Minutes of a Meeting of
Board of Zoning Appeals
held March 2, 2017

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

Also present: Jeff Fillar, Building Official of SAFEbuilt, Inc., and Law Director Gary Ebert.

Audience: Daniel Margulies, Todd Kalish, Ray Sankovich, John Melby, Michael and Susan Novak, Ken Paradise, Eric Tuck-Macalla and Steve Schill.

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

Mr. Norton called for the approval of the minutes of the Board of Zoning and Appeals held February 2, 2017. Motion by Bruno, second by Burke, to approve the minutes of the meeting held February 2, 2017.

Motion passed 7-0.

Todd Kalish
30200 Lake Rd.

C.O. 1153.02(01) requests a 20.22 feet variance from the required 50 feet front setback for construction of a 3 car side loaded attached garage. And second request: C.O. 1153.03 sideyard setback.

Mr. Norton explained that the last time Mr. Kalish was at the Board of Zoning Appeals meeting on January 5, 2017, we tabled the request to allow research on any variances granted or refused by the Board of Zoning Appeals on any similarly situated properties along Lake Road. Mr. Norton stated that the board researched the properties that were provided by Mr. Margulies. He explained that early today Mr. Margulies presented the board with a letter that included a list of properties that were not included in the initial research. Mr. Norton explained that in fairness to Mr. Kalish the added properties that were presented this evening should be researched.

Mr. Norton stated that from the initial research of the addresses provided, the greatest frontyard setback that has been granted is 11 feet. Mr. Norton explained that he does not know how to proceed in order to be fair to the applicant since the board has not studied the additional properties that have been presented this evening.

Mr. Margulies questioned is this about setting a precedence or is it the uniqueness of Lake Road.

Mr. Burke answered and asked Mr. Margulies that from the letter, are you suggesting that Lake Road is unique and that each individual lot is therefore unique. Mr. Margulies stated yes. Mr. Burke disagreed and stated that the width or the depth of a property varying down a street
doesn’t necessarily make each one unique. Mr. Burke explained that what he understands from the code the property itself that is under consideration has to be unique and it seems to me if we follow what you are suggesting that each property along Lake Road is unique because of the variation of the Lake. He explained if this is the case than we could have every owner of these lots coming in to request a variance and then you end up with no such thing as a frontyard setback along Lake Road, because it will be differing to the depth of the lot. Mr. Burke stated that this seems inconsistent with the Legislative intent for having a setback.

Mr. Margulies stated that he believes each lot has to be looked at individually because they are unique.

Mr. Tyo stated that he agrees with Mr. Margulies’s comments. He explained that very few of the houses on the side streets have a true practical difficulty, yet we approve requests based upon the uniqueness of a situation. He stated that he believes Lake Road is very unique, and shows practical difficulty.

Mr. Norton explained that the lots do very along Lake Road. He stated that based on the depths of a lot you need to follow the rules of a 50 foot setback. Mr. Norton stated that the ordinance sets up a footprint and then based on that possible footprint that determines the size of the structure in relationship to the land. If you violate that footprint too much you are now over building for what the lot should have, therefore, you then get a house that is much bigger than the land can comfortably be situated on. He explained, that one of the reasons we have a setback is to keep the land and house size in reasonable proportions.

Mr. Tyo asked is the main point the uniqueness or is it about setting a precedent. Mr. Tyo stated in regards to this situation he believes precedent shouldn’t be a concern in which it normally is.

Mr. Norton stated that it is not just precedent but also scale and over building on the lot. He also explained that another factor that the board looks at, is if there is any unnecessary hardship. Mr. Norton explained that if the board sticks with the 11 feet maximum variance and for example if the circumstances were right would the applicant be comfortable with the 11 feet. Therefore, the applicant ends up with a two car garage instead of a three car garage, however, is a three car garage unfair not to give this land or is it enough of a variance allowing them to have a two car garage.

Mr. Burke asked Mr. Margulies since the board just received the additional addresses today, if he would like to go forward with a vote on a motion for the variance tonight, or would he like the board to research the new properties and see if any are “grandfathered in, and if any variances were granted or denied.

Mr. Kalish, explained that there is no possible way for them to build back and they can only build forward. Mr. Norton explained it’s about over building the allowed footprint and how
much beyond the initial allowed footprint does it become a substantial footprint addition as well as a substantial 40% variance to the rule.

Mr. Bruno stated that this request seems very similar to the Barry property in which there were similar circumstances. Law Director Ebert agreed and stated that the Barry property is now in front of the court of appeals. Mr. Ebert also wanted to make sure that the board received the email from Ken Paradise the neighbor of Todd Kalish, regarding his concerns.

Mr. Miller stated that the sideyard setback is too narrow by two feet and with the overall extension, you are extending the nonconformance an additional distance.

Mr. Norton explained that historically the board has granted that if it’s in line with the present house and you are not increasing you are just extending then this has been allowed. With the idea when that house was the built the side yard requirements were 5 feet and then they have 8 feet and then the law was changed to a minimum of 10 feet so when the law changed it automatically violated that setback, and as long as they don’t increase that violation, then typically this has been allowed.

Mr. Fillar stated that is addressed in C.O. 1153.03(2).

**Existing Principal Building.** Existing principal buildings with side yards of less than those specified in Section 1153.03(1), an addition may be constructed provided that the new addition does not encroach into the existing side yard any further than the foundation sidewalls of the existing building as determined by the Building Director.

Mr. Miller asked why this has been submitted as a variance. Mr. Fillar explained that he has a question mark on his paperwork as well.

Mr. Miller had a question for the Building Department regarding a previous request if they have analyzed the pervious surface that’s shown in these documents as to whether it takes up more than the allowable square footage in the front yard. Mr. Fillar stated that it has not been answered since there has not been an answer on the building itself. Mr. Miller stated that considering we were given a second variance request for something we didn’t need it would be nice if someone could be proactive and analyze what is here now in the event that we approve. Therefore, the applicant isn’t going back and having to change that as well. Mr. Fillar stated that he will bring it up with Mr. Grassi in the morning. Mr. Bruno seconded Mr. Millar’s request.

Mr. Tyo asked Mr. Margulies if he has any other options that he has considered that would be feasible. Mr. Margulies stated that he has done a quick study, however it would eliminate the three car side loaded garage. He said he did a study where they would do a three car frontload however he would still need about a 15.35 variance.
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Mr. Miller asked Mr. Margulies if he has considered a horseshoe drive. Mr. Margulies explained that they are 70 feet wide which makes it tough and they want to maintain the existing landscape in the front.

Mr. Margulies explained there are other possibilities but they still involve a variance of some degree. Mr. Burk stated that at 15 feet it would be helpful to have information on the 17 properties you have provided. Mr. Margulies explained that the addresses provided are a random sample of approximate front setbacks based from the County GIS map. He explained that the measurements from the GIS map are approximate but fairly accurate. Mr. Margulies stated again that Lake Road is very unique.

Mr. Norton explained that at this point he is only comfortable with an 11 foot variance request. He stated with an 11 foot variance you could have a two car side load or a three car front load. Mr. Norton explained that the present research has stated that the maximum variance request is 11 feet. He explained that since additional properties were presented this evening, we can postpone on a vote for this evening, do additional research on the homes Mr. Margulies provided and then have you come back to a future meeting once the research and review is complete.

Mrs. Young asked if 29100 Lake Road was originally a three car request and then the applicant decided to flip one of the garages to the other side of the property. Mr. Norton agreed. He explained that the board granted 29100 Lake Road an 11 foot variance, however he had an initial request for more than 11 feet. After, the board granted him the 11 foot variance, he came back several years later requesting a greater variance for a 3rd bay, which the board denied. Mr. Norton explained that is why the property has a two car garage on the east side of the property and a one car garage on the west side of the property. Mr. Norton explained that the board denied the request of anything more than an 11 feet variance.

Mr. Burke, explained that he would like additional research done on the properties that Mr. Margulies presented this evening. Here is a list of the following properties:

- 30816 Lake Road
- 30300 Lake Road
- 29644 Lake Road
- 29622 Lake Road
- 29014 Lake Road
- 26052 Lake Road
- 26040 Lake Road
- 24838 Lake Road
- 23910 Lake Road
- 23834 Lake Road
- 23804 Lake Road
- 23748 Lake Road
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Mr. Burke explained to Mr. Margulies that if he has any additional properties he would like to add to list that was presented this evening for him to email them to Kristine.

Mr. Norton explained that if this is postponed at your request for further study of design possibilities and this is not to say the 11 foot will be granted new drawings with the modified request will need to be submitted. Mr. Norton said it is not necessary to buy another $50.00 fee. He explained that if you decide that you cannot make it work with the 11 feet then at the next meeting you can ask the board to vote upon the initial request of the 20.22 feet. Mr. Norton stated that Mr. Kalish has the option to request a delay for further study. Mr. Norton stated that the minutes will show that a request has been made for a delay.

Motion by Burke, second by Bruno that we table this matter until the next regularly scheduled meeting. Mr. Burke asked Chairman Norton that it is still his understanding that there will be research on the properties Mr. Margulies has presented. Mr. Norton stated yes. Mr. Norton proposed that we put this item on the agenda for April 6, 2017, to allow for adequate time for research.

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

Motion Carried 7-0

John Melby  
31416 Manchester Lane  
C.O. 1163.05(F) Requests a variance for a 4’ wide section of new fence be permitted to contain an arbor (wooden) that is 8 ½’ high.

Mr. Norton advised that this request is not a variance request but a Special permit request under section 1121.42.

Mr. Burke stated that he drove by the property and believes the fence will have a minimal effect on the appearance of the neighborhood and has no objection.

Motion by Tyo, second by Burke to grant a Special Permit to the property at 31416 Manchester Lane per C.O. 1121.42 to construct an arbor 4 feet wide and 8 ½ feet tall made of wood and within the proposed fence remainder which will be the allowed 4 foot.

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

Motion Carried 7-0
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Raymond Sankovich
29201 Wolf Road

Requesting to construct new garage in front of old garage. New structure requires a variance because it encroaches upon required setbacks due to angled property lines. Code Section 1153.

Mr. Norton advised that he believes we will not be able to hear this request tonight. He explained that the Building Department needs to supervise a variance request because it is not indicated on any of the paperwork what the setback requirement is and there is no indication of what the setback request is. Mr. Norton explained that without knowing what the required setback is on your lot and where the requested garage is in relationship we have no way of making a motion to grant since we do not have any of the numbers.

Mr. Fillar stated that we know the setback from the street, but it doesn’t show where he wants to build. Mr. Fillar stated that Mr. Grassi explained to the applicant 3 times that there was not enough information. Mr. Norton asked Mr. Fillar to relay a message that the board feels we have wasted the applicant’s time. Mr. Norton stated that he believes the Building Department should have told the applicant that we will look up the required setback but then the applicant needs to tell us where the house is in relationship to that setback. Mr. Fillar stated that it was expressed to him that this was explained to the applicant.

Mr. Burke explained that the best way for us to understand this request is to have a drawing showing the footprint of the house, showing the code setback line and where it crosses the footprint of the new structure/garage with dimensions.

Mr. Sankovich asked if he needed a surveyor. It was explained to the applicant that his drawing that he submitted does not show the setback lines.

Mr. Norton asked Mr. Fillar if the Building Department can advise the applicant what the setback requirement is. Mr. Fillar stated yes, we can determine that off of the map.

Mr. Norton explained to the applicant that it is not necessary to pay an additional fee but it is necessary to submit new documents showing the dimensions and setback lines.

Mr. Norton apologized again to the applicant and explained that when the Building Department receives documents they need to make sure everything is included.

Motion by Bruno, second by Tyo that we table the variance request as submitted for the property at 29201 Wolf Road to the April 6, 2017 meeting.

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

Motion Carried 7-0
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Michael Novak
26108 Lake Road

C.O. 1163.05(F) (H) (3), Requests a variance for a 5 foot high aluminum picket fence along a ravine on east side of property of 90 feet fence.

Mr. Burke asked Mr. Novak that at one time the ravine was the entrance to the old Elmwood Beach Club and then in recent years was it acquired by you? Mr. Novak stated that it belongs to his neighbors. Mr. Burke asked if the lot line this is where the old sidewalk is and if it runs right down the middle. Mr. Novak stated no it is up the hill on the west slope. Mr. Burke asked that the majority of the ravine is your neighbor’s property? Mr. Novak stated yes.

Mr. Tyo asked if Mr. Novak had a design or photograph of the proposed fence.

Mr. Norton explained that the board needs to consider C.O. 1163.03(G) which refers to the rear yard variances which is only applied to lakeside properties. The ordinance says anything past 20 feet from the rear of the house must be 75% open. He explained that you can have a side yard four feet four inches height fence 20 feet from the back of the house but beyond that the requirement is four feet four inches plus 75% open.

Mr. Norton stated that a four feet four inch height fence has been determined adequate and traditionally we have turned down requests for more than four feet four inches. Mr. Norton asked if there is a reason they believe a 5 foot fence is needed.

Mr. Novak stated that the current fence is 5 feet and they are just following what is currently in place. Mr. Norton verified that the current fence is being proposed to be removed. The Novak’s stated yes. Mr. Norton asked if you are removing the fence than why can’t you replace the fence with a four feet four inch new picket fence that is 75% open? It was stated that a picket fence meant having spindles, not a solid fence.

Mr. Novak stated that they can do a four feet four inch fence and the reason they requested 5 is because that is the current height of their fence. Mr. Novak asked if there is a limits to the length of the fence. Mr. Norton stated there is no limit since you are not over code. He explained that in the side yard in the back of the house four feet four is allowed and you will not need a variance. Mr. Novak asked about the length of the fence. Mr. Norton said no, that is only if you are over four foot four. Mr. Miller clarified and stated that if the Novak’s were aggregable to four foot four than 90 feet is acceptable.

Mr. Norton explained to the Novak’s that they will not need any variance if they are aggregable to the four feet four. He stated that when their fence contractor submits for a fence permit they need to show that the fence is four feet four and the dimensions of the fence opening meets the 75%.

Mr. Norton explained to the Novak’s that the board can make a motion or they can withdraw their request and go with the four feet four fence. The Novak’s stated that they will be withdrawing their request.
Mr. Norton noted that the amount of the variance based on the square feet of the roof is quite minimal at only 4% and is it not a big request. He also stated that this request based on the architecture of homes has been granted consistently where it does not violate the spirit of the 35 foot ordinance.

Mr. Burke asked what the overall east west length of the structure is. Mr. Schill stated 98 feet and the length of the variance area in question is 20 feet.

Mr. Burke asked if the ratio of the requested variance area to the overall roof area is 4%. Mr. Schill stated yes.

Mr. Bruno asked is the purpose of the extended roof line is aesthetic? Mr. Schill stated yes and he believes the feature will be barely noticeable due to the setback from the street.

**Motion** by Burke, **second** Bruno by that the property at 24300 Lake Road be granted a variance from the height requirements of roof under C.O. section 1151.01. The variance request of 5 feet is per the drawings that were submitted with the application and the area and length of the variance is strictly for that 610 square foot area at the center main roof.

**Roll Call Vote:**

Yea – Bruno, Burke, Gess, Miler, Norton, Tyo, Young
Nay – None

**Motion Carried 7-0**

Mr. Norton welcomed two new members to the Board of Zoning Appeals, Mrs. Carolyn Young and Dan Gess.

Also Mr. Norton explained that Mayor Koomar has asked that each member of the Boards and Commissions to review the new code of conduct. Mr. Norton explained that a blank code of conduct will be in each members packet for the members to review and if they are comfortable to sign the letter. He asked that the members return the letter to Kristine at the next Board of Zoning Appeals meeting.

The meeting adjourned at 8:50 p.m.

Jack Norton, Chairman

Kristine Jones, Secretary