

Minutes of a Meeting of  
BOARD OF ZONING APPEALS  
Held November 21, 2013

Members Present: Burke, Campbell, Dostal, Taylor, Tyo

Absent: Mr. Norton

Also Present: Mr. John Cheatham, SAFEbuilt

Audience: Mark Chernisky, Martin and Ann Tarr, Martin Reuben, Peter Lehner,  
Ed Smith, Sean and Patricia Burke

Chairman pro tem Tyo 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. Tyo 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.

**Motion** by Taylor, second by Dostal, to approve the minutes of the meeting held November 7, 2013 as prepared and distributed. **Motion passed 5-0.**

**Bridget O'Donnell**  
**23724 Cliff Drive**

**C.O. 351.16 requesting variance to enlarge  
driveway more than 40% of the width of  
the lot (only 50 ft. wide area)**

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

Mrs. Alice O'Donnell stated that she has installed an extended driveway because there is no where to park on the street and neighbors call the police when there are cars parked. She stated that she did not extend the driveway for that reason, but built the driveway because she has a handicapped daughter whom she does not want to trip and fall. Her daughter is legally blind and cannot see certain things, and Mrs. O'Donnell wants to make sure she is safe. There are no steps anywhere on the driveway or coming into the gated area. When her daughter walks in she can go to the man door. There are no steps there and she can get herself in, or can use the garage. She does not always remember her code so if Mrs. O'Donnell is not there she must worry about how her daughter is going to get in the house.

Martin Rueben, the neighbor to the west of the O'Donnell's, presented pictures of the driveway that has already been poured and is in place. He stated that while he appreciates the access just described, this is a driveway that is 32 feet across, technically 80% of a 50 ft. wide lot. It serves

as an access point for a giant parking lot. The paved portion provides parking for eight cars, and now there is easy access in order to do that. If the driveway was a normal 22 feet wide, or even 25 feet wide, that would still be within 40% of the allowable width. There is plenty of on-street parking. It has never been a problem in the nearly-30 years Mr. Reuben has lived in the area. Mr. Reuben continued, stating that this is now asking permission after the fact. The driveway is done and poured, and if there was going to be an inspection before the driveway was poured, why was it not in the plans beforehand. A 22-foot driveway would provide the same slope and the same smoothness without any obstacle for a handicapped person. This wide driveway is access to a parking lot.

Mrs. O'Donnell stated that they did get approval from the Building Department for the driveway; it was approved.

Mr. Rueben stated that if it was approved by the Building Department why is a variance being asked for at this time.

Mr. Tyo stated that there is not a Building Code for a driveway but there is a Traffic Code, because of the concrete involved. He referred to Codified Ordinance 351.16 Prohibition of Parking of Motor Vehicle on Lawns. "Driveway" means an area graded and provided with a hard surface of granulated material, asphalt, cement (or concrete), brick or decorative stone, used as a means of ingress and egress, providing that such driveway shall not occupy over 40% of the total required front yard of the lot.

Mr. Burke asked if the concrete shown in the photograph was part of the building plans that were submitted to the city. Mrs. O'Donnell stated that she is not sure but she had the Building Department come out. Mr. Burke asked Mr. Cheatham if a permit is required for this after the fact.

Mr. Cheatham stated that Mrs. O'Donnell asked him on-site when he was out there for another reason about her front drive and how wide it could be. Chapter 11, Zoning, and Chapter 13, Building, were thoroughly searched and nothing was referenced or cross-referenced. Mr. Cheatham informed Mrs. O'Donnell that as far as he could see, he could not see any specific requirements for grass or anything that would prohibit her from having a concrete yard. She was informed that Mr. Cheatham did not think it would look nice or would be in the best interest of the neighborhood, but he did not see anything that would prohibit it. On the day they were to pour it, SAFEbuilt Inspector Bob Lyons came in and stated that there was a rule somewhere about 40%. After further review, they found the rule in Chapter 3, the Traffic Code. They went immediately to the site. They were mostly ready to pour; the wire was in, and they were finishing up a few forms and mesh. It was at 90% ready. Mrs. O'Donnell was informed about the code that was found and told that the pour needed to be stopped. At that point, Mrs.

O'Donnell explained that they had ordered a special aggregate-type concrete which had already been made up and for which the O'Donnell's would have to pay for the cost. Mr. O'Donnell called and stated that it is ordered and paid for, and they were going to pour. Mrs. O'Donnell followed Mr. Cheatham back to the office and filled the paper work out for the variance, and they proceeded with the pour. Mr. Cheatham stated that he did explain to them that if they did pour it knowing the rule, the BZA had the right to tell them it is illegal according to the ordinance and the least would be they could end up having a front yard patio with barriers that would designate it as a patio area rather than a parking spot.

Mr. Cheatham has contacted Steve Lee, Chairman of the Council Planning, Zoning Public Buildings and Grounds Committee, and informed him of the mix-up in the ordinances. Mr. Lee has been asked to address the issue and rewrite the legislation to define yard, define driveway, and address a cross reference.

Mr. Burke asked if there is a requirement that a permit be issued for something such as this, either as part of the plans that were submitted to the city for over-all approval of the structure, or as a later add-on.

Mr. Cheatham stated that they always charge in the original plans for a driveway or patio. Mr. Cheatham stated that he asked Mr. Lyons about the plans. He stated that the plans were just kind of general and did not specifically say what was in the front yard. It was just more or less the plans of the house, the topo, and the grading. It was assumed that the drive would be in the front of the garage. There were no details that defined drive and lawn.

Mr. Taylor noted that it could have been assumed either way, the entire front yard, or in front of the garage.

Mr. Reuben stated that if the O'Donnell's want to have an entire concrete front yard that is entirely their business. His objection is to the fact that every other driveway on the street accommodates approximately 22 feet width.

Mr. Taylor asked if Mr. Reuben has noticed any drainage problems on his property from this driveway.

Mr. Rueben stated that from the driveway there won't be drainage problems because of the way it is sloped. Everything will go down into the street. His objection is aesthetic and there is not a need demonstrated, and this is to accommodate a very large parking area.

Mr. Ed Smith, neighbor to the east of the O'Donnell's stated that they have only been in thier home for 90 days so they are not totally familiar with the neighborhood. His concern, from his

past experience on City Council here in Bay Village and City Council of a rapidly growing suburb of Chicago, is that you have to worry about things like retention and run-off. If you have a lot of impervious covering on a yard, the issue will be exasperated. That was probably one of the drivers behind having a 40% limit in the ordinances. Mr. Smith stated that he has no aesthetic objection. He would just urge the BZA to think about what drives the ordinances and think about what applies in this case. If the BZA decides in favor of this, consideration must be given to granting a variance that is going to set precedence for the future. Some of the notes from former BZA minutes have indicated that the Board has relied on precedent in making a decision.

Mr. Tyo stated that precedent is important in the decision making process of the Board. The uniqueness of the situation must be unique to the property; not unique to family or self.

Mrs. O'Donnell stated that the driveway is a blue-stone aggregate and looks very beautiful.

Mr. Rueben stated that he believes the oversized driveway was constructed to serve a personal parking problem and was going to happen whether or not anyone objected.

Mrs. O'Donnell stated that they had everything set up to pour, and at 3:30 p.m. in the afternoon the Building Inspector showed up. The concrete was in the truck and because everyone was having a fit over this they took the truck back to the yard. The concrete was poured the next morning at 7:30 a.m. Mr. Tyo noted that you cannot leave concrete in a truck over night.

Mr. Tyo asked if anyone called to postpone the pour for the next morning. Mrs. O'Donnell stated that it could not be postponed.

The neighbor across the street, two houses over, stated that he has lived on the street for over twenty years. He is concerned about the precedent. Every house on the street has a single driveway. It is uniform and the neighborhood looks nice. There isn't a problem with parking if the rules are followed. There are safety issues when people park illegally. There are elderly people that live on the street and when people park illegally you cannot get an ambulance or fire truck down the street.

Mr. Burke stated that there is the issue of whether a permit was required or not required. We are not able to hear from Inspector Lyons who is in the hospital recovering from heart surgery. There are several issues here that require further study.

**Motion** by Burke, second by Campbell to table the issue of the O'Donnell driveway until the Board of Zoning Appeals meeting to be held December 5, 2013. Mr. Dostal suggested speaking to the concrete people as well for further information. (PBM Concrete) Mr. Tyo suggested a

combined visit of the Board of Zoning Appeals and the Building Department to the O'Donnell property.

**Roll Call Vote: Yeas – Bruno, Burke, Campbell, Dostal, Taylor, Tyo**  
**Nays - None**

**Motion passed 6-0.**

**Patrick Murray**  
**26807 Russell Road**

**C.O. 1153.03 and 1359.01 Variance of 2'2" for covered porch to the side yard set back and 3' variance for air conditioning unit in the side yard setback.**

Mr. Mark Chernisky of Chernisky Designs was present to represent Mr. Murray. Mr. Chernisky presented an affidavit signed by Mr. Murray to permit Mr. Chernisky to represent him this evening. Mr. Chernisky noted that he has been informed that the air conditioning unit does not need a variance. The porch variance request stands as presented.

Mr. Tyo advised that the Board has had the opportunity to visit the site and review the application. The lot is irregularly shaped.

**Motion** by Burke, second by Campbell, that the property at 26807 Russell Road be granted a 2'2" variance to the side yard setback requirements of Codified Ordinance No. 1153.03 for the construction of a porch as shown in the drawings submitted by the applicant provided that the variance shall be solely for the triangular area shown in the drawings, and not an over-all variance for the sideyard.

**Roll Call Vote: Yeas – Bruno, Burke, Campbell, Dostal, Taylor, Tyo**  
**Nays – None.**

**Motion carried 6-0**

**Jim Erlandson**  
**544 Marvis Drive**

**C.O. 1153.02 Variance to add 2' onto porch going towards front yard**

Mr. Mark Chernisky of Chernisky Designs was present to represent Mr. Erlandson. Mr. Chernisky presented an affidavit signed by Mr. Erlandson to permit Mr. Chernisky to represent him this evening.

Mr. Chernisky stated that they are proposing a covered porch on the existing foundation that is 4 feet off the house. A railing will not be required because it will only be one step up off the service sidewalk.

**Motion** by Dostal, second by Burke that a variance be granted to the property located at 544 Marvis Drive pertaining to Codified Ordinance 1153.02, in the amount of 2 feet for the construction of a porch, and that the porch shall never be enclosed.

**Roll Call Vote:**       **Yeas – Bruno, Burke, Campbell, Dostal, Taylor, Tyo**  
                              **Nays – None.**

**Motion carried 6-0.**

**Martin Tarr**  
**24458 Lake Road**

**C.O. 1163 Variance to install a decorative grapevine trellis to block view of neighbor's property and related items.**

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

Mr. Tarr introduced his landscape architect, Mr. Peter Lehner, to speak to the Board regarding the design.

Mr. Tyo stated that normally a trellis has a height limit of 6'4", and the request for this structure is 8 feet in height. This construction is regarded more as a privacy fence because of the approximate visibility of 20% through the structure.

Mr. Lehner stated that the uniqueness of this particular positioning of the trellis is because the property next door sits behind their home and the neighbor's property sits behind that. The direct view from the Tarr's back yard is the side of the neighbor's garage. Prior to Superstorm Sandy, there was a trellis on the Tarr property with a grape vine that grew all the way along and covered the garage. The only part of the fence that is over the limit is a small section in the middle, approximately 2' x 2', and two-thirds of that section is behind the neighbor's garage. The only section that can be seen from anywhere, other than the Tarr's garage, is a very small section.

Further review and discussion followed.

Mr. Burke stated that if the fence were straight across without the oval section, a variance would not be needed. Mr. Burke expressed concern of setting a precedent in granting this variance.

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Mr. Bruno noted that the variance will stay with the property forever. A future owner of the neighbor's home may level the home, which happens quite often on Lake Road, and the positioning of the home may change with no garage there in the future. There would be no need for the variance.

Mr. Tarr withdrew his request for a variance.

There being no further business to come before the Board, the meeting adjourned at 8:30 p.m.

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Jack Norton, Chairman

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Joan T. Kemper, Secretary