

Meeting Minutes of
Board of Zoning Appeals
Held October 06, 2022

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

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

Audience: Sean Kinzel, Michael Barnes, Steve Diamond, Paul Noble

**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 September 15, 2022.

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

Motion Passed 7-0

1) Sean Kinzel on behalf of Michael Barnes 28928 Buchanan Dr.	Applicant is seeking a variance to section 1153.02 to build an addition to the existing garage that encroaches into the required 50' front yard set-back by 8 ft. The variance will be for 8'. <i>Tabled 9/15/22</i>
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Mr. Norton introduced the next item on the agenda as 28928 Buchanan Drive advising that the board has had an opportunity to review the front yard setbacks from the last three years. It's to be noted that the majority were for front porch requests rather than an enclosed garage. He feels that it's fair to discount the porches because that's not what this applicant is asking for.

Mr. Kinzel commented that they aren't planning to change the front of the home. Some of the porches are making a pretty dramatic change to the front of the houses. This particular variance doesn't make any changes to the front elevation. It's just changing from two doors to a single door – they're not doing two stories. There is not a dramatic change to the front elevation – that's what he's trying to emphasize.

Mr. Norton stated that the houses on that street are uniformly setback. The ones that had gotten some relief had something special about them. There was one on Lake Rd. where they had no backyard – it was eroded away. Another home was on an unusual corner lot and they were granted a 4'5" variance (24509 Lake) – that one was unusual in that it was a couple homes away from a corner lot and the pattern had been disturbed. The one that is closest to this current request was on Lincoln they had requested a 6'. It was similar in the sense that all the houses along that street were within code and they wanted to come out to enhance their garage. The board turned it down because it would have stood out in the neighborhood. If they approved a variance of this nature every other home would have a right to request it. That is where this board struggles with precedent and they don't want to change the law.

Mr. Kinzel inquired why they consider garages different than porches if they're not changing the front elevation?

Mr. Norton replied that the reason they look at them differently is that they must be left open. Some are roofed, but they weren't allowed to have sides. They don't have a mass of building coming in front of the building line.

The board and applicant proceeded to discuss the difference between porches and garage elevation changes.

Mr. Kinzel commented that on Osborn there was a major variance granted for their garage. The board seems to feel that because it's a different street it's okay, but from a homeowner standpoint it's difficult to swallow that someone a street away can receive a variance simply because of their address.

Mr. Norton replied that the variance he referenced was 7' and concurred that he questions the rationale on that also.

Mr. Bruno stated that his rationale is that Osborn is similar to Wolf or Lake Rd and there are so many variations on the setbacks. They gave that consideration in that instance and it was a part of the dialog. There is quite a bit of variation on the setbacks for existing homes along Osborn.

Mr. Kinzel advised that it helps to understand, but he's not sure that it makes it any better. If you're over the setback you're over the setbacks. The porches aren't just on Osborn and Lake Rd.

Mr. Bruno added that they're trying to foster community with the front porches. That has always been part of that plan. Based on that it's in the spirit of tinkering around the edges as opposed to a structure that impacts the elevation.

Mr. Kinzel inquired if he feels that the garage bump out will have that large of an impact? It will be very difficult to pick up that fact that this is over the setback line.

Mr. Bruno concurred that the property on the corner does encroach on the setbacks, but it's also on a different street. Otherwise to the Chairman's point, the other homes are consistent with their setback and they try not to change the character of the neighborhood. They've recently had extensive conversations with one of the properties in Huntington Woods because they didn't want to encroach on that setback and they instructed them to go to the homeowner's association. They give a lot of consideration to each case and each case is unique.

Mr. Kinzel remarked that he can appreciate the board's desire not to set precedent, but they are not changing the front of the house at all. If someone is coming in with huge two-story addition over the setback it's clear that it's not consistent with the neighborhood, but he thinks they are very much in keeping with the neighborhood with this proposal.

Mr. Burke remarked that it will be very noticeable if there is one home that sticks very far out in front of the others.

Ms. Barnes stated that the neighbor across the street added an addition a few years ago that was right along their garage, but it's so different looking and so out of character. They basically have two gable garages. They didn't encroach, but it's an addition that sticks off the front of their house and just changes the character of the neighborhood dramatically.

Ms. Young advised you're allowed to change the look of your house. You can reface the whole thing. People tear down houses and put-up things that clearly don't fit in with the rest of the neighborhood. They're allowed to do that as long as they're within the other laws.

Ms. Barnes replied that she understands – they're just trying to make an improvement to their home and add a laundry room.

Mr. Bruno added that he loves folks improving their homes. He put an addition off their home. The board empathizes with the applicant, but the applicant also has to see the quandary that they have. They're here to hear variances and 8' is a little more than what they'd typically consider.

Mr. Norton reiterated that every substantial front yard variance that they've granted over the last 3 years was on an unusual lot (for example Donald). Or some of the older streets in Bay have older homes and primary structures that predate the current setbacks. They're trying to avoid setting a new precedent without a unique reason.

Mr. Barnes stated that he measured from their existing home to the sidewalk and they were already setback 52' so would the board consider a 6' variance considering they've got a little more room. With the naked eye – there may be 3 or 4' difference between homes. He'd be glad to have a survey is appropriate.

The board discussed the fact that the home distance cannot be confirmed without a survey and that the setback doesn't always necessarily coincide exactly with the sidewalk. To determine they'd need to get a survey.

Mr. Kinzel inquired if there is a tolerance for something less than 8'? It's not worth pricing an addition for 2'. They're really trying to encapsulate the 2nd floor space and there is a certain amount of space that would be required for it to be worthwhile.

Mr. Burke replied that they cannot do a straw vote on a possible compromise. He'd have to see the actual measurements, but he believes that he'd consider a 4' variance.

Mr. Bruno added that would be less than 10% of the setback. Typically, they try not to get too aggressive with the variances granted and try to stick around 10%.

Ms. Young referenced a home on Lincoln that last year requested a 6' variance for an extension on their garage, so very similar to this one, and it was voted down.

The board continued to discuss various other variances granted and the importance of setting a precedence on Buchanan.

Mr. Gess stated that 8' captures the 2nd floor space – is there a way to adjust the design? Can they capture 8' and only push out 6'? Is there any way to box it in within the garage to get heat from the new laundry room, etc. Typically, these alternatives are a part of the conversation – is there a plan B or C?

Mr. Barnes replied that they're considering that, but they'd still need a variance of 5-6' minimum to accomplish any of these goals regardless of survey results.

Mr. Bruno advised that he's never comfortable granting a variance without drawing. They want to work with the applicant and they want them to improve the property.

Mr. Burke inquired if Mr. Tuck-Macalla has anyway to determine the exact setbacks?

Mr. Tuck-Macalla replied that a survey would be necessary.

Mr. Norton stated that the only example they've had in the last 3 years, which is similar to this request, is Lincoln and their request for 6' failed. So, in effect, they've set that as a precedent. As to the heat issue -there is a variety of ways to address that and the board is not supposed to use cost as a reason for granting variances. We can come up with some possibilities, but that's out of their purview. He suggested tabling the item so that the applicant could get a survey and re-evaluate.

Mr. Kinzel confirmed that they'd like to table it at this point.

Motion by Mr. Burke, **Second** by Mr. Bruno, that the application for 28928 Buchanan Dr. be tabled until the next meeting to give them time to review and possibly revise their application.

Roll Call Vote:

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

Nays –

Motion Passed 7-0

2) Paul D. Noble 31095 Jonathan Ln.	Applicant is seeking a variance to place a fence with the finished side towards his property. The ordinance is 1163.05 (a). The original fence conforms to section 1163.05 (i) Adjacent to non-residential uses and can be 6 ft. in height.
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Mr. Norton introduced the next item on the agenda is 31095 Jonathan Ln. The board has had an opportunity to visit the site.

Ms. Young stated that the fence is the same all the way down.

Mr. Noble replied in the affirmative saying the builder did one large fence all the way down. It's falling down now. Some have been replaced and they all face the house rather than Nagle Rd. He doesn't want it any taller or a different style he just wants it facing his house. He's not sure how the builder originally got away with it to begin with. They tried to verify if a variance was granted at that time, but they couldn't find one.

Mr. Miller remarked that it could have been a consideration when considering the development.

Mr. Bruno stated that he always has a hard time going against something that was preexisting.

Motion by Mr. Burke, **Second** by Mr. Bruno, that the property at 31095 Jonathan Ln. be granted a variance to place a fence along the south side of the property with the finished side of the fence facing inwards towards the property a variance to the requirements of 1163.05 (a).

Roll Call Vote:

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

Nays –

Motion Passed 7-0

3) Steve Diamond 24736 Lake Rd.	Applicant is seeking three variances to section 1163.05 (d). 1) Requesting a 4' fence in the front yard. The variance would be for an extra 8" totally 396 linear feet. 2) Requesting a variance for brick piers along the fence line. Requesting 4 – 4'8" piers and 2 piers at 5'. 3) Requesting a variance for a 5' tall decorative driveway gates.
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Mr. Norton introduced the next item on the agenda as 24736 Lake Rd.

Mr. Diamond stated that he's a fence contractor and the owner of this house. He just noticed something, as he was coming here, that there may be an additional barrier to his application. He wanted to apply for a fence all the way around his property which has a pool and may help with his case. The barrier ordinance says that the barrier should not enclose the driveway – he's not sure if that effects this whole thing. He provided an additional drawing showing a fence that does not surround the entire home. He also feels that he also may have answered #2 question incorrectly. He now feels like it is unique – the sheer size of the house and property makes it unique. He's trying to maintain the same architectural look around the whole home. Seems like a 3' fence for a house of this size and a double – isn't a typical Bay Village property. As a fence contractor he understands and agrees with having front yard fence requirements. In his current, short lot on Vineland, he'd never consider this. To have an entire fence around an estate size lot, like this one, isn't uncommon. Another unique feature of the lot is that he has three neighbors budding up to his west property line. He's talked to all of them and they're all fine with what he's asking for. Ryan Little, on the corner house, has come to him to price out some fencing in his yard for their dog. He'd like to come off of their fence, but it's possible that he'd be budding up his 4' to his 3' fence and it may not be effective. If not – then they'd have to run a parallel fence to his which isn't ideal for either party.

Mr. Miller confirmed that they can have a double fence.

Mr. Diamond replied that he'd hate to do that despite it being within code. He's considered moving the fence back further from the sidewalk, but his property starts to grade down and the yard drains and swales come into play. Ultimately, he does feel like they have a unique lot.

Mr. Burke stated that just east of Cahoon park there are some houses on the north side of Lake with stone pillars. Does Mr. Tuck-Macalla know the height on those?

Mr. Tuck-Macalla replied that one was granted a variance due to special federal circumstances. The other ones he's not sure off the top of his head.

Mr. Bruno stated that most of those are more than 70-80% open. He's not seeing much of a hardship because he's not inhabiting his front yard. There is a safety concern with the visibility.

Mr. Diamond stated that he noted there are many along Lake Rd that are in violation, but he didn't want to come in here and point them out by address. Over the years he may have even put some of the up – some were back 25-30 years ago. It's not like he's going to call people out.

Mr. Bruno acknowledged that there is a lot of inconsistencies along Lake Rd.

Mr. Diamond advised that he considered the 3', but he's trying to maintain the architectural integrity of the whole project and the fence is part of that plus the added security. He knows it's just a 4' fence, but a 3' fence you can just step over. It's not his huge issue, but there are quite a few to the east of their home that have 4' and one at 5' and 6'.

Mr. Norton clarified that the applicants request is for an open style picket as shown on the photo of the gate – which would be at least 75% open nothing that he wouldn't want to put that fence right on the grade. The ordinance reads 4'4" and 3'4" to allow for the fence to be up off the grade. In the past they have treated the piers, because of scale, and have been fairly generous with that. The actual gate is going to be further in on the property to ensure there is room.

Mr. Diamond confirmed stating that he wants it far enough so that it doesn't inhibit the sidewalk.

Mr. Norton stated that the one thing that sways him is that he's right next to 3 backyards and they could put up a 4' fence if they wanted to. It may look a little unusual from that standpoint if he has a 3' fence. He also feels that it makes this lot unusual/unique.

Ms. Young pointed out that the garage comes forward quite a bit and as a result they're permitted to put 4' up to that point.

Mr. Diamond confirmed that as accurate. He advised they tried to design the house to go with Bay Village in general. He wishes that the yard had the topographic ability to drain properly – which complicates the fence location.

Mr. Bruno sought confirmation that the style of fence is the same as the gate photograph provided.

Mr. Diamond confirmed and provided a drawing of the fence style. A black aluminum ornamental picket with 3/4" wide pickets. He plans to come into the yard at least 5' off the sidewalk. If he can come further, and the swales aren't impacted, he'd be happy to do so.

Ms. Young pointed out that the drawing provided appears shows it right on the sidewalk.

The board and applicant discussed the fence design, the possibilities of bringing the fence further in, and line of sight concerns regarding the corner of the driveway and sidewalk.

Mr. Tuck-Macalla confirmed that the code states there needs to be a clear view 10' from the corner of the sidewalk and the driveway.

Mr. Gess stated that each pillar would need to be 10' back to allow the sight line to be clear for bikers/walkers.

Mr. Diamond stated that he's still designing the fence/driveway and it's possible he'd be able to configure it so that the piers are 10' from that corner. He suggested that he can have his architect redo the plan to reflect those changes.

The board discussed changes to the plans with Mr. Norton suggesting that he also include the correct final height since the drawing now shows 4+/-.

Mr. Burke inquired if a tabling until the next meeting would provide sufficient time for him to revise/detail his request?

Mr. Diamond confirmed that 10/20/22 would work for him. He advised that the neighbor to the East who has already planned to put up a fence in the rear yard permitted him to make it a commercial style fence.

Motion by Mr. Burke, **Second** by Mr. Bruno, that the application for three fence variances at 24736 Lake Rd. be tabled until the next meeting to permit the applicant to make the revisions that were discussed tonight.

Roll Call Vote:

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

Nays –

Motion Passed 7-0

Mr. Miller inquired if the home is going to have a generator and three A/C units on the side of the home?

Mr. Diamond replied in the affirmative.

Mr. Miller suggested that the applicant have his architect review the ordinances regarding their side yard placement.

Mr. Tuck-Macalla confirmed that the air conditioner can be in the side yard, but it needs to be 10' away a generator has to be in the rear yard. It can be in the side yard, but it has to be 10' from the property line.

The board, applicant, and building director proceeded to discuss the mechanical locations and the fact that he may need more variances.

4) Carolyn and Charles Young 29100 Lake Road/PP# 202-04-001	The applicant is requesting an extension to a special permit, granted 8/6/2020, that the property at 29100 Lake Road (PP#20204001) be granted a special permit per C.O. 1141.01(a) for the construction of a boat house provided that the boat house remain below the sightline from the sidewalk from height of 5'8" to the cliff and further that the actual house be approved by the City as to any other building requirement.
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Mr. Norton introduced the last item on the agenda as 29100 Lake Rd. It's to be noted that the reason it was delayed is that the City was involved with trying to preserve the integrity of the cemetery.

Mr. Burke sought clarification if the extension is good for a year?

The board agreed that the extension would be a year from today's date.

Motion by Mr. Bruno, **Second** by Mr. Burke, to grant the property an extension of one year from today's date on the previously granted variance as documented in the agenda for the property at 29100 Lake Rd/PP#202-04-001. In order to give the property owner ample time to take action as provided by the board of zoning previously.

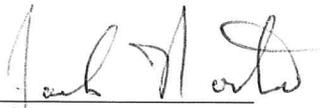
Roll Call Vote: Bruno, Norton, Gess, Miller, Burke, Saurman

Yeas –

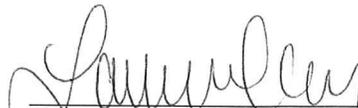
Nays –

Motion Passed 6-0 (Young Abstained)

There being no further business to discuss the meeting adjourned at 8:20 p.m.



Jack Norton, Chairman



Lauren Oley, Secretary