

Meeting Minutes of
Board of Zoning Appeals
Held September 2, 2021

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

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

Excused:

Audience: Mr. Ronald Adams Sr., Mr. Ronald Adams Jr., Daron Mitchell, Linda Sullivan,

**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 August 19, 2021

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

Motion passed

1) Ronald Adams 29260 Inverness Dr.	Applicant is requesting a variance to section 1370.05 to place a Generator in the side yard closer than 10 ft. from the side lot line. In this case the generator will be 18 inches from the lot line. The variance request is for 8.5 ft.
--	--

Mr. Norton introduced the next item on the agenda as 29260 Inverness Drive. He noticed that the lot next to where this is located is a blank slate. He confirmed that the property is privately owned.

Mr. Adams Sr. confirmed that it's a dead end street and he's the last house on the street.

Mr. Norton inquired if the City owns the right to extend that street.

Mr. Adams Jr. stated that to his knowledge that is private property and if the City would like to buy easement access they'd need to negotiate with the owner of that property.

Mr. Norton stated that there is potential sometime in the future that land could be developed by the present owner. The board has had an opportunity to visit the site and review the application.

Mr. Burke stated that it seems like there would be room for them to move the unit back.

Mr. Adams Jr. stated that it would still not be more than 10' from the property line since the house is currently 10' from the property line. They also needed to be so far away from the point of the gas line and the slope of the terrain didn't permit access to that. The property slopes.

Mr. Norton stated that when the board is discussing air conditioners and generators, that are closer to the property line, they also require them to be hidden behind natural vegetation or a little decorative fence. Currently no one is going to be able to see it except from the front, but for the future since that could be developed they could consider that which would be a simple request.

Mr. Adams Jr. advised that he understands.

Mr. Saurman inquired why the unit can't go behind the house where the air conditioner is.

Mr. Adams Jr. stated that the reason for that is because of the carbon dioxide. If the windows are open he doesn't want that floating into the house at their age. For ease of access he doesn't want it on that terrain. He doesn't live locally and he doesn't want his father trying to access the unit. With it being so close to the house, as we can see with the current hurricane, sometimes generators catch fire. He would like to have it further away from the structure for life safe issues.

Motion by Mr. Burke, **Second** by Mr. Bruno, that the property located at 29260 Inverness Drive be granted a variance of 8.5' from the 10' sideline setback requirements of CO 1370.05 for the installation of a generator in accordance with the application shown provided that it be screened on both the south and west side by some time of year round screening.

Roll Call Vote:

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

Nays –

Excused –

Motion Passed 7-0

2) John D'Amico (The Great Garage) for Katie Leininger 30027 Westlawn Dr.	General Contractor for owner is seeking a variance to section 1149.01 to build a garage closer than 3 ft. to a property line, the variance requested is 18" or 50% . <i>Item was tabled 8/19/21</i>
---	--

Mr. Norton introduced the next item on the agenda as 30027 Westlawn Dr. The building director has referred them to a case in October 2018 that would reflect on this request. It was for several variances and one was for an 18" distance from a property line for a garage on Cliff Dr. It's to be noted that Cliff Dr. is part of an area of old cottages that are on very tight small lots which is sometimes taken into consideration. This is a situation with some similarities as to the dimensions.

Mr. Tuck-Macalla advised that the applicant withdrew her application.

Mr. Miller inquired if she was able to resolve the position of the garage?

Mr. Tuck-Macalla replied in the negative.

Mr. Norton stated that for the board this brings up the whole subject of precedence. In this case they would really have had a real struggle not to grant that request because of past activity of the board, but if it's withdrawn then no need to discuss further.

Mr. Miller inquired if they had the opportunity or need to discuss the precedence.

Mr. Tuck-Macalla advised that the applicant agreed to table it so he doesn't think bringing it back would be appropriate. He wanted to leave it on here to show the board the precedence.

Mr. Miller clarified that if it comes back to them then this is a reference point?

Mr. Tuck-Macalla replied in the affirmative.

3) Mike Smith (Green Leaf Properties LLC) for Prakash Vemulapalli 31408 Narragansett Ln	Applicant is requesting variance to section 1153.02 to build a 4'5" porch to the front of his home. The setbacks on Narragansett are 50 ft. from the Building Line. The request is for a 4'5" variance or 9% . <i>Item was tabled 8/5/21 & 8/19/21</i>
---	---

Mr. Tuck-Macalla advised that this item has also been withdrawn. He advised that he looked at the setbacks for Huntington Woods and all the setbacks there are 75' from the center of the street. In this case the house was 60' back so it didn't need a variance, but he just wanted to let them know that – since there was some discrepancy with the setback.

Mr. Miller clarified that the front porch addition won't encroach on the setback?

Mr. Tuck-Macalla replied in the affirmative – it's more than 10' back.

4) Daron Ann Mitchell 24506 Oakland Rd.	Applicant is making an appeal to the violation sent to Daron Mitchell and Linda Sullivan to remove a fence that was installed by an unregistered contractor, without permit and on city property.
--	---

Mr. Norton introduced the next item on the agenda as 24506 Oakland Rd. It's to be noted that a letter was received by a neighboring property in opposition to this and it is also to be noted that they have a letter from our law director recommending that the board not overrule the building director's order. The one question that he has, is that it would appear that putting the cement driveway in on City property was sort of blessed by the City. A letter was issued to the property owner that if the City ever used that they have no recourse to having their driveway eliminated,

but the City was not saying that they have to tear it out or that they can't do it. The City allowed the driveway to be on city property.

Mr. Barbour replied that these houses have their driveway on to the paper street Calvin, which has not been installed, so their alternative would be to put their driveway on the side yard out to East Oakland. Years ago the City agreed to let them use the right-of-way as a mutual driveway and put gravel down. At some point in the very recent past, the City became aware that there was going to be concrete poured over the gravel without our consent or knowledge and at that time because they were already using our property as a driveway, as a convenience to the residents, we decided they could go ahead and put concrete down, but understand that you're on our property and it's at our pleasure. At no time was any discussion of a fence made – there was no permission sought for the fence. It never came up and nor was there a permit applied for nor is the party who installed the fence a licensed contractor. They became aware of the fence and that is why the letter went out and residents have the right to appeal the building director which is why we're here. The applicant is asking for some kind of variance, but you can't give a variance that isn't even their property. Whether they need or want a fence are not appropriate matters for even discussion. It's our property it's not built with our consent, permission, or knowledge – prior to construction. So we strenuously object to the fence and are going to have it taken down.

Mr. Burke inquired if the residents land owner property goes to the middle of the paper street subject to the cities easement?

Mr. Barbour replied in the negative.

Mr. Burke confirmed then that the land is outright owned by the City?

Mr. Barbour replied in the affirmative.

Mr. Burke stated that since the City has given permission to the adjacent owners for the concrete, as long as they agree if the street is improved that can be gone and they have no recourse...

Mr. Barbour interjected to say that if they need to get back there for example to put a sewer line in they can have that taken up as well. It's not just limited to the street, but to answer his specific question – yes.

Mr. Burke went on to inquire if the City could grant to them a similar permission for the fence as long as they agree that if the City has to rip it out they have no recourse?

Mr. Barbour replied that if that was going to happen it would have happened before they build the fence.

Mr. Burke agreed that would have been the preferable way to go.

Mr. Barbour stated not preferable, but the right legal way. He advised this could be something that could be discussed at a future date, perhaps. He added that the fence is 6' high in excess of 32'.

Mr. Burke inquired if it's in excess of 32' on their property?

Mr. Barbour replied that they are actually talking about angels on the head of a pin because it's on the City property without their permission, knowledge, and consent and we don't want it there and we want it removed. He would submit to the board that he's not sure if they even have the authority to even grant them relief in this instance.

Mr. Burke stated that they're appealing an order of the building director which he believes they do have jurisdiction on.

Mr. Barbour restated that he doesn't think there is any element of this order that should be overturned because they have no right to our property.

Mr. Burke inquired if the City has any obligation to clean what they are claiming is their property in the back where all the leaves/brush are.

Mr. Barbour replied that if you look at the area – it's a heavily wooded area. Whether we have responsibility to clean it or not has nothing to do with if they can build a fence across our property. He would say that's not even relevant to the discussion.

Mr. Bruno stated, as a follow up to Mr. Burke's question, is the entirety of the fence on City property?

Mr. Tuck-Macalla replied in the affirmative.

Mr. Norton stated that he just thought that roughly 28' was on City property? There is 50-60' that is on the homeowners property? They have too much 6' fence on the property.

Mr. Barbour stated that he doesn't want to talk about the 6' fence part of it because whatever 6' fence is on their property needs to be removed and then they need to address that they put of a fence without a permit and what do we do about that, and how much fence is left does it exceed the 6'. He wants it off City property.

Ms. Mitchell apologized and advised that the person that put up the fence told her that he was registered with the City of Bay Village. He also told her that he was going to get a permit. She was out of town for the entire week and got a call from the City that this was going on. To be fair, the intention was to get a permit because they got a permit for the driveway and they wanted to get a permit for the fence. They wanted permission. There has been dumping behind there and they don't know who is doing it – if it was the previous owner. They look at it every day and they want to bring their property value up. All they look at is people's lawn dumping, tree cuttings, and weeds. She's gone back there to clean it up and gotten pickers and poison ivy. If it is the City's property they're happy to take care of it – they do take care of it. They get it plowed, they just got the driveway sealed, they want to make sure it looks nice and they want to take care of it. Aesthetically they'd like to bring up the value of the house. She did not mean to put it up on City property without permission – that was not their intent.

Ms. Sullivan advised that she's lived there for 23 years. The City did give them a partial driveway at one time, but with that gravel – they went through hell every winter. It was an ice skating rink, it was slippery, and the gravel got shoved around. The City has turned the responsibility of this over to them, but if anything happens on it it's the owner's responsibility.

Yet if they called for gravel they wouldn't put new gravel down – so they thought by doing the driveway they were enhancing the property. If they ever do build through there – whatever, but the board doesn't know what it was like to live there. It was awful.

Ms. Mitchell stated that they submitted some pictures – it's awful. They live with it every day. People just dump their stuff back there and they look at it. They're just trying to cover it up. Perhaps they could plant some trees? They'll take the fence down, but they don't want to look at it.

Mr. Barbour stated that anything that would happen would have to happen before it happens if you want to plant trees you have to come to the City to talk about it before you do it. He disputes some of the facts, but the fact of the matter is that it was done without the cities knowledge and consent and they're not going to agree to it. If there is something else that you want to do his suggestion would be that they approach the building department first before doing it. He's not saying that they would agree or disagree – it's not his position to say at this time.

Mr. Norton remarked that he believes they have jurisdiction that this is an appeal from the building directors decision. In that regard, they can either support the building director's position or not support it. To Mr. Barbour's point, the building director is correct in that you can't build on City property without City permission. They are in a bit of a catch-22. From his perspective, the City is 100% right that the applicant can't build on City property without their permission. The issue goes slightly beyond that in that if you look at the overall, does the City have some obligation – if the City was someone other than the City would they be allowed to have a gravel pile up against their property and have it very unkempt. Wouldn't the inspectors advise them to clean it up?

Mr. Barbour stated that is not the issue that is before them tonight.

Mr. Norton replied that this board often tries to act like mediator. To his point, he's absolutely right – they've got to turn that down, because it's on City property.

Mr. Barbour commented that the time to mediate it would be if they wanted to build it and the City said no. Then they could talk about if they should be allowed to build it.

Mr. Norton stated they're way past that. They are citizens. The City is a City. There is an interface here. The City has some obligation...

Mr. Barbour inquired if the City has the same property rights as other property owners?

Mr. Norton stated that they do, but you also have the same responsibilities as the City to clean up an eyesore.

Mr. Barbour commented that the responsibilities should be addressed separately from the property rights.

Mr. Norton agreed that they are not here to discuss that.

Mr. Barbour replied that they are creating the impression that is something they are requiring the City to do. He understands what they're saying, but he doesn't know if it's entirely appropriate in this case.

Ms. Mitchell stated that they are happy to take it down and they are so sorry. She just moved in. She bought the house in 2019 and she doesn't know the neighbors that well and she didn't realize he wasn't registered. He said that he was. They got a permit for the driveway. The same thing for the fence - they knew they needed a permit. She's not lying. They told him this is an easement. The contractor knew. They don't have the best relationship with that side of the street. They can take down the fence, but they really don't want to look at what's there.

Mr. Norton inquired, of Mr. Tuck-Macalla, since they have a formal letter from the resident across the street objecting to the excess of 32' of 6' fence. Does that constitute a formal complaint that you need to deal with? He hasn't even dug into that yet. They need to deal with this issue first.

Mr. Burke inquired if once this fence is removed, depending on the vote, is the remaining fence that is on their property in excess of 32'?

Mr. Tuck-Macalla replied that he needs to go back and see if there was a permit. He does know that it's in excess of 32'. The owner may need to get a permit, which would be denied, then it would need to come back in front of BZA if they'd like to. That would be for the remaining fence that is on the property. As he mentioned, he hasn't dug into it that far yet.

Mr. Norton stated that the building department would dig into it because of a formal complaint.

Motion by Mr. Gess, **Second** by Mr. Burke, that the board upholds the violation notice sent to 24506 Oakland in regards to the fence that was built on city property.

Roll Call Vote:

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

Nays –

Excused –

Motion Passed – 7-0

Mr. Norton commented that the City will be understandable in maybe trying to work something out in both the City's best interest as well as yours.

5) Brian Knauer agent for Davis Family 30336 Lake Rd.	Applicant is seeking a variance to section 1163.05 (f) to have front yard fence posts or columns taller than the permitted 3 ft. 6 inches . The columns would be 4 ft. tall and variance or 6 inches. <i>Request modified from denied application 7/15/21</i>
--	---

Mr. Norton introduced the next item on the agenda as 30336 Lake Rd. He inquired what the difference is in the request from the denied application from 7/15/21.

Mr. Saurman advised that, as he read it, they're not asking for a fence anymore they're asking for the post to attach a gate to. It needs to be that large to accommodate the gate.

Mr. Miller stated that he'd like to mention that they have questioned the scale of some of the elements - whether they are fixed to anything or they are standalone features by disrupting the sight line. They've got a column on the southeast corner of the property that the fence is attached to which is well within the 10' proximity to the front of the property. He's not sure if that specific column is 4' tall, but they do have a detail that calls out that column. Since the fence does appear to be attached to it his assumption is that the column is 4'. Do we take any issue with that column being that far forward? He has no issue with the columns supporting the gates.

Mr. Norton stated that he sees that column on the second entrance to the drive.

Ms. Young inquired how they got away with that on the west side and the point where the driveway meets the sidewalk on the west side of the property. Both of the gates are off of the sidewalk and then the fence jetties out to the sidewalk on both sides. He has this column on one side, but not the other.

Mr. Miller advised that on the graphic the actual line that is drawn on the CAD format doesn't always place a square - so they might just have a starting point and then every 4' they may place the square, as if it's a post, so graphically it probably has a post at the points. Like he referred to the one on the southwest, which he thinks they had just connected with posts, but it would be a little bit odd because they would have a square with the angle of the fence on the street and the angle from the yard comes at a different angle. They could cut the fence and still make the attachment, but he wonders if they should discuss that column.

Mr. Gess wondered if, from his recollection, the east gate is primary and the other one is secondary. He knows the applicant isn't here, but the suggestion would be that it's some sort of address marker - to mark the prominence of one drive over the other. He would agree that is a spot that is typically not permitted.

Ms. Young stated that she's thinking about the house without the columns over by Dover and they're set back off the road and they still have address markers.

Mr. Bruno commented that he doesn't see how they can clarify without the presence of the applicant.

Mr. Norton advised that they could approve the other four columns and then disapprove the 5th column on the sidewalk and then they can go back to the design and see what they can work out.

Ms. Young inquired they wanted to wait and ask for clarification?

The board clarified the applicants request per the application.

Motion by Mr. Bruno, **Second** by Mr. Burke, to grant the property at 30336 Lake Rd. a variance per CO 1163.05(f) to have front fence posts/columns be installed taller than the permitted 3'6"

thereby granting a variance of 6” for the only the four columns that will support the automated gates at either end of the driveway as they approach the street.

Ms. Young noted that the concept sketch does show the column as an address marker.

Roll Call Vote:

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

Nays –

Excused –

Motion Passed 7-0

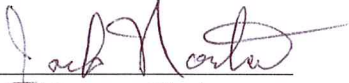
Mr. Gess stated that he imagines that the applicant hearing that news might raise the question, ‘what happened to my 5th column’ he thinks the right answer is that they can move it beyond 10’ of that radius.

Mr. Tuck-Macalla stated that it would still need to come back to BZA.

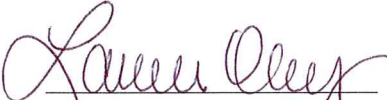
Mr. Gess stated that they can still go full steam ahead as long as they move that column.

Mr. Tuck-Macalla added that if they went on the other side of the driveway almost 90 degrees from where it’s at they’d be fine.

There being no further business to discuss the meeting adjourned at 8:10 p.m.



Jack Norton, Chairman



Lauren Oley, Secretary