests are dependent on the width of the lot. So rather than trying to judge it based on the smaller size he suggested that the applicant go back and ensure the proper width of the lot prior to proceeding.

Mr. Miller sought clarification on the process. If the submission were to stay as it is today, with the smaller lot width – would they forward this to council for review?

Mr. Tuck-Macalla replied that he’s not sure off the top of his head. Council has an appeal on a decision from planning commission, but he doesn’t know if they have an appeal from a decision from BZA. Perhaps it would be the court of common pleas.

The board requested that the Building Director get clarification from the Law Director.

Mr. Beegan stated that he feels there is value to hear their opinions on the other four items assuming that the site is as presented.

Mr. Norton stated that the second request is a 4’ variance request on the height of the garage. His calculations have that at a 27% variance request. Last meeting the architect indicated that it was a reflection of the house height – so this may follow logic that if the height of the house is decreased further the height of the detached garage may also decrease. Hearing no further insight from other board members Mr. Norton proceeded to outline the third variance request as a minimum front yard setback which is very minimal at 8”.

The board concurred that the request for a front yard variance is quite minimal.

Mr. Norton stated that the fourth variance request is for a minimum side yard setback request to the 30% rule – which is about a 22% variance. This is more of a request, but this could change if the lot width changes. He also stated that the lot next door is unique because it's unbuildable.

Mr. Beegan stated that they moved it further away from that line, further south based on the discussion last time.

Mr. Gess inquired if they changed the mass of the house following their last discussion.

Mr. Beegan replied that they shifted the house, but they did not change the footprint of the home. The style of the roof was modified to reduce the height.

Mr. Norton inquired if there was a reason why they have a 25' side yard on the south side and only a 2' on the northside?

Mr. Beegan replied that it's solely because of the location of the creek.

Mr. Norton confirmed with Mr. Tuck-Macalla that there are no riparian issues. He went onto introduce the 5th variance request which is in regards to the concrete/driveway coverage in the front yard which is about a 34% variance request (as presented today).

Mr. Bruno stated that he believes that's a pretty big ask, noting that if the lot is wider the request diminishes. He advised that they usually try to stay in the 10-15% range.

Mr. Beegan stated that they were working off the current curb cuts.

Mr. Miller stated that they also consider the uniqueness of the property and in his opinion the front yard of this property is not unique. He referenced a similar request they reviewed for a very small lot on Lake Rd which they did end up granting a variance for front yard paving.

Mr. Burke stated that all the issues notwithstanding he still takes an issue with some of these because they're starting from a blank slate.

Mr. Beegan added that what is throwing off the setback on the northside is a screened in porch. If it comes down to it, the applicant won't be thrilled, but they can always just put a deck and then it's a non-issue. The house itself will be within the setback.

Motion by Mr. Burke, **second** by Mr. Bruno, that the application for 510 Bassett Rd be continued until a later regularly scheduled meeting to give sufficient time to the applicant and architect to come up with changes and confirm the current size of the lot.

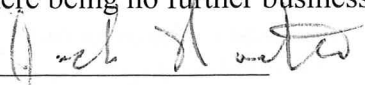
Roll Call Vote:

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

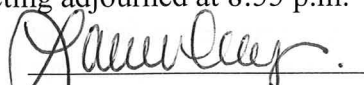
Nays –

Motion Passed 6-0

There being no further business to discuss the meeting adjourned at 8:55 p.m.



Jack Norton, Chairman



Lauren Oley, Secretary