

Minutes of a Meeting of  
BOARD OF ZONING APPEALS  
Held March 3, 2016

Members Present: Burke, Miller, Norton, Taylor

Also Present: Jeff Fillar, SAFEbuilt, Inc.

Audience: Robert and Diane Kahler, Debra Conway, Doug Gertz, Tricia and Brian Gadd, John and Dani Berlan.

Mr. Norton called the meeting to order at 7:30 p.m.

A copy of City of Bay Village Codified Ordinance 1127.01 was posted and Mr. Norton advised that the code states that the Board shall consist of seven electors of the City not holding other municipal office or appointment. If all members are not present at a meeting, the applicant may request a delay so that all members may be present. An applicant may delay a decision up to two times.

Mr. Norton noted further that there are only four members of the Board of Zoning Appeals present this evening.

**Motion** by Taylor, second by Burke, to approve the minutes of the meeting held January 7, 2016 as prepared and distributed. **Motion passed 4-0.**

**Emmanuel J. Touma  
30208 Applewood Dr.**

**C.O. 1153 – Rear Setback Variance – 4 feet  
Sideyard Setback Variance- 3 feet**

Mr. Norton advised that the Board has had the opportunity to visit the site and review the application. Mr. Doug Gertz, builder, represented Mr. Touma this evening. Review of plans and discussion followed. Mr. Norton referred to the comments of Mr. John Cheatham, Chief Building Official, in his memorandum dated February 22, 2016, stating that the applicant desires and requests a variance to encroach four feet into the minimum required rear yard setback in order to construct an addition for a home office. The applicant desires to construct an addition to the master bath in order to add a soaking tub which would project three feet into the sideyard setback. Mr. Cheatham further notes that the variance requests are not substantial.

Mr. Burke noted similar rear yard setbacks on neighboring property and commented that he does not believe this modification would be detrimental to the neighborhood.

**Motion** by **Burke**, second by **Taylor** that the property at 30208 Applewood Drive be granted two variances: the first variance is a four feet, nine inch variance to the rear setback requirements of Codified Ordinance 1153.03 of the City of Bay Village, and the second variance would be a three feet to the west sideyard setback variance to Codified Ordinance 1153.04, provided that the variances shall be granted only to the extent needed to make the additions as shown in the drawings submitted by the applicant.

**Roll Call Vote: Yeas – Burke, Miller, Norton, Taylor  
Nays – None.**

**Motion passed 4-0.**

**Brian Gadd  
28801 Northfield**

**C.O. 1153 – Side Setback Variances  
2 ft. on west side; 3.1 ft. on east side\***

**\*Correction by memorandum of John R. Cheatham, Chief Building official dated February 16, 2016, to request a 1 ft. variance on the west side, and a variance of 6+ feet on the east side, and a variance from both the cumulative setback requirement of 30% of the width of the property and the minimum setback requirement of 6 feet on the lesser side.**

Jeff Fillar, Building Inspector with SAFEbuilt, Inc., advised that 30% cumulative setback would equal 16 feet total.

Mr. Norton advised that the Board has had an opportunity to visit the site and review the application.

Mr. Norton asked the point of measurement, since this property is on a diagonal lot. Is it measured where the furthest projection is toward the front, or on the actual frontage where it hits the street, or 53 feet? There is a 30% question and the minimum 6 foot question. On the east side, where the property abuts the park property, there is requested a 3.95 ft. distance versus the minimum of 6 feet. The proposal is to have a 5 feet distance on the west side. The requirement is 6 feet. A 1 foot variance is requested on the west sideyard setback. The 30% rule of cumulative setback requirement is measured at the building line.

Builder Anthony Kucia stated that they have positioned the new home so that it is more in parallel with the neighbor to the west, since the neighbor to the east is the park. Mr. Kucia explained the plans submitted with the application. He stated that the hatched line underneath is the existing structure. The “P” is the existing porch of the existing home. The new structure will be approximately four feet south, or greater setback of that point. They do not hit that point, which is approximately 36 feet until they are almost all the way over to the eastern property line, where they touch it at 35.5 south. With the park property to the east, they are trying to stay in favor and in alignment with keeping and encouraging the neighbor’s view. The rear yard is greater because the existing garage will be razed. Mr. Kucia stated that while two sideyard variances are requested, there will be improvement on the front and rear yard setbacks. The existing asphalt driveway is close to the western property line and this will be improved to maintain a 5 foot sideyard setback to the structure on the western property line.

Mr. Taylor confirmed with the builder that the existing garage will be removed.

Mr. Norton stated that if 59 feet is taken as the width at the point of the house, there is a 17.7 foot requirement applicable to the 30% rule. There is 3.95 feet on the east side, and 5 feet on the other side, which is 8.95 or 9 feet. An 8.75 feet variance will be required to the 30% rule.

Further discussion followed. Mr. Norton noted that this home is next to open land of the park. This makes the lot, besides its unusual shape, unique.

Mr. Taylor noted that if the MetroParks ever decides they want to build on this open land they are not required to receive City approval. They are free to do whatever they please. Any government agency, including the federal government, does not have to apply to the City for approval for any building.

The property owners on the west side of the property, John and Dani Berlan, addressed the Board stating that they can appreciate the uniqueness of the lot. Mrs. Berlan stated that the applicant is asking to increase their lot size significantly and it seems that was not taken into consideration when they created the plans for the home. The size of the proposed structure, Mrs. Berlan noted, does not really maintain the spirit of the neighborhood. It will be 6 feet from the Berlan home, without consideration to landscaping or walkway. There is a door on that side of the home so at some point there will be a walkway built to that door.

Mr. Taylor asked if a firewall will be necessary since the home will be so close to the property line. Mr. Fillar stated that anything closer than 5 feet will require different types of overhangs and eaves. Closer than 5 feet will require a firewall. At 5 feet they miss that requirement and are permitted a 12 inch eave overhang without protection.

Mr. Burke clarified that a 2.05 foot variance will be required on the east side of the property, and a 1 foot variance will be required on the west side of the property, plus the 30% cumulative setback requirement.

Mr. Burke noted that the Board has not seen the elevation drawings. He suggested that in order to give consideration to the drawings, the matter be tabled until the meeting of March 17, 2016. Mr. Norton agreed, noting that this would give some idea of the scale of this proposed home in relationship to its surroundings. He noted that the intent of the 30% cumulative setback requirement is that you should not get close to both property lines and overall separation is maintained.

Discussion followed between the builder of the new home and the neighbors to the west. Mr. Norton noted that the real issue is the request for a 50% reduction in the 30% rule. Fifty-nine feet is being taken as the width of the lot. Thirty percent of that is 17.7 feet. The request is 3.95 feet on the east side, and 5 feet on the west side, for a total of 8.95 feet. A variance of 8.75 feet is required to the 30% cumulative setback rule. Mr. Burke noted the significance of the request as it relates to the amount of the total feet of variance required to the 30% cumulative rule.

Mr. Norton stated that he is not comfortable with making a decision until the four elevation plans are reviewed by the Board prior to the next meeting. Mr. Taylor asked that when the plans come

in, the Building Department must be careful about the verticality of the home. It cannot be more than 3 feet above the sidewalk.

Mr. Miller asked if consideration has been given to the fact that the east elevation has a bit of taper to it. At one corner it is the narrowest point, but further out it is greatly increased. Mr. Norton stated that he believes the 30% rule requires measuring at the front of the home. He does not know if this is to be measured the way the house is oriented, straight across, or on the same angle as the front property line. Clarification will be required as to where the 30% has to be taken from. If it is taken parallel to the face of the structure, it would be less than the 59 feet aforementioned, which would be favorable to the applicant with the percentage of the request going down.

**Motion** by Burke, second by Miller, to table the application for a variance to the property at 28801 Northfield to the meeting of the Board of Zoning Appeals of March 17, 2016, and in the interim the members of the Board of Zoning Appeals be provided with detailed plans of the property showing elevations on all four sides, and that the 30% rule be clarified further by the Building Department. The code states that it shall be measured at the building line, or 59.01 feet. Mr. Miller noted that because the overall property is trapezoidal it may be under 59 feet.

The builder stated that he will have the engineer note that they are building at the 35 foot line which will be somewhere between the 59.01 feet at the 40 foot build line, or the 57.66 at the 30 foot building line. Mr. Norton asked that the engineer state the actual numbers that he is comfortable with as to the 30% rule. This information will be submitted to the Secretary of the Board by Friday, March 11, 2016 along with the elevation drawings so that it can be included in the next packet to be sent to the members of the Board of Zoning Appeals. Mr. Norton stated that if the information cannot be assembled by Friday, March 11, the builder will bring the information with him to the March 17, 2016 meeting.

**On the motion to table, roll call vote: Yeas – Burke, Miller, Norton, Taylor  
Nays – None.**

**Motion passed 4-0.**

**Deco LLC  
23105 Lincolnshire Dr.**

**C.O. 1153 – Sideyard Setback Variance  
to convert single car garage to double  
car garage**

Mr. Norton confirmed that the Board has had an opportunity to visit the site and review the application. He noted that along the south side of Lincolnshire Drive there is only one other house with a single car garage. Mr. Norton stated that if the research were done, he would think those with the double car garages would not meet the revised requirements of 30% rule and minimum of 10 feet setback.

The neighbor to the east of the applicant, Diane Kahler, 23101 Lincolnshire, stated opposition to the application. Mrs. Kahler presented letters of opposition from other neighboring property owners. Also submitted for the record, was a letter from Mark Chernisky, 23016 Lincolnshire,

stating his position against the sideyard variance for a garage addition as he feels the variance is excessive and will set a precedent to build four feet off of the property line.

Mrs. Kahler further noted that there is regular distance measurements between all the homes which will be disturbed on their property if this variance is granted.

Debra Conway, the owner of the property for which the variance is requested, pointed out that the Kahler's have a very large, two-story, 20 foot barn that sits on her property line. Mr. Kahler stated that he received a variance for this construction. Ms. Conway stated that the very large tree owned by the Kahler's overshadows her property.

Mr. Norton stated that his inclination is that the reason this home and the home to the west do not have double car garages is because the builder, at that point, decided not to build as wide a home as the other homes. With this garage addition, this home will be the same as 90% of the homes on Lincolnshire. Mr. Taylor stated that these two lots may have been smaller than the others.

Mr. Norton suggested referencing the City's plans that show the frontage all along Lincolnshire Road. If the plot is the same size as the other plots on the street, and similar in the frontage, it is reasonable that this property should be allowed a two-car garage. Mr. Norton noted that this lot is also trapezoidal with a 100 foot line in the front and 85 foot line in the back.

Mr. Burke noted that the distance between the corner of the garage to be built to the neighbor's northwest corner of their home will be 12 feet. Mr. Taylor noted that the Conway home was built with a 30% cumulative setback variance in 1959. Mr. Norton noted that at that time the requirement was 25%.

Further review and discussion followed. A 7.5 foot variance will be required for the 30% cumulative setback rule, and a 6 foot variance to the minimum 10 foot rule will be needed for the east side of the property.

**Motion** by Burke, second by Taylor, that the application of Debra Conway for a variance to build a double car garage on her property at 23105 Lincolnshire be tabled until the meeting to be held March 17, 2016. Mr. Norton asked that the contractor for this project present the stamped engineer's plan at the March 17, 2016 meeting to confirm the dimensions of the property. Jeff Fillar of SAFEbuilt, will obtain the dimensions of the lots along the street from the Cuyahoga County website and have that information available for the March 17, 2016 meeting.

**Roll Call Vote: Yeas – Burke, Miller, Norton, Taylor.**  
**Nays – None.**

**Motion passed 4-0.**

The meeting adjourned at 8:50 p.m.

Board of Zoning Appeals  
March 3, 2016

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Jack Norton, Chairman

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Joan Kemper, Secretary