Minutes of a Meeting of  
Board of Zoning Appeals  
held December 7, 2017

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

Also present: Jeff Fillar, Building Official of SAFEbuilt, Inc.

Audience: Mark Chernisky, Brian Fabo and Ray Ningard

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

**Motion** by Bruno, **second** by Gess, to approve the minutes of the meeting held November 16, 2017 as prepared and distributed. **Motion passed 7-0.**

Mike Parks  
400 Fordham Parkway  
C.O. 351.16(A)(1) Homeowner is requesting a variance to widen their driveway for 3 car parking by 6' to the south.

Mr. Norton advised that the Board has had an opportunity to visit the site, review the application and asked for any discussion.

Mr. Burke stated that in terms of the percentage rule for coverage of front yard concrete the request is for over 50% of what the ordinance allows. Also the distance from the side lot line would go from code from 5 feet to 0 feet therefore it will go right up to the property line. Mr. Tyo agreed with Mr. Burke. Mr. Burke also noted his concern with the amount of concrete in the applicant’s front yard.

Mr. Norton explained that a driveway is allowed to be up against the property line but a driveway is described separately from a parking area. He understands that this is a desirable request for the homeowner but if this request was granted it would set a precedent. Mr. Norton also noted that this request is not a small percentage. Mr. Tyo added that the proposed widening will create a surface that is 62% of the required front yard.

Mr. Norton asked Mr. Chernisky if there is anything the board is missing. Mr. Chernisky stated that the variance is 12% and his interpretation was the width not the square footage. Mr. Norton responded that it refers to the square footage because that is how the percentage is calculated. Mr. Norton referred to the ordinance and it says that 40% of the front yard can be covered by paving. Mr. Chernisky asked if the calculation is stopping at the face of the garage or is taking it to the porch. Mr. Norton explained that the ordinance refers to the minimum front yard setback
rather than where the house is. The request is for 62% of that area to be covered versus the 40% allowed. Therefore it is a little over a 50% increase in what is allowed.

Mr. Chernisky stated that the existing driveway has over 40% coverage and that is by taking 20 feet wide times 30. Mr. Norton responded that it would be 20 feet wide by the minimum setback number which is 25 feet so it will be 500 feet. The ordinance states that “a driveway shall not occupy over 40% of the total required front yard lot”. The required front yard of this property is 1250 square feet. The proposed widening of the driveway will then be 780 square feet or 62% of the required front yard.

Mr. Chernisky asked if there is a difference between a parking spot and a driveway. Mr. Norton said yes and the request is for a parking spot and that is where the 40% rule comes in effect. Mr. Norton explained that the proposed “widening” is not part of the driveway since it does not go up and meet the face of the garage, it is an extra area for parking. That is why this request falls into the 40% rule. Also, a parking space cannot be at the property line. Mr. Chernisky stated that the proposed widening will not be going up to the south property line it will be 6 inches away. Mr. Norton responded that the requirement is 5 feet. He stated that 1191.09 reads “no off-street parking space shall be located within five feet of the side line of any lot.” Therefore that 6 inches would violate the rule.

Mr. Chernisky asked if the five feet rule also be part of this variance request. Mr. Chernisky noted that this part of Fordham is very difficult to park because there is not a whole lot of street parking. Mr. Miller asked if they are utilizing the garage for parking. Mr. Chernisky responded that the homeowners can get one car in the garage and it is a small garage. Mr. Miller stated that the garage is 20 feet wide and it is a two car garage. Mr. Norton explained that the house is already a little closer to the side yard because it was grandfathered in.

Mr. Miller asked what percentage is allowed on 50 foot wide lots. Mr. Norton responded that 6 feet is the minimum on the side lots.

Mr. Chernisky asked if the problem with this request is the percentage of the variance. Mr. Burke responded yes as well as the parking space being too close to the south property line and setting a precedence.

Mr. Burke asked Chairman Norton if he would like two separate motions or one with both variances. Chairman Norton stated two separate motions.

Motion by Burke, second by Tyo, that the property located at 400 Fordham Parkway be granted a variance from the requirements of section 351.16 (a) (1) of the codified ordinances of the City of Bay Village, for the enlargement of a parking area by the way of adding an additional 6 feet to the south of the existing driveway/parking area. The variance being requested will increase the coverage in the front yard to 62% while the ordinance requires the maximum of 40% of the total required front yard.
Roll Call Vote: Yeas – None  
Nays - Bruno, Burke, Gess, Miller, Norton, Tyo, Young None  
Motion Denied 7-0

Motion by Burke second by Tyo that the property at 400 Fordham Parkway be granted a variance from the requirements of codified ordinance section 1191.09 to locate a parking area within 6 inches of the south lot line. The variance therefore being four and half feet from the minimum of the 5 foot requirement.

Roll Call Vote: Yeas – None  
Nays - Bruno, Burke, Gess, Miller, Norton, Tyo, Young None  
Motion Denied 7-0

Raymond Ningard  
501 Clague Road  
C.O 1149.06 Homeowner is requesting to install a garage extension/carport.

Mr. Norton advised that the board has had an opportunity to visit the site, review the application and asked for any discussion.

Mrs. Young stated the property is unique because it buts up against Resse Park and there is a high fence along the park. Mr. Norton agreed that the property does have a uniqueness. Mr. Norton explained that he does not have any difficulty in this request by extending the garage by 4 ½ inches however, he does struggle with the carport request. The applicant would be violating the 5 foot requirement and the carport is a structure that will be built right up to the property line. The percentage of that is huge. It is required to have 10 feet and it is going to have zero feet.

Mr. Burke explained that the board has granted larger variances based on circumstances for properties that back up to the school bus lot and a home that backs up to Martin’s Deli but in both of those cases the variance was for a privacy fence to protect the homeowner. This case seems to not protect the homeowner from what is next door but it also benefit the homeowner. Mr. Burke is concerned with the complete loss of any side yard setback on the south side of the property.

Mr. Gess agreed with Mr. Burke and believes that the uniqueness to the property does not seem to pertain to the proposed variance.

Mr. Ningard noted that he planted the trees along the south lot line and he had permission from Jim Sears to do this. Mr. Ningard stated that his property was fine until the City put a fence in the ballpark and then it became a steady issue of grown kids coming to the park to play home run derby. He stated that Jim Sears passed an ordinance that allowed kids up to 15 years old to use the field. He presented a picture that showed numerous amounts of baseballs that had landed in his property. He stated that he has a serious issue with baseballs coming into his property and he is trying to protect that area of his property. Mr. Norton stated that he does not understand how an open sided carport is going to protect Mr. Ningard’s property.
Mr. Norton stated that building a structure right next to the property line would set a precedent. Mr. Burke questioned that baseballs still come through Mr. Ningard's property even though there are pines on the on the south side of the property that are twice as high as the house? Mr. Ningard responded that they are just pines. Mr. Bruno noted that the pines are pretty much even with the front of the home.

Mr. Ningard presented pictures of his property.

Mr. Bruno asked Mr. Ningard why he would not want to install a protective fence as opposed to an open carport. Mr. Bruno noted that the trucks parked under the proposed carport will still be exposed to the baseballs and explained that a fence might be a more reasonable request as to a structure. Mr. Ningard responded that the baseballs would still get over the fence. Mr. Bruno stated that he is not comfortable with a permanent structure that is right on the property line.

Mr. Burke asked Mr. Ningard how long has he lived in his home. Mr. Ningard stated 25 years and for 25 years Mr. Ningard stated he has maintained the park on that side of his lot because the city does not. Mr. Bruno added that there is a lot of foliage.

Mr. Burke stated that he is sympathetic to the applicants plight but he does not believe the board can permit sympathy to granting a variance.

Brian Fabo, Fabo Architecture, stated “that when the zoning laws were established in the 1920’s there were protections put in place to protect various uses for the various property owners from the adjoining property owners. In this case there is no victim here to build a zero lot line it is a very unique situation. There is a natural buffer from the trees and no one is going to see the carport and no one is getting harmed by building to the property line. There is no neighbor, it is a victimless crime. It will be a very rare instance that someone will be able to site that this is a precedent because they would have someone they are directly affecting, he does not.”

Mr. Burke stated that zoning ordinances are like any law whether it’s federal, state, local and are not just for the protection of the individuals but for the protection of the community. Mr. Fabo said having the carport does not negatively affect the community. Mr. Burke responded that setting a precedent and allowing someone to build to the lot line does affect the community. Mr. Fabo explained that they are not setting a precedent because of the unique situation and that there is no neighbor that the setback is protecting them from.

Mr. Norton stated that he is struggling with this request because it is not two residential properties next to one another. He explained the intent of the ordinance is to provide separation between two dwellings, however, there will never be another dwelling next to Mr. Ningards property because of the park.

Mr. Fillar stated that the building code states when you build up close to a property line it does not matter what is on the other side of that property line. For example, it can be a park today and it could change to a mall in 10 years, we do not know. There also needs to be a fire barrier if anyone would build next to Mr. Ningard property. The code does not look at what is there now
the code looks at that property line as a property line. He also believes the zoning code should reflect the building code.

Mr. Miller asked what is allowable side yards on 150 foot wide lot in R3. Mr. Norton responded that once you are 70 feet or wider it is 30% minimum of 10 feet for the side yards. Therefore, 30% of a 100 foot wide there would have to have a total of 30 feet but no less than 10 feet on the side. Mr. Ningard stated that his side yard is 11 feet 7 inches on one side and 18 feet 9 inches on the other side.

Mr. Bruno asked why the board would allow a variance for someone to build right to the property line to park their personal vehicles. This applicant has a two car garage and a driveway. Mr. Bruno stated that he does not see practical necessity, hardship or uniqueness.

Mr. Buke agreed. Mr. Ningard has a garage and existing space in front of his garage and this does not show any necessity or hardship based on the uniqueness of his property. He believes the issue is caused by the use of the adjacent property. Mr. Bruno asked why would Mr. Ningard want to put his property even closer to what is going to hurt his property and why would the board allow a structure to be built to the property line.

Mr. Ningard stated that he never had a problem with the park until the city installed the fence in the baseball field. Mr. Bruno stated that this is more of an issue with the city protecting Mr. Ningard property and the city should do something about this. Mr. Ningard stated the city put the fence up he did not.

Mr. Tyo asked if the baseball field is still a little league park. Mr. Ningard said yes and Jim Sears passed the ordinance. Mr. Tyo asked why do six year olds need a fence. Mr. Norton noted that if there is an ordinance in effect than Mr. Ningard should let the police know and have the police enforce it.

Mr. Bruno stated that if this was a protective fence application for Mr. Ningard property as a result of the baseballs coming into his yard he could understand the request. However, he does not believe Mr. Ningard should be able to build a structure up to his property line for a carport that can still be damaged from baseballs.

Mr. Buke stated that he believes that the problem with the baseballs entering Mr. Ningard’s property began with the installation of the fence on the city’s property. The city is the one that created the issue. He noted that from now until April there will not be many people using the baseball field and suggested that the board table this request until April. Mr. Burke also added that Mr. Ningard should contact his councilman and put the “heat on them to figure out a solution”. Mr. Bruno and Mr. Ningard agreed to that solution.

Motion by Burke, second by Bruno that the property located at 501 Clague Road be granted a variance of 4 ¾ inches from the setback requirements of Codified Ordinance 1153.03(1) for the construction of the garage.
Roll Call Vote: Yeas – Bruno, Burke, Gess, Miller, Norton, Tyo, Young
Nays – None

Motion carried 7-0

Motion by Burke, second by Bruno that the board will table the second request for a variance for the proposed carport on the side lot until the second meeting in February 2018. For the reason that the board believes this is an issue that the city has created and that the city should correct. The board also grants this time to allow the homeowner to approach City Council.

Roll Call Vote: Yeas – Bruno, Burke, Gess, Miller, Norton, Tyo, Young
Nays – None

Motion carried 7-0

Mr. Chernisky asked if he could speak to the board. His question was concerning the 5 foot rule off the side yard for a parking spot. He asked if the board would have been opposed to increasing the driveway by a 1 1/2 feet up to the 5 foot. Mr. Burke said we do not give advisory opinions. Mr. Chernisky asked that since the meeting is not adjourned can we open the request back up? Mr. Tyo asked Mr. Chernisky if he is asking the board to vote. My. Tyo stated to Mr. Chernisky that he knows that the board cannot do that twice in one night and he would have to reschedule.

Mr. Fillar asked Mr. Norton that since the request was denied doesn’t Mr. Chernisky have to come back to the BZA with a considerable difference in his request and then the chairman decides if the board will hear the request. Chairman Norton stated yes, the request would have to be a substantial difference. Mr. Fillar asked if Mr. Chernisky has to appeal since he was denied. Mr. Burke responded that Mr. Chernisky can reapply for a new application. Mr. Fillar said that if Mr. Chernisky appeals the request than he won’t have to pay again. Mr. Burke stated that the appeal would be from turning down the original request and it seems that Mr. Chernisky is now asking for something entirely different. Mr. Miller added that this is why the board usually would table a request. Mr. Norton stated that whatever the rules are in terms of starting over again and paying the fee, those are the rules.

Travis Bennett
30233 Ednil Drive

C.O. 1350.03 The applicant is requesting a variance for a 10x20 shed instead of the required 10x12 shed.

Mr. Norton advised the Board that Travis Bennett is not present at the meeting this evening. Mr. Fillar stated that when the revised drawings came in the paperwork was dropped off by someone other than the applicant. Mr. Fillar explained on the last picture of the packet that was dropped off it states that the Bennett’s are going to build a 10x12 shed and that does not require any variances. He noted that the pergola that is shown on the picture is only for show and not requested on this permit. Mr. Fillar stated that they are no longer in front of the board.

Mr. Fillar explained that the person that dropped off this paperwork did not mention anything about the variance and they laid the paperwork on the counter and left without saying anything.
Mr. Miller noted that there is already poured concrete that is 10x20. Mr. Fillar responded that the note says that is gone and it will not be approved with the pergola and the drawings are not sufficient. Mr. Miller asked if the floor is going to remain 10x20. Mr. Fillar responded that it says shed only according to the note on the picture.

Mr. Fillar stated that we are going to deal with this as a shed in the Building Department and if he does anything else he will have to come back to the BZA.

Mr. Bruno suggested that the board should move to table the request. Mr. Norton explained that it seems that the note on the paperwork says the request is withdrawn. Mr. Fillar stated that the paperwork does not say withdrawn.

**Motion** by Bruno, **second** by Tyo to table the application for the property at 30233 Ednil Drive per codified ordinance 1350.03.

**Roll Call Vote:**  
Yeas – Bruno, Burke, Gess, Miller, Norton, Tyo, Young  
Nays – None

**Motion carried 7-0**

*For the record Mr. Burke wanted to compliment SafeBuilt on the staff report letters for each of the applications. In the past the letters have not been thorough and for the past several weeks all of the letters have been detailed and complete. Mr. Fillar stated that he will pass the compliment on to the author of the letters.*

**There being no further business to discuss the meeting adjourned at 8:40 p.m.**

Jack Norton, Chairman

Kristine Jones, Secretary