Minutes of a Meeting of
BOARD OF ZONING APPEALS
Held September 20, 2018

Members Present: Bruno, Burke, Gess, Miller, Norton, Tyo, Young

Also Present: Jeff Fillar, Building Official of SAFEbuilt, Inc., Law Director Mark Barbour

Audience: Margaret Mann and Daniel Popkin, Herman and Sue Jachnick, Dave Tadych, Summer Mayhugh

Chairman Norton called the meeting to order at 7:35 p.m.

Mr. Norton called for the approval of the minutes of the Board of Zoning Appeals held September 6, 2018. Motion by Mr. Bruno, second by Mr. Burke, to approve the minutes of the meeting held September 6, 2018. Motion passed 7-0.

Margaret Mann and Daniel Popkin
23920 Lake Rd.

C.O. 1111.05 (B)3.02(01)
Variance for Two (2) Lot Splits

Applicant: Margaret and Daniel Popkin

Property Owner: Same

Address of Property: 23920 Lake Rd.

Mr. Norton stated that the Board has had an opportunity to visit the site and review the application. A memorandum was submitted for the Board to review by Mark Barbour, Law Director, and Gary Ebert, Special Counsel.

Mr. Burke discussed with the applicant about the sale of their property and it being contingent upon the split of the front lot of their land. He also asked if application to split the property would be of an economic benefit to the homeowner.

Homeowners, Margaret Mann and Daniel Popkin, stated the reason for their application was in part for personal reasons because they are relocating for family. They also explained that they see that it would be the most economically beneficial to the City of Bay Village because it would provide another house in that area for tax revenue.

Mr. Burke then asked the homeowners if the selling of their property and splitting it into two lots would be more valuable than it would be as is.

Mrs. Mann explained that the interested buyer is only interested in the lot split, so they can build a second home for their son and that they are actually selling the property for less than the current asking price.
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Mr. Burke asked if the homeowners were aware that a similar application was submitted from their property in 1974. The homeowners were not aware.

Mr. Burke asked Jeff Fillar, from SAFEbuilt, Inc., if he was aware of any differences between the applications. He had not had a chance to review the 1974 application.

Mr. Burke then asked Mr. Barbour for his opinion between the two applications. Mr. Barbour reviewed the Planning Commission minutes from the 1974 where the application was denied. It was then sent to City Council where it was denied. Finally, it was appealed to the Board of Zoning Appeals and denied. It was noted that the property was not well suited for a split due to the frontage and for safety reasons.

Mrs. Mann discussed that the 1974 application was different in that they were looking to split the property into three lots where the current application is asking to only split it into two lots.

Mr. Norton discussed the long term impact of the Board’s decision to applicants and the decision will run with the land. One important consideration is whether the same variance request has already been made for this property.

Mrs. Mann and Mr. Popkins were not aware of the previous appeal on their property and believed they had adequate square footage for a lot split based on their discussion with the building department.

Mr. Barbour explained that once an application is made and reviewed by the Board, the denial or approval stays with the parcel even if there is a change in ownership. He stated that a determination of the Board must be whether there was a material issue change between the applications on the same property. He stated that based on his understanding of the 1974 application and the current application, that the applications are substantially similar and should be denied. The Law Department’s position is that the remaining lot lacks frontage and is in violation of C.O. 1111.05. Based on minutes from 1974, the Planning Commission, Board of Zoning Appeals and City Council did not want to actively create.

Mr. Burke asked for clarification from Mr. Barbour that based on the frontage requirement of the ordinance whether the parcel sought to be split off into one or two is not material because it is based on whether or not the remaining lot had too small of frontage.

Mr. Barbour agreed and explained that you might have a current non-conforming lot, but you cannot take an action that continues to make that a non-conforming lot.

Mrs. Mann explained why she believed there is a material difference between applications based on that the 1974 wanted the property split into three lots versus what they are currently seeking—that the property being split into two lots.
Mr. Tyo discussed the history of the lot and noted that there were other requests that were also denied due the complexity of the property prior to the 1974 application. They do not have documentation of those requests at this time.

Mr. Popkins discussed that he was not made aware of any past precedence on the lot.

Mr. Barbour noted that each property has a file held at City Hall that contains any applications, variances, or permits on the property.

Mrs. Jachnik, neighbor of applicants, asked a question about the previous sale of the lot.

Mr. Burke described that the number of individual lots up for sale may be different than the final properties that were sold.

Mr. Popkins had a question about the tax evaluation of neighboring properties.

Mr. Barbour explained that that tax valuations are performed by Cuyahoga County and not by the city of Bay Village.

Mr. Gess asked about whether the variance could be granted regardless of the properties past history.

Mr. Barbour stated that it is a non-conforming lot that has been grandfathered in before an ordinance was passed and that adding the back lot would be creating another non-conforming lot. He explained that you have to take an action, so that both lots conform with the ordinance in order for it to be approved.

Mr. Norton commented that there appears to be a property in the recent past (within the last ten years) that was granted a variance similar to the request of the current applicants. However, the Board did not have a chance to research the property.

Mr. Bruno stated that the Board is not in the position of creating non-conforming lots.

Mr. Barbour explained that in order to grant a variance it needs to be based on an undue hardship and that another property and its particular characteristics should not be considered by the Board when discussing this application.

Mr. Barbour described the Law Department’s role within the city is to make sure that the current laws of Bay Village are followed appropriately and that all the Boards of Commissions and City Council make decisions that are well informed and based on the current state of the law.

Mrs. Mann provided additional considerations to the Board for why granting of their variance would benefit the city including a reduction in litter and trespassers and with improving the area overall.
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Mr. Jachnick gave historical background on his property and surrounding area. His grandfather was the original land owner in 1929.

Mr. Burke asked Mr. Norton that they have more time to research other properties and perform further research to determine if there are additional records on the 1974 request on the applicant’s property. He suggested that the request be tabled until further research is conducted.

Mr. Bruno expressed that priority should be set to further researching the 1974 application.

Mr. and Mrs. Jachnick presented original letters and paperwork from the property to be submitted and copied for the Board.

Mr. Burke makes a motion to table the application until further research is performed. Mr. Norton seconded the motion and called for roll.

**Motion** by Mr. Burke, **second** by Mr. Norton to table the matter of Margaret Mann and Daniel Popkin regarding the property 23920 Lake Road.

**Roll Call Vote:**
**Yeas** – Miller, Bruno, Gess, Norton, Tyo, Burke, Young
**Nays** –
**Motion Carried 7-0**

The meeting adjourned at 8:17 p.m.

The meeting will be tabled until the October 18, 2018 BZA Meeting.

[Signatures]
Jack Norton, Chairman
Kateri Vincent, Secretary