Minutes of a Meeting of
Board of Zoning Appeals
held April 6, 2017

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

Excused: Tyo

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

Audience: Daniel Margulies, Mr. and Mrs. Todd Kalish, Ray Sankovich and Mr. and Mrs. Ken Paradise.

Chairman Norton called the meeting to order at 7:36 p.m.

Mr. Norton called for the approval of the minutes of the Board of Zoning and Appeals held March 16, 2017. **Motion** by Bruno, **second** by Burke, to approve the minutes of the meeting held March 16, 2017.

**Motion passed 6-0.**

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.

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

Mr. Norton verified with Mr. Margulies and Mr. Kalish that they received an email with the results from the research done on front yard setbacks. The list of homes with potential front yard setback variances was presented at the March 2, 2017 meeting and since then Mr. Norton reviewed the properties and presented the summary to the Board Members, Mr. Margulies, Todd Kalish, Law Director Ebert and Mayor Koomar. Mr. Margulies and Mr. Kalish stated yes that they received the information.

Mr. Norton explained that the summation of the summary is that “old” means that records or the site visit and view of the foundation indicate that any violation of the setback was grandfathered. He explained that the ordinance states that as long as the foundation was not moved forward you can remodel, therefore, the homes that appear to be newer homes are grandfathered based on that the house started on the foundation prior to the ordinance. Mr. Norton also explained that the variances that were granted were for 2 car garages not 3 and it seems that from the minutes a 2 car garage is more of a necessity then a 3 car garage. Mr. Norton explained to Mr. Margulies
and Mr. Kalish that the Board and the City have taken this request seriously and a great deal of effort was put in to visit each of the homes to try and make a fair determination.

Mr. Burke wanted to thank the Building Department and Kristine for the research that has been done and request that the email referenced from April 2, 2017 be made part of the record for the facts of tonight’s case. Mr. Norton agreed.

Mr. Margulies explained that at the last meeting we talked about precedent and percentages and there are 2 specific cases that he would like to review. Also, he asked what is the definition for precedent and when does it start. Mr. Margulies explained that from the research 23910 Lake Road received a 20 foot variance in 1963. Mr. Norton explained for the property of 23910 the home was allowed to be brought up to the same elevation as the home next door which is a Fordham road address. He explained that if the house on Lake was properly pushed back the 50 feet, the house would have been at the property line because, the second house on Fordham Road their backyard extended behind the Lake Road house and the house would have had no backyard. Therefore, they would have violated the rear yard setback, so it was a catch 22. He explained that the practical solution was to allow the Lake Road house that violated the 50 feet to come and be level with the house next door which is a Fordham Road address.

Mr. Norton stated the Board of Zoning Appeals cannot answer every question with an ordinance. He explained, that one of the things we can make judgements on is unusual circumstances where a lot is different than a normal lot. Mr. Norton stated that 23910 Lake Road was a unique lot, and yes, they were granted a 20 foot setback but the minutes referred to the fact that they allowed the Lake Road house to have a minimum 20 feet back yard as a buffer between them and the backyard of the second Fordham Road house. He explained that this seemed to be a reasonable solution to a problem that was very unique. Mr. Margulies asked is it the lot that would affect the variance or does it include what is already built there. Mr. Margulies explained that they cannot build back. Mr. Norton stated that you could build back you have a big backyard but, he understands why they would not want to build back since they would have to change the whole nature of the house. Mr. Norton explained that one of the concerns the board has is setting a precedent.

Mrs. Kalish explained that the primary reason for the addition is for the 3 car garage and we cannot go into the backyard with a 3 car garage. Mr. Burke stated that we understand this.

Mr. Norton referred to 29100 Lake Road where an 11 foot variance was granted for a 2 car garage and then a few years later the homeowner came back to the BZA and wanted an additional variance for a 3 car garage. Since there was already an 11 foot variance for a 2 car garage they denied an additional 10 foot variance to add a 3rd bay. Mr. Norton explained that the homeowner came back to the board and asked if they could build a bay across from the other 2 bays so he would not be encroaching anymore. The Board of Zoning explained to the homeowner that he did not need us because what he was doing is legal.
Mr. Margulies stated that 29100 Lake had the width, this property does not. Mr. Norton asked isn’t that the lots problem?

Mr. Norton explained that the 11 feet was a proportional and substantial variance, and 29100 Lake Road could not physically build back.

Mrs. Kalish explained “that we have looked at every possible design that we can do in the front and we just do not have the width and this is the only plan we could come up with to get the 3 car garage.” Mr. Norton explained that you have to ask yourselves the question is a 3 car garage part of your property rights. He explained that a 3 car garage and the extra space above the garage is desirable. However, if it goes against the ordinances of the city than that is when the BZA is charged with finding cause that your situation is different from the normal situation that they already passed a law about. Mr. Norton explained that council has the power to make an ordinance and they say only on certain circumstances the BZA can change and allow someone to do something that is not a part of that ordinance. Mr. Norton referred to the Fordham road house and in that situation they were granted a 20 foot variance however their property rights could have been violated if this was not granted because of the uniqueness of the lot.

Mr. Burke stated that in regards to precedent in which Mr. Margulies mentioned he explained that the Fordham Road house was granted a 20 foot variance 54 years ago and in the meantime the BZA has not looked at that 20 foot as a precedent. He stated, that over the years an important factor is that the board has not used the 20 foot setback to support similar requests.

Mr. Margulies questioned this and referred to Wolf Road, in which he believes is a lot less unique than Lake Road. He explained, recently at 24211 Wolf Road the Board of Zoning granted two different variances for front yard setbacks. The first, was March 17, 2016 when the BZA granted a front yard variance of 21.85 feet from a required 42 feet which is a 52% percent variance. Then he explained they over built that variance and on February 2, 2017 the board revised the variance to 25.75 feet which is 61%. He stated this is a new home with new construction with a lot more flexibility in the design. Mr. Margulies stated “maybe the house is too big for the lot and no one said anything there and it got built.”

Mr. Norton explained that there are two areas that are very different about that property. One, the house to the west the address is on Upland. Mr. Fillar stated no, that the two EFG next to each other are both new, they are both Wolf Road on the South side of the street 24211, 24219 or 17. Mr. Norton asked which house was existing that was granted the variance. Mr. Fillar stated, the second build that has the lot with a lot behind it. Mr. Norton stated that the second time they came back for a variance it was for 1.5 feet and it was discussed how exactly the professionals came up with the measurement. Mr. Margulies stated that he has read that information from the minutes but that is not the point. Mr. Norton explained that the bigger dimension went from 27 feet to 2 feet since it was on angle. He believes that there was an issue with the original footprint of the previous house because it was not grandfathered the way they designed it. He stated it
needed a variance because they were not putting the house on the original foundation they wanted to pull the foundation out and start over. Mr. Burke stated that they tore down the old cottage that was there. Mr. Fillar stated that cottage was on both of the lots and it was small and explained that they split that lot a year and half ago, before they built the corner house. Mr. Fillar said that they then came back and built the second house. Mr. Bruno explained that to the chairman’s point, the red sided cottage was on most of the footprint of the second build on an angle. Mr. Norton stated that there was a discussion because they could have used the footprint of the small cottage that was closer to Wolf Road. He also explained that another issue is that on this particular part of Wolf Road the tree lawn is about 15 feet wide and normally the tree long along Wolf Road is a few feet wide. The property line and the sidewalk line is pushed way back from the street. Mr. Norton explained that a lot of the variance that was granted was offset by the fact Wolf Road along there has a huge tree lawn. Mr. Margulies stated that the corner of that garage of new home is about 8 feet from the sidewalk and if you are travelling west along Wolf Road it sticks out. He also explained that the bottom line is that it started out as a 21.85 variance and it grew to a 25.75. Mr. Norton explained that along certain sections of Wolf the houses vary as getting close to the street and one of the main reasons is that so many of them are side street addresses. He explained that if your address is on a side street the lot side that faces Wolf Road is considered a side yard and a side yard on those lots can be as little as 6 feet, even a full 70 foot wide lot is only 10 feet. Mr. Norton explained that it’s the side yard versus a front yard. Mr. Norton continued and said if you are dealing with a house here that has a 10 foot setback and then the next house if the address is on Wolf has they have a 50 foot set back therefore, there becomes a lot of variation. He stated that you do not have that variation on Lake Road until you get down into the eastern section of Lake. Then there are the little side streets that come off of Lake Road and then you get a house that has a side street address next to a Lake Road address.

Mr. Kalish stated that you granted a variance and then they exceeded that variance. He continued and stated “if I am an uninterested party here I can build first and then ask for forgiveness later? I don’t understand this.” Mr. Norton stated that there have been circumstances where people had to unbuild. Mr. Kalish stated but not in this instance. Mr. Norton stated the job was frozen by the Building and Law Department, and when it came back to the BZA it seemed to be a justified error on the part of the professionals and was a very tiny error. Mr. Margulies stated that second variance does not matter it’s only the first variance that we are talking about.

Mr. Norton asked is your argument that there were not circumstances along Wolf Road that were different from you circumstances, is that your argument? Mr. Margulies stated its just circumstances, its circumstances on every lot. Mr. Norton asked then why doesn’t the law get changed that says the setback on Lake Road will be something different.

Mr. Burke asked Mr. Margulies if there were any other address besides the previous address and now Wolf Road that the board should consider before making a decision. Mr. Margulies stated
no. Mrs. Kalish brought up a home that is being built on Lake Road however she did not have the address. She explained that it is being built by Schill on a dual lot and that the garage is very close to the street and they have plenty of room to build. Mr. Burke asked Mr. Fillar if he knew which house Mrs. Kalish was describing. Mr. Fillar stated the one on the south side of Lake Road is 50 foot 7 inches. Mr. Norton stated that sometimes they appear to be less than the 50 feet. Mrs. Kalish explained this home is on the north side and they have two lots and plenty of space. Mr. Norton stated that in order to build new construction you need to have a building permit and the building permit includes a land survey and what the setbacks are. Therefore, if the Building Department saw that it met the requirements than they issued the building permit. Mr. Fillar asked Mrs. Kalish if the house she is describing is a beige stumbaed stone with a medal shingled roof. She stated yes. Mr. Fillar stated that home is 52 feet back and they do not own the lot next to them that is a separate lot, which will be for sale after the home is complete.

Mr. Margulies stated that in anticipation of the board not looking to favorably upon this variance request he has done some redesign. He asked if the board needs to vote against the original request first and then reapply? Mr. Margulies stated that his redesign reduces the variance request by 5 feet. Mr. Norton, stated we need to see architectural drawings before we consider. Mr. Burke stated we need to see the footprint and then we need to study the drawings. Mr. Norton said you would not need to do a re-application because we have not turned down the original request. Mr. Burke stated the request could be tabled and then you will have the option of submitting a second revised application. Mr. Fillar explained that if the request is tabled Mr. Margulies would just need to submit the new drawings/information to the Building Department.

Mr. Norton noted that they have previously discussed that the 11 feet was what the board seemed to be comfortable with, and the 11 feet would allow for a larger 2 car garage. He explained that it’s your right to submit whatever request you want. Mrs. Kalish stated that we have a 2 car garage.

Mr. Burke referenced a comment that Mrs. Kalish made earlier in the meeting regarding the need to have a 3 car garage and this is the main reason for the remodel. Mr. Burke continued and explained that over the years there have been many requests “of that would be nice to have,” however, the property might not have sufficient square footage or it does not meets the required various setbacks in order to grant the request. Mr. Burke explained that not every addition can fit on every lot and Mr. Norton’s comment regarding the 11 feet is a sufficient fact.

Mr. Bruno asked Mr. Norton if he could read the 3 elements of the code for consideration for a variance.

1. A practical difficulty or unnecessary hardship and is peculiar to the premises.
2. A refusal will deprive the owner of property rights.
3. Granting the appeal will not be contrary to the purpose and intent of the zoning code.
Mr. Bruno explained that those are the three things we consider when it comes to the circumstances of the lot and the rights that you have with your lot and the structures on it.

Mr. Burke explained that the peculiar to the premises means that the property itself as opposed to the desired use by the owner of the property. He asked in regards to this property is it unusual or unique that it would meet 1 of the 3 requirements.

Mr. Margulies asked is it the land or is part of the structure that is already on the land. He stated they did not build the structure they bought the structure. Mr. Burke stated that when they bought the home they understood what the structure was when it was purchased. Mr. Burke explained that a uniqueness to a property is if a property backed up to the railroad tracks and the homeowner wanted to put up more than 32 feet of a 6 foot fence. This would be an example where a variance would be granted.

**Motion** by Burke, **second** by Bruno, that the application of the property at 30200 Lake Road be tabled till the next regular scheduled meeting, **AMENDED** by Mr. Burke to reschedule for the May 4, 2017 meeting.

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

**Motion Carried 6-0**

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 the board has had an opportunity to visit the site and review the application.

Mr. Norton explained that along this section of Wolf Road you have very wide tree lawn. The extra wide tree lawns help to mitigate that front set back need. He explained that the property line in this case is beyond the sidewalk line.

Mr. Burke explained that the request of variance is 16 feet at the north east corner diminishing to 9 feet at the north west corner.

Mr. Norton asked if there was discussion, and stated that it was interesting that we have front yard setback request.

Mr. Bruno stated that this property is on an angled part of Wolf Road similar, to the one referenced earlier in the previous application. He explained that one aspect is the site line and when you drive or walk from the east to the west on Wolf Road and if you look at the two properties to the west the houses are at an angle. He continued and explained that the 16 feet
variance on the north east corner of the garage is in line with the front of the home to the houses
to the west. He explained that is a great example of uniqueness and peculiarity of the positioning
of the structure.

Mr. Burke stated in addition to what Mr. Bruno mentioned that the requested variance is the 16
feet only at that point of the north east corner and it diminishes from there in accordance with
that general site line.

Mr. Bruno also stated that in regards to the chairman's comments regarding the tree lawns he
wanted to make it clear that one day Wolf Road could be widened and those tree lawns could
diminish. He explained that that this may never occur but wanted it stated.

Mrs. Young explained that because of the peculiarity of the property line being 8 feet from the
sidewalk, in a more standard situation it would not be a 16 foot variance it would be more of an 8
foot variance if you took it to the sidewalk. Mr. Fillar agreed that visually since the property is
at an angle it will appear to be 8 feet and the other side the variance turns into 1 foot, visually.

Mr. Gess asked Mr. Sankovich that on one of the original documents that was submitted it shows
an alternate design with the garage on the west side of the house, and asked is that not a viable
option that would limit the need for a variance. Mr. Sankovich explained that is the cost. He
explained that they would have to tear up the driveway and move it completely to the other side,
and then they would need to rearrange windows for the living room and bedroom. Mr.
Sankovich said that is also the nicer side of the property and he is trying to reuse the same
foundation that is there.

Mrs. Young stated that there could be a side entry where the driveway would not move and it
would stay where it is and you could pull in that way. Mr. Sankovich stated that he was told
from the concrete contractor that it would all have to be torn out and redone.

**Motion** by Burke, **second** by Bruno that the property located at 29201 Wolf Road be granted a
variance from the front setback requirements to code section 1153 the specifics of the variance
being a variance of 16 feet at the north east corner of the proposed garage diminishing as per the
drawings to a variance of 9 feet at the northwest corner of the proposed garage. The garage is to
be built at the location and according to the dimension as shown in the application.

**Roll Call Vote:**  
Yea's - Bruno, Burke, Gess, Miller, Norton, Young
Nay's- None

**Motion Carried 6-0**

The meeting adjourned at 8:28 p.m.

Jack Norton, Chairman

Kristine Jones, Secretary
KRISTINE,
PLEASE SEND THIS REPORT TO MR. KALISH AND MR. MARGULIES.


30816 OLD
30300 ASKED FOR 25’ FOR DETACHED GARAGE, GRANTED 10’
29644 9’ GRANTED FOR 2 CAR ATTACHED GARAGE.
29622 OLD
29612 OLD
29560 OLD
29560 OLD
29434 27’ DENIED, 5’ GRANTED
29336 OLD.
29100 11’ GRANTED FOR TWO CAR ATTACHED
29014 OLD
26052 OLD
26040 OLD
24838 OLD
23910 NEXT TO LOTS ON FORDAM PARKWAY SO IT WOULD HAVE NO REAR YARD BUT WAS A BUILDABLE LOT. IN LINE WITH HOUSE TO THE EAST FACING FORDAM. A 20’ VARIENCE WAS GRANTED IN 1963. LOT TO THE WEST HAS A LONG DRIVE WITH ONE LOT BEHIND ANOTHER.
23834 OLD
23804 OLD
23748 OLD

THIS RESEARCH MAY HELP IN YOUR DISCUSSION RE THIS VARIENCE REQUEST.

JACK NORTON