

Meeting Minutes of
Board of Zoning Appeals
Held October 20, 2022

Members Present: Jack Norton, Jan Saurman, Clete Miller, Dan Gess, Scott Bruno

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

Audience: Julie Eisenberg, Michael Chakirelis, Kelly Mahon, Laura Geuther, Christina Schmitz, Wendy & Mike Barnes, Sean Kinzel, Renee Bellini, Steve Diamond, Judy & Jim Henley, Diane Pavan

**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 October 6, 2022.

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

Motion Passed 5-0

Mr. Norton advised that the agenda item on Fordham Parkway has been postponed until the next meeting. Additionally, he explained the quorum qualifications that the applicants would need to get 4 out of 5 votes to be approved.

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 & 10/6/22</i>
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Mr. Norton introduced the first item on the agenda s 28928 Buchanan Drive. Last meeting, they discussed how much of a variance would be needed. The applicant opted to not have a survey done at this time.

Ms. Barnes stated that they believe they do not have any new information to present. She'd like to appeal to the board to consider their request. They've brought some neighbors with them for support. All their houses were built in the mid-sixties and none of them have laundry on the main floor. Setting the precedent that they'd like to set would not only benefit them, but their whole side of the street. As time goes by most of the neighbors may consider this same sort of upgrade to bring laundry on the first floor. Behind the garage is ideal for multiple reasons. They like the fact that if they put the laundry room there then it will be on a slab and they don't need to worry about leaks. She remarked that many potential buyers won't even consider a first-floor laundry. They'd like to stay in this space forever. They'd also like the opportunity to enclosed the pipes that are freezing in the master bath. They don't have architectural plans because they didn't feel comfortable spending thousands of dollars until they were aware if they got the variance. The front of the house is going to look no different and it will just be out 5'. They already know that are 51' back from the right away so they've got a 1' there to work with and they believe they can work with 5'. She looked at the house in Lincoln where they rejected the 6' request. It's really not in their neighborhood – that house is East of Sutcliffe which is a completely different

neighborhood. The ones on Osborn, which did pass, seem closer to them than the one on Lincoln that did not. Ultimately, if passed it will only add integrity to the home, the street, help resale value, and help set precedent.

Mr. Kinzel confirmed that the front elevation won't change – just bumped out. They do have a set of older drawings of the home if that helps.

Ms. Judy Henley advised that they live right across the street from the Barnes and they have the same designed house. She's 82 years old and they've thought of doing the same thing. The bathroom is right up against the garage. It would be so much less expensive because of the location of the plumbing. It just makes sense to add a few feet to the garage and use a closet to house the laundry. The Barnes have had a lot of people come in and try to fix those freezing pipes and they've not had any luck. She's all for the variance.

Ms. Linda Geuther advised that she lives next door in a house that is the same design as the Barnes. They've often talked about doing the exact same thing they've just not gotten to it. It would be unfortunate if the Barnes get turned down. It's the perfect place because of what Ms. Henley said. Moving it out a few feet really isn't changing the look of the neighborhood in anyway. They're in support. The people across the street added a bedroom to the front of their home and it looks completely different and that was approved. It was not necessarily what they would want, but it works and now they have their first-floor bedroom, but it didn't go out any further.

Mr. Bruno remarked that it sounds like the applicant has changed their request to a 5' variance?

The Barnes confirmed advising that they can make 5' work.

Mr. Norton stated that it would be predicated upon a survey because they're still doing a little bit of guessing regarding where their house is in regards to where the setback is. The building department would likely have the requirement of a survey. If a 5' variance is passed, they may have 6', but they have to show that to the building department.

Mr. Bruno added that the board would provide, based on the drawing they have, in the motion that this is just for the garage area per the drawings prepared and submitted that the variance is only for 22' width. They want to preserve the side yard setback to include any other area within the front yard setback.

Mr. Norton noted that in the research the building department provided – the house at 24509 Lake Rd was given a 4'5" variance and up until now that seems to be the biggest. A 5' isn't talking about much more than that. They have approached this on the basis that they've partially set a precedence. That property has a little uniqueness, but not much. They want to consider the fact that they've already stepped over the line. They don't want to set the precedent that it's automatic and change the law. It sounds like their application, at 5', seems to be a common neighborhood problem which may show up in other homes. It's also noted that a first-floor laundry is an asset to a home. They want to make sure that they're not cavalier in changing what has been a tradition and what the rules are.

Mr. Bruno stated that they're careful regarding what they consider a unique/hardship. Some of the comments point towards hardship, but really the thing they try to consider the most is uniqueness. At least, they are near the corner, compared to the other homes on that street, of Dwight and the side yard setback seems to come further towards the street.

The board and applicant proceeded to discuss if there was a uniqueness to the applicant's application with Mr. Barnes noting that their street is made up of homes built in different time periods.

Ms. Geuther pointed out that she finds a neighborhood where all the homes are not exactly the same is a benefit and what young people look for character and uniqueness. They don't have to all look the same anymore. That is the nice thing about our city – there are houses build at different times and it's not a bad thing.

Mr. Gess advised that the board is charged with evaluating variance requests with three criteria and use isn't one of them. The application specifically states that in order for a variance to be granted there needs to be a difficulty or hardship that is particular to the premises inherent to the property itself, but admittedly there is subjectivity.

Mr. Bruno stated that he's still struggling to understand the uniqueness of the property.

The board, applicant, and architect continued to discuss the potential to establish the uniqueness to the property.

Mr. Henley advised that they've lived in their house since 1970's and he's tried to insulate that room many times because it sits over the garage, but it just doesn't work. They've got the same problem – it's a bad design that the Barnes are trying to correct and he doesn't blame them.

Ms. Henley added that her husband now has to do the laundry because she can't do the steps anymore. They don't want to move because they love the neighborhood and they love their home, but they'll eventually need a first-floor master.

Mr. Norton thanked the neighbors for their comments. They add some weight to the whole idea of a somewhat unique situation. It's all part of their considerations. He cannot speak for the board, but they may want to remember the quorum details that he outlined at the start of the meeting. If their request is turned down then they can come back to the board, but they'd need a substantial change to the request.

The board and applicant proceeded to discuss the possibility of postponing the vote.

Mr. Barnes stated that he is comfortable with the five members voting this evening and confirmed that they're officially changing their request to 5'.

Motion by Mr. Bruno, **Second** by Mr. Gess, to grant the property at 28928 Buchanan Drive a variance per CO 1153.02 to build an addition to the existing garage that encroaches into the required 50' front yard setback by 5' thus granting a 5' variance. Provided that the applicant submits drawings for the building director's review and also provided that a survey with clear markings and clear measurements be provided to the building department to determine the exact setback. Further provided that this variance would only be granted for the 22' width garage space based on the current footprint of the primary structures garage as prepared and submitted in the current application.

Roll Call Vote:

Yeas – Norton, Saurman, Gess, Miller, Bruno

Nays –

Motion Passed 5-0

2) Steve Diamond 24736 Lake Rd.	Applicant is seeking three variances to section 1163.05 (d).
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| | <ol style="list-style-type: none"> 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. Noting that the request in the agenda may be a little off both in distance and height off the ground.

Mr. Bruno pointed out that at the entrance to the property, where the driveway is expected to be, appears to allow plenty of room to see and has a proper radius. It appears to be over the 10' required. The style of fence and relative transparency in addition to the size of the property is something he'd like to keep considering in their discussions.

Mr. Norton noted that Mr. Diamonds property is unique in the regard that his whole west side is someone else's backyard and they'd have a right to put a 4'4" fence in that location. In some regards, Mr. Diamond could pay them to put a 4' fence up on their property.

Mr. Diamond replied that one of those neighbors is actually waiting to hear this boards determination before moving forward with his fence plan.

Mr. Norton stated that the neighbor to the east has been granted a variance for more privacy screening given the uniqueness of their property in that it was originally connected to Mr. Diamonds property as a side house. It's almost like their front yard is Mr. Diamond's side yard in the way that history has configured this. There is some uniqueness to be considered.

Mr. Norton sought clarification with Mr. Norton regarding the neighbor to the East fence location.

Mr. Saurman stated that this variance only applies to the area in front of the garage. The area that goes behind the garage is the 'side yard' which is technically permitted to be 4'.

The board and applicant continued to discuss the layout of the surrounding homes and their fencing goals, the transparency of the fence, and the safety features of a taller higher quality commercial fence.

Mr. Diamond noted that they've moved the generator since these plans were designed and now it will be 40' from the property line, but still on the side.

Mr. Tuck-Macalla advised that the generator is required to be behind the house and 10' from the property line so he will need a variance to put it in the side yard.

Mr. Diamond stated that he's not worried about the generator this evening.

Mr. Norton reiterated the quorum voting requirements.

Mr. Gess pointed out that they've had other requests along Lake Rd. for higher fences and pillars. There was one with a judge and dogs, etc. One of them the building department went back and identified other applicants – would that research be available? As one drives down Lake Rd., we see a fair number of fences that are clearly higher plus gates and pillars. It might be helpful to have that sort of research to review to consider this request.

Mr. Bruno concurred that information would be helpful in making their determination. He is okay with the pillars because of the precedent already set on that, but the height of the fence in the front is a challenge. From a transparency perspective it's okay, but little ones might be able to squeeze through those pickets.

Mr. Diamond pointed out that he's using a commercial grade to avoid any issues with someone squeezing through.

Ms. Oley confirmed that she gathered the information from the last 3 years in a spreadsheet should it would be relatively easy to acquire that information.

Mr. Norton remarked that he just saw a fence on Rye Gate that seemed to be well over 3'. He would like to review the front yard fences variance requests prior to finalizing this one. He also suggested the applicant clarify the height request as 4' or 4'4" and the distance required prior to the next meeting along with the generator issue if he'd like to review that next time.

The board and applicant proceeded to discuss the various homes along Lake Rd that have higher fences, pillars, current grade of property, etc.

Mr. Bruno noted that he plans to revisit the property and review the grade limitations to pushing the fence further back.

Mr. Diamond stated he doesn't want to ruin the aesthetics by pushing the fence too far back. They're about to finish the grade for the landscapers. They're hoping sometime next week that will happen.

The proceeded to discuss the grade sloping issues at the front of the property.

Motion by Mr. Gess, **Second** by Mr. Bruno, that the property at 24736 Lake Rd. be tabled to the next meeting or a later date that is convenient to the applicant to allow them time to research.

Roll Call Vote:

Yeas – Saurman, Gess, Norton, Bruno, Miller

Nays –

Motion Passed 5-0

3) Michael Chakurelis on behalf of Jen Doughery 27904 Osborn	Applicant is requesting a variance to build a porch onto the front of the house encroaching into the front set back. The new porch will be 10'. The porch would encroach upon the setback 11' leaving the front yard 46' deep. Variance to section 1153.02 (1) building line setback, a variance of 11 feet.
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Mr. Norton introduced the next item on the agenda as 27904 Osborn. The setback for this property is 57' the house sits at 56' so the house currently sits 1' into the setback as it is. In the recent past the board has looked favorably on setbacks, but has only granted around 6'. The side yard setback isn't an issue for this porch.

Mr. Chakurelis advised that his client was debating about putting a small roof on it, but has decided that isn't going to be the plan moving forward. The proposed porch will have no roof. It will be located right off the side

door, facing Glendenning, and she has an existing porch that is about 1' off grade which this will be as well. No railing will be required. She wants to use a stone veneer on the bottom portion of the decking. His client doesn't really have a backyard per se.

Mr. Saurman stated that he feels the unique part of this property is that the front, where the porch will be, seems like it'll be the side yard even though it's an Osborn request. It almost appears the front of the house is on Glendenning, but a 10' porch is pretty large.

Mr. Chakurelis pointed out that it's already 6' off the house on the one side. They're going to eliminate the porch she has an rebuild it wrapping around.

The board and applicant discussed the proposed layout on the submitted plans and the portions of the property that would be encroaching on the setback.

Mr. Miller pointed out that this will be a very transparent addition in that it's close to grade and doesn't have a roof unlike other applicants.

Mr. Norton concurred remarking that it's not unlike a patio since it's so close to grade.

The board and the building director discussed the unique nature of Glendenning and their setbacks. With some very old homes in that neighborhood.

Motion by Mr. Bruno, **Second** by Mr. Bruno, to grant the property at 27904 Osborn a variance per CO 1153.02 (1) per the code to build a porch, that is open air and has no covering, per the drawings as prepared and submitted requiring a variance of 11' from the front yard setback.

Mr. Chakurelis inquired if, down the road, she wanted to add a roof would she be permitted to or would she need to apply for a second variance?

Mr. Bruno advised that he, and generally the board, is not a fan of these porches having covering.

Roll Call Vote:

Yeas – Gess, Norton, Bruno, Miller, Saurman

Nays –

Motion Passed 5-0

4) Christina Schmitz on behalf of Kelly Mahon 345 Rye Gate St	Applicant is requesting a variance to build a covered porch encroaching upon the front and side yard of the home. The front of the home is on Rye Gate which has a set-back of 25' the new porch would encroach the full depth or 6'1" Variance to section 1153.02 (1) building line setback, a variance of 6ft. 1 in. The side yard setback per section 1153.03 (4) is forty feet the house is behind this setback by 3.5 feet. Variance to section 1153.03 (4) side yard setback, a variance of 6 ft.
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Mr. Norton introduced the next item on the agenda as 345 Rye Gate. He and the building director discussed the fact that the side yard setback varies and is of a diminishing nature. The house is unique. It's almost a leftover lot in this development – they squeezed in a house. The setbacks don't leave very much space for a house.

Ms. Schmitz concurred remarking that it's been challenging. The living space is on the side yard. They don't have much outdoor space. The owner really wants to have a porch and there is no cover to their front door – they're just subject to the elements. They utilize the side yard a lot.

Mr. Norton stated that he feels this is somewhat in line with the exceptions they've made in the past for porches. They usually try to keep it at about a 6' dimension which this basically adheres to.

The board and architect discussed the proposed plans and required setback. The front yard variance really is the larger request, but it's a diminishing request.

Motion by Mr. Bruno, **Second** by Mr. Saurman, to grant the property at 345 Rye Gate two variances. The first per CO 1153.02 (1) for a variance of 6'1" for the front yard setback for the construction of a porch, per the drawings as prepared and submitted. The second variance per CO 1153.03 (4) for a 6' variance for the side yard setback for the porch construction based on the drawings as prepared and submitted.

Roll Call Vote:

Yeas – Miller, Gess, Bruno, Norton, Saurman

Nays –

Motion Passed 5-0

5) Julie Eisenberg 536 Glen Park	Applicant is requesting a variance to section 1163.05 (3) to place additional 6' fencing over 32'. The request is for an additional 32' of privacy screen. The perimeter of the lot is 472 ft. 10% being 47.2 ft.
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Mr. Norton introduced the last item on the agenda as 536 Glen Park. He went on to explain the fencing rules as it pertains to 10% and changing direction. Essentially advising that the applicant is essentially granted 16' additional feet with no variance. She may not need the full 32' to accomplish what she's trying to accomplish as far as privacy goes in her seating area. Two 8' sections may be sufficient to shield that area.

Ms. Eisenberg explained that she's trying to regain the privacy that was lost due to some trees that have recently fallen. She's also trying to shield the neighboring property for aesthetic reasons.

Mr. Bruno reiterated that he concur with the Chairman that she may be able to accomplish her goal with a 1' variance to grant her a full 16'.

Ms. Eisenberg reiterated that she's trying to get full enjoyment of her yard and she feels she needs more screening to do that. She feels that is a hardship.

Mr. Saurman suggested two sections of 8' and a transition panel down to 4'4" so that she'll have more than 16' of 6', but it would be transitioning down.

Mr. Bruno clarified that would be an 8' variance in addition to the 16' for a transition panel.

Mr. Gess pointed out that the applicant isn't building a full fence so a transition panel may not be as helpful as it is in other cases.

Ms. Renee Belini introduced herself as Ms. Eisenberg's neighbor and advised that she can see Ms. Eisenberg's yard from her own. She feels it may look weird to have a 16' long slab of fence that is supposed to give privacy, but then just cuts off – you'd want the whole seating area to have a privacy. It would almost look like a background to the seating area.

Ms. Eisenberg concurred that it would be strange if only 75% of the seating area is covered by the privacy fence.

Mr. Norton countered that a 32' section might still look a little lost because it doesn't go to the end of the property. He suggested angling the panels so shield the area. Going from a 6'4" to 4'4" gives you some additional privacy and in the past, they've allowed that as a transition panel so you can get a little bit more, but it's going to look a little odd to have 32' of 6' and it doesn't stop a logical end.

Ms. Eisenberg explained her landscaping plan which ideally would have the fence dropping off behind the shed.

Mr. Norton advised the applicant that the board members have visited the site and are familiar with the layout.

The board and applicant discussed the proposed layout design and the fact that the existing 32' of privacy screening is the applicant's fence.

Mr. Miller advised that in their history they've not granted an additional 32' of fence when they already have her permitted 32'. Granting the 16' and then the additional 8' of sloping is actually quite a bit – it's a significant step in the right direction for the applicant. He would have a hard time agreeing to the 32' it's completely out of the norm. They encourage applicants to find a landscaping option or find a way to use the fencing that can be agreed upon.

Ms. Eisenberg commented that the fencing that she's decided upon doesn't lend itself to sloping which is part of the problem. They are preconstructed panels and they don't have one that is sloping.

Mr. Gess summarized that she's basically permitted an additional 16' because of the 10% rule so she's requesting 16' which is about a 33% ask. The benefit that she has is that her perimeter is 480' which is a lot greater than people with smaller properties. There are many residents who don't get to benefit from the 10% rule which puts their maximum privacy screening of 32'.

The board and applicant continued to discuss the request. Suggesting that she potentially move where her existing 32' of privacy screening is as a solution.

Ms. Eisenberg replied that she can't see taking down a fence she's already invested in and move it.

Mr. Bruno suggested putting up arborvitaes instead of a fence. It's an alternative that they always present.

Ms. Eisenberg advised that if she were to add arborvitaes, she'd fear that the neighbor would trim them against her wishes.

Ms. Belini confirmed that they are evasive neighbors that have trimmed trees in the past. There is often quite a bit of garbage that is kept back there.

Ms. Eisenberg reiterated that she doesn't think she should have to look at the garbage.

Ms. Belini pointed out that during a storm a couple years ago one of the neighboring trees fell into Ms. Eisenberg's and took down one of her trees, then took down one of their neighbor's trees and ultimately Ms. Eisenberg was left with the cleanup. It's disrespectful. She has an area now that she's invested in and she wants a small amount of privacy.

Mr. Norton suggested putting this on the next agenda for the consideration of the full board. She has some points, but they have to be very careful on defining a unique situation.

Ms. Eisenberg replied that she could explore some of the proposed options during the next week before coming to the next meeting.

Mr. Miller suggested a few homes around town that might be beneficial to look at examples of the proposed step down.

Mr. Saurman stated that there was an application a few years back on Osborn where a neighbor didn't want to look at a house in disrepair, but they didn't grant him a variance.

Mr. Bruno added that the variance lives with the property forever.

Mr. Norton suggested that the applicant provide a little better drawing which would show exactly where the proposed fence would be located.

The board and applicant discussed Trex products and their application as well as suggestions regarding sloping the fence.

Motion by Mr. Bruno, **Second** by Mr. Saurman, to table the application for the property at 536 Glen Park to a future meeting to provide the applicant additional time to research the options that they have relative to the current application that they've submitted.

Roll Call Vote:

Yeas – Miller, Bruno, Gess, Norton, Saurman

Nays –

Motion Passed 5-0

Mr. Norton commented that over the last 30 years they've used both of those factors, length and 10%, and he knows that is in conflict with the building director's determination. It is important that they work on it. Mr. Tuck-Macalla had suggested that perhaps they do away with the 32' and grant 10% and say 'use it the way you want'. Is there any progress there?

Mr. Tuck-Macalla replied that he's not had an opportunity to pass it to council yet, but it's ready to go. He had sent them an earlier version. The way he's written it is that it's 10%, but that anyone can get 32' even if your lot is very small.

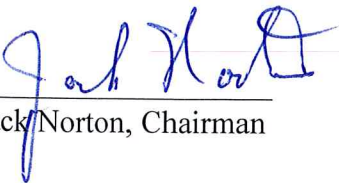
Mr. Norton suggested that this board and the director discuss the wording prior to submitting it to council perhaps it could help the case to move things along.

Mr. Tuck-Macalla advised that he will try to get it on the agenda for the next meeting.

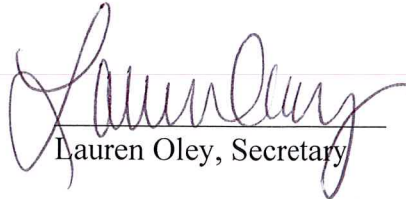
Mr. Norton reiterated that he doesn't want to be in conflict with the building departments determination, but he is also concerned with changing the precedent that they've used for all these years.

Mr. Tuck-Macalla confirmed that he thinks this change would clear that up. It's going to be presented as not changing the fence ordinance, but rather just making it easier to interpret. He advised that he'll get the board a copy of his proposed changes clearly showing what he's changed.

There being no further business to discuss the meeting adjourned at 9:30 p.m.



Jack Norton, Chairman



Lauren Oley, Secretary