

Meeting Minutes of
Board of Zoning Appeals
Held September 16, 2021

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

Also Present: Shawnee Schuller (Assistant to Building Director), Mark Barbour (Law Director)

Excused: Lauren Oley (Assistant to Building Director), Eric Tuck-Macalla (Building Director), Scott Bruno

Audience: Ben Gertz, Matt Matisko, Brian Giovazzi, Dave Maddux, Hayden Stafford, Richard Maggio

**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 7:35 p.m.

Mr. Norton introduced the first item on the agenda, the approval of the minutes that were held September 02, 2021.

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

Motion passed

1) Matt Matisko Architect for Michael Tomasone 26712 Lake Rd.	Applicant is requesting a variance to section 1163.05 (d) to place a 48” fence and 6 ft and 48 inch columns in the front yard. The allowable height on a front yard fence is 3’4” and on Columns (fence posts) 3’6”.
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Mr. Norton introduced the first item on the agenda as 26712 Lake Rd. He advised that the board has had an opportunity to visit the site and review the application. He went on to say that they showed the sliding fence is 4’ high – what is the height of the rest of the fence on East and West side?

Mr. Matisko confirmed he was the architect for the homeowner and remarked that there is an existing 4’ fence on the property.

Mr. Norton inquired if he was aware that the fencing in front of the homes is only permitted to be 3’?

Mr. Matisko confirmed that the homeowners would like for it to be 4’.

Mr. Norton commented that they get request for higher fences on a regular basis, but he doesn't see anything unique about this property that would justify that. Sometimes the decorative nature of these stone columns, being higher than 3', as an entrance to an area like this is considered, but there would have to be some unusual nature of the rest of the front yard that would require something over 3'4". One example was a specific security issue where a special permit was issued which we allowed. Is there further discussion?

Ms. Young commented that there is a side depiction of what the area between the driveways would look like. She sought clarification on where they wanted the higher fencing.

Mr. Matisko clarified what the homeowner was requesting with Ms. Young using visual aids.

Mr. Norton advised that the owner refers to the need for a higher fence in the front yard as a security measure for little kids and traffic – is there a reason why 3'4" would not be an adequate safety fence for kids?

Mr. Matisko stated that he doesn't find any reason why it wouldn't be, but the homeowner wanted to go with a 4' fence. He is aware that it possibly couldn't pass.

Mr. Gess stated that he noticed that the gate was higher, but the masonry walls, which are acting as a fence (on the front) are only proposed at 3'? There is a proposed gap. If a 3' fence is adequate on the front then he doesn't know why it wouldn't be in other places. He understands the flower bed is a gap and therefore a deterrent. He knows they have allowed some exceptions for columns as a focal point or necessary for mounting of gates and the fact that those columns are more than 10' from the sidewalk is important to note as well. Sometimes the proximity to sidewalk can be sight of line blocking – it's nice to see they were pushed back.

Mr. Burke inquired how high the sliding gate was.

Mr. Matisko replied that the exact height of the sliding gate is 3'9" so 44". The reason the homeowner wanted to use the taller fence is when you slide the gate back behind that then you're not seeing the gate overhang the rest of the fence.

Mr. Norton stated that if the gate is 3'9" and the connecting masonry wall is 3' you'd still see the top of the gate behind the wall.

Mr. Matisko replied that they would, but not the big gap between the lower columns.

Mr. Miller stated that the detail on his submission does have a note that it has 48' of aluminum sliding gate, but it's not 48'.

Mr. Matisko advised that the manufacturer came back with the actual specs and said it was 3'9". It's a sliding single gate - both gates will be able to be open at the same time.

Mr. Norton remarked that the board might want to consider this as two separate issues. One is the gate height of more than 3'4" and as a second issue the columns that connect the masonry wall.

Mr. Miller stated that the application states that we should review a 48” fence. If the fence is flanking the property then we have 3 items to discuss. The gate, fence, and columns.

Mr. Saurman remarked that columns are all along Lake Rd. There are several houses nearby that have very large columns – just about every house has 5’ columns. They’re all massive. Is this a similar size column?

Mr. Matisko stated that the 6’ columns would be 30x30 – probably similar to the gentleman next door, perhaps 2 doors down that flank his swinging gates.

Mr. Burke inquired if there was a shorter gate option?

Mr. Matisko replied that he could check with the manufacturer, but he’s not aware of any at this time. Since they going with the 4’ gate that is what they were asking the manufacturer for.

Mr. Norton stated that he doesn’t have a problem with the columns because that’s been a fairly normal request that they’ve received and granted, but the height of both the sliding gate and the rest of the gating in the front yard he has an issue with.

Mr. Maggio introduced himself as the neighbor across the street. He said it’s not clear to him – are they proposing a 6’ column?

Mr. Norton showed him the drawings and advised there are 4 columns flanking the drive opening and there is a gate between them.

The board discussed the gate operations, keypad location, final fence height, and distance between columns and fence height.

Mr. Matisko remarked that he could lower the columns to 5’.

Motion by Mr. Burke., **Second** by Mr. Saurman, that the property located at 26712 Lake Rd. be granted a variance to permit the construction of four masonry columns at the front of the property as shown on the drawings – not to exceed 5’ from the maximum allowable heights as specified in section 1163.05 (d).

Mr. Burkes first motion included columns not to exceed 6’, but Mr. Gess interjected to inquire if they’re debating 6’ or 5’ columns because it was mentioned at one point that 5’ is an option.

Mr. Matisko stated that if the board feels more comfortable that he would certainly reduce the height.

Mr. Gess added that, for context, the house that was referenced earlier has a 3’ fence and the columns look to be about 4’. For context - we’re considering being greater than that.

Mr. Burke clarified that 5’ would work for the applicant?

Mr. Matisko stated that he can make 5’ work.

Mr. Burke revised the motion to reflect 5’ columns.

Roll Call Vote:

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

Motion Passed 6-0

Motion by Mr. Burke., **Second** by Mr.Gess, that the property located at 26712 Lake Rd. be granted a variance of 1’ for the fencing and gate from the maximum allowable height requirements in the front yard as required by 1163.05 (d) along the east, south, and west boundaries.

Ms. Young stated she’d like to discuss that a little. The columns are 4’ in the corner and then they lead into the fence that is 4’.

Mr. Matisko replied in the affirmative.

Mr. Norton clarified that the motion is to allow a 4’ fence in the front yard. So if the vote is positive it is allowed and negative is not allowed.

Mr. Burke advised that he has an issue based on precedence. He would be concerned about allowing 4’ fence in the front yard.

Ms. Young remarked that if the concern is children – then why is the masonry fence 3’? She inquired what type of fence they’re proposing.

Mr. Matisko replied that it would be a powder coated aluminum similar to a rot iron fence.

Mr. Norton remarked that the owner has a few short sections behind the house and it looks like its 4’. Perhaps he was just thinking he was going to match that and do it all as 4’, but he may just be thinking about this as something that would look good, but the board has been clear in the past that they struggle with. It doesn’t change the security nature of the fence.

Ms. Young remarked that is why there are different heights for the front and back yards.

Mr. Norton stated that it’s a nice open fence, but council wants to keep front yard fences very low to keep them friendly. As far as views into front yards.

Roll Call Vote:

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

Motion Failed 0-6

Mr. Matisko remarked that if he gets the homeowner to go to a 3’ fence then he just would apply for the permit and he doesn’t need to come back?

Mr. Norton replied in the affirmative and remarked that it’s actually 3’4” because you can take a 3’ fence and pull it up off the ground 4” so it’s not down into the earth.

Mr. Matisko advised he has one final question. If he goes to the manufacturer and they say that 3'9" is the minimum height of the gate. How does that work?

Mr. Norton stated that he'd have to come back because at this point it's been turned down. He'd have to come back and make that as a separate ask. He believes that he's gotten the flavor of the board. There is likely another manufacturer that can make it that way.

Mr. Miller added that if he has to come back it may benefit him to research the precedence's of other gates in the city. Sometimes they go up without permits.

2) Denise Roznovsky Interior Designer for Alison Sammon 28031 Lincoln Rd.	Applicant is requesting a 6 ft variance to put an extension on the garage. The set back on the home is 45 ft. the requested variance is 6 ft.
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Mr. Norton introduced the next item on the agenda as 28031 Lincoln Rd.

Mr. Ben Gertz introduced himself and advised that he's the general contractor for the homeowner and she asked him to come in Ms. Raznovsky's place.

Mr. Norton stated that he drove the block both East and West of this home and he didn't find an example where the front yard setback had been changed. The board looks for a reason that this lot is unique and in this case he's failed to find that.

Mr. Gertz remarked that the homeowner just purchased the home. He advised that there are two issues here. One is that she has limited space in her kitchen and was going to use a portion of the garage to convert into a pantry in order to have more storage which would require the garage to be bumped out 6' towards the street and the other issue is that there is currently no real proper front door on the house. The entryway is through the side of the garage and by building the front porch, which would not require a variance, but the staircase will go into that 6' which would add a front door into the home.

Mr. Norton commented that if they were talking about stairs to get from a porch and only the stairs were infringing on the setback it would be a whole different type of request. The stairs are almost at grade level and it would only require 2-3 and it wouldn't require 6'. The garage becomes a whole structure into the setback.

Mr. Gerz remarked that it's a split level home so it's more than 2-3 steps it's probably 5-6 steps. It would take up the majority if not all off of that 6' with the staircase.

Mr. Gess commented that if they go back a couple weeks they were talking about stoops that are permitted in the front yard. It would almost be a moot point. It's the mass of the garage that is the issue.

Mr. Miller stated that is what Mr. Tuck-Macalla stated in his note to them.

Mr. Norton remarked that it's sort of a universal wish for people to have more storage space, particularly in the garage, and in looking at that whole neighborhood – if the board was to grant

that they'd have a flood of the same request. They would have set a precedent and they'd have to let them all to do it. Without a uniqueness it would set a dangerous precedent and council doesn't like them to change the law – only to tinker around the edges.

Mr. Miller remarked that the elevation on the top shows a new gable and so and maybe two aspirational images.

Mr. Gess replied in the affirmative and advised that he believes the owners designer just put those on there as inspiration.

Mr. Miller commented that the gable and the garage would retain the same form and move forward.

Mr. Gess replied in the affirmative. She was proposing for a porch with the stairs and a new entryway.

Mr. Burke stated that when he drove up and down the street he did not see any other houses that come forward. He understands what the homeowner would like to do, as far as the front door, and even changing the roofline on the garage, but he has a problem granting an extension.

Mr. Norton stated that for the porch they wouldn't need a variance since it's behind the setback. The stairs infringe on the setback, but that's traditionally not been considered a problem.

Mr. Miller remarked that even though there are 5-6 steps that maybe opens up the opportunities to turn and have them come down to the garage, but he has a hard time pushing the garage that far forward.

Motion by Mr.Burke, **Second** by Ms. Young, that the property at 28031 Lincoln be granted a variance of 6' from the front yard setback requirements of the code to permit the extension of the garage that is set forth in the application.

Roll Call Vote:

Yeas –

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

Excused – Bruno

Motion Failed 0-6

Mr. Gertz inquired if they were to propose a front porch would he need to come back for the stairs?

Mr. Norton replied in the negative. He believes they are in agreement that the staircase is fine. It's not covered and it's just stairs so you wouldn't need a variance on that.

3) Brian Kauffman Architect for Jay & Erin Vaidya 23604 Lake Rd.	Applicant is requesting a variance to section 1153.03(1). The required set back is 16.5 ft one side yard cannot be less than 7 ft. the other must be 7 feet 4 inches the side yard encroachment is 2'6".
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Mr. Norton introduced the next item on the agenda as 23604 Lake Rd.

Mr. Maddux advised that he is a partner at Modern Smart Homes and he's filling in for Brian Kauffman tonight.

Mr. Norton stated that it looks like this is a very unusual lot the way it's shaped.

Mr. Maddux stated that it's sort of a tapered lot. It's bordered on the East by the residence and on the West it's bordered by the utility parcel where no houses will ever be. Because of the taper of land and the 50' setback the 16.5' total side yard setback they're required to have with a 7' minimum. They've looked at positioning this house a couple of different ways. We've got a design the owners are really interested in and they could, if they keep pushing it towards the lake, fit it within the setbacks. It's an unusual lot. The Stafford's, to the East of this house, are great neighbors and they want to be really good neighbors to them. Hayden Stafford is here today. They want to align this house with theirs as to not obstruct their western views. They are cognizant of not wanting to throw their views. To do that, and to still get the programmatic needs of this house met, they really want to align it with the front of their garage and sort of organize it where the Stafford's house sits. To do that they are requesting a 2'6" or 30" variance on the West setback line – which effects no other homeowners as it's an empty lot. It's just a corner it's not the full chunk.

Mr. Norton stated that this would seem like a very modest request of just one little corner.

Ms. Young remarked that it's also a unique lot with it not being buildable next to it.

Mr. Stafford introduced himself and advised that he lives in the house immediately to the right and they did do a build out where they spend almost all their time in that corner trying to see the sunset four months out of the year. They've been very encouraged by the builders coming to them and trying to work with them so they don't do bad thing of building further out and cutting off that view.

Ms. Young remarked that it looks like they are doing some lakefront work down there.

Mr. Maddox replied that they are doing some shoreline work so that they can enhance that view.

Motion by Mr. Burke, **Second** by Ms. Young, that the property located at 23604 Lake Rd. be granted a variance of 2'6" from the sideline setback requirements along the west sideline for the construction of a home as proposed in the application provided that the variance shall not be for the entire length of the west lot line, but only for that amount needed to construct the home as described in the application.

Roll Call Vote:

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

Nays –

Excused – Bruno

Motion Passed 6-0

4) David Maddux Architect with Arcus Group for Pat & Mary Breslin 24110 Wolf Rd.	Applicant is requesting a variance to section 1153.02(1) to encroach upon the Front yard setback or Building line is 39 ft. the requested variance is 42 ft.
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Mr. Norton introduced the next item on the agenda as 24110 Wolf Rd. Along with this request it's to be noted that the board has received a communication from Catherine Davis at 24021 Russell Rd. in regard to this application which goes into, at length, difficulties in this area as to drainage concerns that affect her property. It's to be noted that it's been clearly stated by the architect that what they are proposing, in this construction, has no bearing on the drainage situation that is referred to in this communication.

Mr. Burke inquired if Mr. Maddux's review has come to the conclusion that there is no connection between the construction and the water issues. Did they find a way to divert the water?

Mr. Maddux stated that he was notified of this concern today and he believes he misspoke on that question on the application.

Mr. Saurman stated then, to be clear, where the question reads, 'will be adversely effected'...

Mr. Maddux interjected that it should say will *NOT* be adversely effected and he'd be happy to rewrite that to clear it up.

Mr. Saurman stated that for the record he meant to say not.

Mr. Maddux confirmed that was his intent. They are doing work both on the street side and the West side of the home. He was not aware of the draining situation that she is referencing, but they will certainly take a look at that as they are doing the addition to the West. If there is a way to put a yard drain or a French drain in to try to alleviate some of those situations they will certainly look into that. This is the first he's heard of it. He knows, from some other neighbors on that street on the backside, all of the backyards are a little soggy. It's one of those areas that is not a super well drained neighborhood. He certainly doesn't want to contribute to any neighbor's drainage situation.

Ms. Young commented that if this were a new construction they often see those homes being build higher than what was previously there, but this is an addition and looking at the before and after pictures it's at the same grade - so she doesn't see this being built any higher or causing any additional drainage issues.

Mr. Maddux stated that they aren't regarding the site in any sort of negative way at all. They will take a look at ways to improve the rear drainage, but that is not why they are here.

Mr. Norton stated that they are talking about a very small piece that tapers to this front porch addition.

Mr. Maddux drew their attention to the images that were provided. They are doing a decent size addition on the West of the house. They have a great lot on Wolf Rd. which is almost a double lot. They're a growing family and they are adding to the West side. It doesn't really have a front porch it just has a stoop and they are readdressing the entrance and trying to create a better architectural entrance as well as making it more functional. The little sketch shows existing and proposed views from each way. They are requesting a small variance to put a front porch, but it makes it architecturally a lot stronger and functionally better. This part of Wolf Rd. is very curvy and there aren't a lot of houses that line up straight. It's imperceptible coming forward to the street.

Mr. Burke clarified that they are asking for a 3' variance and it's only needed for the front porch?

Mr. Maddux confirmed. He advised that it's sort of as minimal as they could make it, but give the house the strength that it needs.

Mr. Gess remarked that the right side of the porch, the non-entry part, is projecting 5'4" and then you go 14" in front of that? So the deepest depth of the porch's entry is 6'8". Our discussions in the past have been about the depth of porches. Often an applicant will ask for 8'. The BZA generally tries to embrace the idea of porches and what they can add to the house and neighborhood, but they've tried to keep them somewhat consistent. If they are going to violate the setback to keep it 6'. They're already behind that for the majority.

Mr. Maddux stated that they don't want the front porch to hang out they just want something that is welcoming and more approachable.

Mr. Burke inquired if the code would require a fence or is it low enough to grade?

Mr. Maddux replied its low enough to grade.

Mr. Gess stated that technically the need could be as little as 1'8" or 20" which sounds better than 36".

Mr. Maddux replied that was their interpretation. They measured from the sidewalk and it's a little bit angular and it's not quite parallel. They felt that the 3' was a wiggle room that would be safe.

Mr. Gess clarified that if the 3' variance is granted the intent isn't to build out to 3' it's to maintain the dimensions as proposed.

Mr. Norton commented that they could even argue that is not a straight line on the front. It curves back – so that fights them somewhat on that corner.

Motion by Mr. Gess, **Second** by Ms. Young, the applicant at 24110 Wolf Rd. be granted a variance with respect to CO 1153.02(1) the requested variance of 3' be granted for that properties front yard setback.

Roll Call Vote:

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

Motion Passed 6-0

Mr. Norton stated that the minutes will address the error in Mr. Maddox's application. The woman who brought up the issue can see that you've brought up the issue and it's been amended.

Mr. Maddux stated that he'll take a look at the issue, but if there is something they can do to address that they will.

Motion by Mr. Miller, **Second** by Mr. Burke, to adjourn.

There being no further business to discuss the meeting adjourned at 8:25 p.m.



Jack Norton, Chairman

Lauren Oley, Secretary