Minutes of a Meeting of
Board of Zoning Appeals
held May 25, 2017

Members Present: Bruno, Gess, Miller, Norton, Young (arrived at 8:04 p.m.), Tyo

Excused: Burke

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

Audience: James Yorks, Jeff Kaltenstein, Candra Reese, Todd Kalish, Daniel Margulies and Steven 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 Appeals held May 4, 2017. Motion by Bruno, second by Gess, to approve the minutes of the meeting held May 4, 2017.

Motion passed 5-0.

Todd Kalish
30200 Lake Road

C.O. 1153.02(1) Requests an 11 feet variance from the required 50 feet front setback for construction of a 3 car attached garage.

Mr. Norton advised that the board has had an opportunity to visit the site and review the application as well as research similar situations along Lake Road.

Mr. Norton explained that one thing we have discussed in the past is what might be a reasonable request and we do not want to create a new precedent. He explained that the 11 foot variance requests seems to fit with the past discussions. However, his only other concern was in regards to the neighbor and the preservation of the large tree. Mr. Norton explained that the City Arborist cannot make any statement on the tree because it is not City property.

Mr. Norton asked if there would be a level of protection regarding the tree. Mr. Margulies stated that we will entertain that. He explained that they have a large landscape bed in the front of the house and he is doing everything they can to preserve all of it. Mr. Norton explained that on the east side boundary you are already closer than you are allowed, that is grandfathered because it is in line with the house and you are not increasing. You are also requesting a variance for a front yard setback. Mr. Norton explained that pertaining to these 2 factors if the board chose to include something about the tree having a professional opinion that might not be
an unreasonable request. Mr. Margulies stated that they will look at that a little closer and he explained on that specific corner design revisions were made and on that side coming forward is 6-7 feet. We don’t hit the 11 foot mark. Away from that is the 11 foot mark.

Mr. Tyo stated that is great that you will entertain the idea of an arborist but what exactly do we want to do. Mr. Norton explained that the neighbor contacted the city and asked if the City Arborist could look at it. Bob Lyons explained that the city cannot make a determination of that. Mr. Norton explained that if the neighbor wishes to ask for a formal opinion at his expense for an arborist than it might be reasonable to include that in the acceptance of the variance.

Mr. Bruno asked what the address is of the neighbor to the east. Mr. Norton stated that it is Ken Paradise and the address is 30166 Lake Road. Mr. Bruno explained that if a provision is made he would like to state the address.

Mr. Norton read an email from Ken Paradise dated March 7, 2017 however Mr. Norton noted that was also when the request for the variance was 20.22 feet.

It says:

In addition, we did contact a certified arborist concerting the potential for damage to our large maple tree located near the proposed construction.

It was Mr. Bill Wilson's opinion that severe damage with the potential for death of our trees within five years of construction would be significant if the roots of our tree within the drip line would be severed due to the felling of trees on Mr. Kasich's property and the removing of their stumps.

Our house was planned around that large maple tree, and we would ask that extreme care would be mandated to ensure that any construction would not damage the root structure of our tree resulting in its untimely death.

Mr. Norton stated that they did have an opinion however and that opinion was based on the old request and the new request is significantly less at 11 feet. Mr. Miller asked when Mr. Margulies was developing the elevation of the addition did he consider the tree proximity. Mr. Margulies stated that he did not see the tree being an issue at all. Mr. Miller asked if there is a precedent where the portion of the tree that hangs over that adjacent property is not the owners. Mr. Tyo said it’s not the owner of the trees of the trunk it’s the responsibility of the property that it is hanging over. So they can trim it do anything they want to it. Mr. Miller asked in the condition of a drip line that drip line could be altered to benefit the addition so that it also is to the benefit of the tree. He said that those roots that might get covered by the concrete driveway aren’t necessarily effective. Mr. Miller said he does not believe that the addition is going to be that close to the drip line. Mr. Norton said we don’t have the exact proximity of that.
Mr. Miller asked that when you bring the addition forward will you be adding concrete that is not the footprint of the concrete that is there now. Mr. Margulies said “It’s not far off at all.” He said this is why we are able to preserve the landscape bed in front of the house. Mr. Miller explained that it seems that any of the roots that are in encroaching on the existing driveway are not going to grow any farther and it would seem that the relevance of an arborist for the adjacent property doesn’t really have any opinion on this. Mr. Norton explained where the garage itself is that 2 story structure will have to have a full foundation and that means to get that foundation they will need to dig 3 feet. Mr. Norton believes once you trench through, it is not the top 6 inches of surface roots, it’s a lot more. He explained to Mr. Kalish that since you are asking permission to do something that is outside the rules we need to respect the neighbor with this issue. He stated that Mr. Paradise has voiced several requests in terms of the allotment of the variance and the potential damage to the tree. He suggested that if the arborists comes out and based on the new setback request says there could be potential damage that is something to consider.

Mr. Margulies asked how do you work with that. Mr. Norton asked that if a tree is clearly on someone’s property and the branches are going over the line to the neighbor’s property the neighbor can’t come along and just cut off all those branches. Law Director Ebert stated that is true. Mr. Ebert discussed a similar issue on Cliff Drive. This discussion was discussed in length.

Mr. Gess agrees with Mr. Norton in that the request has been made to build in area that by ordinance shouldn’t be disturbed by a structure and asked if it is reasonable for the BZA to request certain conditions in consideration for deviating from normal ordinances and those requests could be special consideration for existing conditions. Mr. Ebert stated that you could put considerations on the variance request. Mr. Gess asked what is appropriate in this case.

Motion by Tyo, to grant the property at 30200 Lake Road per C.O.1153.02(1) an 11 foot variance from the required 50 foot front setback for construction of a 3 car attached garage. With the understanding that if the neighbor to the east 30166 Lake Road prefers to hire an arborist his or her opinions will be submitted to the Building and Legal Departments for comment.

Mr. Ebert asked what the comment is. He explained that when you grant a variance you grant a variance and that comment can’t change the variance.

Mr. Bruno suggested we say that the property owner at 30200 will give consideration to the professional opinion of a certified arborist at the expense of the property owner of 30166 Lake Road to attempt to preserve the integrity of the root structure of the tree on the east property line of 30200 Lake Road, as much as practical. Mr. Tyo then said that 30166 is not here. Mr. Bruno and Mr. Norton stated that they have submitted specific concerns in including the fact that they have consulted an arborist. Mr. Ebert explained that you could indicate to take in consideration the arborists opinion of how to minimize the potential disruption to the tree. He explained that it
is not going to prevent the construction from moving forward. Mr. Fillar asked if this part of the motion or do we have to start over. Mr. Norton stated that we have the motion up to the point of the tree subject.

Mr. Gess asked if it would be appropriate to say that the arborists recommendation should be considered however does not need to be considered such that the project cannot move forward.

Mr. Norton stated that if we wanted the arborist opinion to dictate the terms of construction than you would say that it is subject to an arborist’s opinion of how to mitigate the damage. If however we want to go on record of saying respect the neighbor’s position then you could leave it loose and the only affect that it would have is if the neighbor was really upset and wanted to pursue legally.

Mr. Fillar stated that we shouldn’t look at taking construction out of the project and we should stick to what we know and Mr. Margulies and Mr. Kalish have already said that they will keep in mind the consideration of the tree. Mr. Ebert stated that once you pass a variance a variance is granted.

Mr. Tyo asked the secretary to have the motion go up to the 3 car attached garage. Mr. Ebert stated that you need to add onto that. For example, however, we request that you take in consideration ways to protect the integrity of tree.

The Motion was amended to:

**Motion** by Tyo, **second** by Bruno, to grant the property at 30200 Lake Road per C.O.1153.02 (1) an 11 foot variance from the required 50 foot front setback for construction of a 3 car attached garage. However, we request that you take in consideration the integrity of the tree in question located at 30166 Lake Road.

**Roll Call Vote:** Yea – Bruno, Gess, Miller, Norton, Tyo
Nays- None

**Motion Carried 5-0**

Tammy Rae Morikis  
24300 Lake Road.  

C.O. 1153.03 Requests a side yard variance of 5 feet is requested for the installation of the west side entrance steps and a side yard variance (west side) of 12 ½ feet is requested for a portion of the garage. **Also** a variance request to install a generator in the front yard opposed to the required rear yard placement.

Mr. Norton advised that the board has had an opportunity to visit the site and review the application.
Mr. Norton asked the Building Department what is the lot width. Mr. Schill stated that the lot width is 140 feet. Mr. Norton continued and asked is this a request for variance to the 30% rule? Mr. Norton asked what is the east side. Mr. Schill stated the east is 10 feet. Mr. Norton said that meets the east side setback. Mr. Schill said 30% of the 42 feet so he has a 32 foot setback on the west side. Therefore, that is how he come to the 12 ½ foot corner of the garage and the 5 foot for the steps. Mr. Schill explained that the variance is not for a parallel wall it's only for an angle that he put on for an architectural feature.

Mr. Norton asked Mr. Fillar if steps are included in the side yard setback. Mr. Fillar said yes. Mr. Norton asked about the front yard setback. Mr. Fillar said yes if they are footed and connected to the property. If it was a set of wooden steps sitting against the house no, but these are part of the foundation.

Mr. Norton stated that this a very generous lot and asked how far is the front setback. Mr. Schill stated that they are a 160 feet to the front of the garage from the right of way.

Mr. Norton stated that we will be doing 2 separate motions, one is setbacks and the other is generator.

Mr. Schill presented a drawing that showed where the placement of the generator would go. He stated that the generator will be properly screened and you will not be able to see it from Lake Road.

Mr. Miller commented that the Generac Generator has a 61 DBA which is extremely quiet.

Mrs. Young arrived to the meeting at 8:04 p.m..

Motion by Bruno, second by Tyo to grant the property at 24300 Lake Road per C.O. 1153.03 three variances. The first a side yard variance of 5 feet requested for the installation of the west side entrance steps as submitted per the drawing. The second variance to grant the property at 24300 Lake Road a 12 ½ foot variance for a portion of the garage as submitted per the plan. The third variance we will like to grant to the property at 24300 Lake Road is for the placement of the generator in the front of the property as submitted by the drawings per the location as identified by Mr. Schill provided that there is planted and maintained or if necessary replaced yearlong screening of vegetation or screening.

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

Motion Carried 6-0

Mr. Ebert stated that the Generator should be voted on in two separate issues so there is 2 motions. Mr. Norton stated as to the second part of the request as to the generator a motion has been made is there a second?
Seconded by Tyo.

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

Motion Carried 6-0

Brian & Candra Reese
28405 Osborn Road

C.O. 1163.05(h)(3) Requests a variance to replace an existing 6 foot high fence around the property’s built-in swimming pool, the fence will be 400 feet instead of the 32 feet limit.

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

Mr. Norton asked Mrs. Reese if she knew the overall size of her lot. Mrs. Reese said she did not. Mr. Fillar stated that it is 73 x 235 and the perimeter is 616. Mr. Norton explained that when we are dealing with lengths of 6 foot privacy fence there are sections of the code that we must follow, one being that you cannot exceed more than 32 feet of 6 foot fence in one direction also the fence cannot exceed 10% of the perimeter of the property. Therefore we need to know the lot dimensions in order to determine whether the length that you are asking for exceeds not only the 32 feet but also the perimeter limitation. Therefore according to the 10% rule you are allowed 61 feet of privacy screening. He stated that we have two different issues to look at.

Mrs. Reese stated that the existing fence was on the property when they moved in over 23 years ago. Mrs. Reese stated that their main concern is safety and having the fence as a protective barrier to the pool. She explained that we are asking to replace the existing fence, nothing will be added we just want to update the fence since it is over 23 years old.

Mr. Norton stated in regards to the safety issue having a fence that is 6 foot 4 versus a 4 foot 4 fence a teenager could still climb over the fence. Also if someone is in the pool who is in trouble you would want to have more visibility into the pool.

Mr. Tyo stated that a variance stays with the property forever.

Mr. Miller asked how did we get to this point. At some point the 6 foot 4 fence potentially has been given a variance or would have it proceeded. Mr. Tyo explained that the Reese’s moved in to the house in 1994 and we don’t know if a variance was granted or not or did the previous owners just put the fence up on their own.

Mr. Norton explained that this has come up regularly. The pool ordinance says you can protect the pool with a fence that is at least 4 foot 4 and it can be up to a 6 foot fence. In the past people have interpreted that and said I can protect my pool and put a 6 foot high fence around it. Mr. Norton read an interoffice correspondence memo from July, 2002 from Doug Milburn who was
the building director at the time regarding swimming pool enclosures and fence requirements. It states “that the interpretation of this section shall be that 6 feet in height fencing shall be permitted in compliance with section 1163.05(h) which is the 32 foot rule.” Mr. Norton explained that the building director at the time and the Law Department determined that it wasn’t automatic that you could have 6 foot fence on your whole rear property just because you had an in ground pool. There have been some situations where adjustments have been made to 32 foot rule, for example, you have a 40 foot pool. He continued and explained that the other issue that came up was viability. Where they felt it was dangerous to have a site line blocked to a pool and wanted to protect the visibility from the house.

Mr. Norton stated that you are allowed to have 32 feet of a 6 foot fence in any direction. He explained that the function of the Board of Zoning and Appeals is not to legislate, that duty is for City Council and the BZA is permitted to make minimal changes to city ordinances. What is being asked of the board is to make a substantial change to the requirements of ordinance. Mr. Norton explained that the board might entertain an interpretation to the 32 foot rule but not to have the whole backyard have 400 feet of it.

Mr. Bruno stated that he would like to table this request and research the property to see if a variance was ever granted to the property. Mr. Ebert agreed. Mr. Norton stated we can place this on the June 1st meeting.

Mrs. Reese asked if we could speed up the process. She explained that she had no idea that this would be a problem to replace the existing fence. She asked what if we patch work the fence and replace the pieces and parts that need to be done. Mr. Bruno explained that June 1st is next Thursday. Mr. Miller explained that the outcome for you this evening could be no based on the fact we don’t know if there was ever a variance given and also by today’s ordinances. Mrs. Reese asked if their neighbors didn’t have any objections could that change the answer of no. Mr. Miller said no and explained that we could listen to them object the installation of a 6 foot fence but not if they are in favor.

Mr. Miller asked Mr. Ebert if there was an objection to the BZA’s determination of variance could the applicant appeal to City Council. Mr. Ebert stated that is only Planning Commission and if the BZA’s answer is not acceptable than it is Common Pleas Court. Mr. Ebert explained that the issue is if the fence was permitted initially when it was put up and if a variance was granted on the height of what was put up. Also, the issue of the fence itself whether it is an open or closed fence because of the concerns the board has with safety. These three things are what needs to be researched. Mrs. Reese stated that they are replacing the current fence with a shadow box fence.

Mr. Norton stated that we can do 2 things. We can make a motion to grant your request and if that is not in your favor you can come back with another request as long as it substantially different. Or we can table the request, do the research and have you come back June 1st. Mrs. Reese stated that she would want the research done to see if anything was granted to the property.
Mrs. Young asked if a permit was granted initially and then subsequently an ordinance was put in place that would that affect this. Mr. Norton stated in that case they would be grandfathered in and the variance lives with the property.

Mr. Fillar retrieved the property file for 28405 Osborn Road and stated that he does not see any information regarding a variance request or paperwork for a fence. He explained that there is documentation and a permit stating that the pool was installed in 1969. There is no fence permit but in 1998 they did do a decorative header on the garage and added on to the fence.

Mr. Ebert explained that Mr. Fillar has the file on the house and there is no evidence that a variance was granted.

Mr. Ebert explained that every Fence Company coming into the city knows that they need to establish a permit and that they need to apply with the Building Department for that permit. If they put up the wrong fence height we would go back and have them correct it. However, the installation of the fence predates when the Reese’s bought the house.

Mr. Bruno asked Mr. Norton if he prefers to table the request or consider it tonight. Mr. Ebert asked Mr. Fillar if there would be a copy in the file if a variance was granted to the property. Mr. Fillar said yes that is how they do it now and there is a permit for when the pool was put in, in 1969. Mr. Ebert stated he is assuming there was none.

Mr. Norton stated that is safe to assume and since we have the property file the fence never received a proper permit when it was installed. He explained that we can go ahead with your request to make a ruling and if it is turned down any other requests for a variance would need to be substantial. Or we can table the request to June 1st. Mr. Norton asked if we had any legal requirements with sending out notifications. It was discussed and noted that if any of the neighbors had a concern they would be here tonight since it was on the agenda for tonight’s meeting. Mrs. Reese stated she would like to table her request.

Mr. Norton stated that they will table the request from tonight to June 1st. Also Mr. Norton asked Mrs. Reese if she if could bring in any plans that showed any changes to her request.

Mr. Norton asked if there was a motion to table the request.

**Motion** by Miller, **second** by Bruno, to table the request to June 1, 2017.

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**All in favor say aye:**  
Ayes-6  
Nays-0  

**Motion Carried 6-0.**
Board of Zoning Appeals  
May 25, 2017

Jeff Kaltenstein  
23817 Cliff Drive  
C.O.1153.02(4) Requests a variance to expand current front porch 7 feet 8 inches from the front of the home.

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

Mr. Norton noted that the house to the west and east seem to be similar have similar situations and in the same position.

Mr. James Yorks the architect presented a print out of the homes from Google Maps. He explained that all the bungalows that were built over there were all Western Reserve Houses they actually have very similar floor plans but they are all decorated differently in the interior. The building is set back line originally established was 36 feet but they are all at 34 feet. The homes to the east and west all have 7 foot 8 inch sticking out in the front. He explained that ours is 4 foot and we want to make it nice. We are asking for the same control line as the neighbors and asking to be 7 foot 8 inches protection from the building to the front yard setback line. The actually variance if you want to be technical would be 9 foot 8 inches because everybody is 2 foot over the line with their house. Mr. York explained that we researched and the building setback line originally was 36 foot from the right-of-way all the houses are 34 feet. Mr. Kaltenstein agreed with what he received from the site survey.

Mr. Norton stated that the request needs to be 9 feet 8 inches and also, per plans and specs so it doesn’t change the drawings it just changes the mathematics based on the real setback.

Motion by Bruno, second by Tyo to grant the property at 23817 Cliff Drive per C.O.1153.02(4) a variance of 9 feet 8 inches to expand the current front porch from the front of the house per the plans submitted with the application and as specified in the plans.

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

Motion Carried 6-0

The meeting adjourned at 8:42 p.m.

Jack Norton, Chairman  
Kristine Jones, Secretary