

Minutes of a Meeting of  
BOARD OF ZONING APPEALS  
Held January 16, 2014

Members Present: Bruno, Burke, Campbell, Norton, Taylor, Tyo

Absent: Dostal

Also Present: Mr. John Cheatham, SAFEbuilt, Law Director Ebert

Audience: Martin Reuben, C. Erdelac, Ed Smith, John Faile

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

A copy of City of Bay Village Codified Ordinance 1127.01 was posted and Mr. Norton advised that the code states that the Board shall consist of seven electors of the City not holding other municipal office or appointment. If all members are not present at a meeting, the applicant may request a delay so that all members may be present. An applicant may delay a decision up to two times.

**Motion** by Tyo, second by Bruno, to approve the minutes of the meeting held December 5, 2013, with correction on Page 5 in regard to the reference of the Codified Ordinance as Section 361.16, which is corrected to read **Section 351.16** as amended. **Motion passed 7-0.**

**Nancy Riley**  
**588 Red Oak Lane**

**Special Permit for Arbor**  
**C.O. 1149**

**This matter has been withdrawn by the applicant.** The representative of the applicant, Mr. Greg Hebble of Elyria Fence Company, notified the Secretary on January 15, 2014 that the resident Nancy Riley has decided not to have an arbor at her residence.

**Bridget O'Donnell**  
**23724 Cliff Drive**

**C.O. 351.16 requesting variance to enlarge  
driveway more than 40% of the width of  
the lot (only 50 ft. wide area)  
(Note- Variance Denied Dec. 5, 2013)**

Mr. Norton addressed Mrs. O'Donnell and stated that he is not quite sure of what the request is for this evening. A letter received by Mr. John R. Cheatham, Building Department, Bay Village, on January 7, 2014 has been distributed to the Board of Zoning Appeals, from Timothy J. O'Donnell. The summary of the letter, described by Mr. Norton, is that the proposed change of the width of the apron is not going to work so Mr. O'Donnell will contact legal counsel.

Mr. Norton stated that the last request of the O'Donnell's was to leave the property as it is, and that was denied by the Board of Zoning Appeals. There has not been a new request.

Mrs. O'Donnell submitted a photograph of the previous driveway on the property, stating that it was just as large as the one they have now. She stated that there are all kinds of other driveways all over Lake Road. She was advised by her counsel that he will measure every single driveway in Bay Village on the lake, and throughout Bay and then bring that to the attention of the Board of Zoning Appeals. Now, he says it is harassment. Mrs. O'Donnell stated that she is represented by Reminger and Reminger Attorneys.

Mr. Tyo stated that because the footprint was larger doesn't necessarily it means that it is legal as a matter of placement. Mrs. O'Donnell stated that she already got the approval to do what she was supposed to do, so this is where it stands as well. She stated that they had approval to do it. The apron they did not change. The city owns the apron.

Law Director Ebert stated that the right-of-way is the apron and the tree lawn which the city does not allow concrete because if utilities went through for installation the utility company would rip the concrete up and they would not restore concrete. They would restore as a tree lawn. The city does have a right-of-way in that area.

Mrs. O'Donnell stated that the apron they did not change at all. The apron is exactly the way it was. He put the apron back the same, exact way, and the city owns that apron.

Mr. Campbell stated that it was wrong before and the Board is trying to make it right.

Mr. Tyo stated that we know what the O'Donnell's originally asked for, and we know it was approved by the Building Department. Mr. Campbell stated that Mrs. O'Donnell was told in time that it was wrong. Mr. Tyo stated that the question he has is "What exactly are you asking for tonight?" "Are you asking for what you originally asked for back in early December?"

Mrs. O'Donnell stated that if they are changing the apron because the city owns the apron, they can fix the apron anyway they want. She stated, "You can do whatever you want with your apron. They wanted us to tear up the apron. The driveway we don't have to talk about, I thought."

Mr. Norton informed Mrs. O'Donnell that her legal counsel has whatever opinion he has, and if it comes to that it is between the court, the city's counsel and O'Donnell's counsel. Mr. Norton continued, stating "As it stands, you've been turned down for letting it stay the way it is. Today's status is it is not legal to have that. The BZA said no. If nothing else changes from that point then the city would proceed with whatever the normal procedure is to demand that you change that, and then your option is to have your lawyers file suit and say they have a right not to change it. That ends up in court if nothing else happens. Then the court decides whether the fact

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that it was that way before and never had a variance for it, it was illegal all along, and if the court says yes, but it was there, you can keep it, fine.” Mr. Norton stated that he doubts that the court would say that. “If the court says, no, your plans showed it was not included and even though there was some mix up with the Building Department and so on, you had an opportunity to stop it.”

Mrs. O’Donnell stated “Well, no, it was all paid for, how do you stop something that you paid for?”

Mr. Norton answered, “You could have stopped the pour.”

Mrs. O’Donnell asked “Then who pays for all the cement?”

Mr. Norton explained, “If you would have stopped the pour and not poured the extra part, the cement company would have had a right to tell you that you have to pay for that special aggregate that you ordered especially for you. And, you also have to pay us for the excavation and framing in preparation for the concrete. That would have cost you, \$1,000, \$2,000, \$5,000, whatever the number is. You would have then had a case that you would have gone to Bay Village and said, ‘Look, you guys, screwed up. You said it was ok and then at the last minute you didn’t. And, in the meantime I ordered the aggregate and we had the contractor get it all framed and ready. And, so that cost us \$5,000. You owe us \$5,000.’”

Mr. Norton continued, “Chances are, that either the city voluntarily, or the court would have told them ‘Give her \$5,000 because it wasn’t her fault that she ordered too much of the aggregate.’ That’s how it would have been resolved. But, the choice was to go ahead and let them pour the whole thing after having been told that that is not permitted under the ordinance. Granted at the last minute, and granted they did damage to you by first not finding the ordinance and saying it’s o.k. Granted they did damage to you. But, you decided to ignore that.”

Mr. Ebert interjected that originally maybe that was so, but the concrete was not poured until the next morning after they were told to cease and desist. It wasn’t poured that afternoon which the Building Department was told it was going to be poured; it’s on its way. It didn’t happen until the next morning. The concrete could have been stopped. Whether there are damages or not is still left to be determined, but at that point in time the homeowner was on notice that it was a violation of Ord. 351.16 without a variance. Mr. Cheatham had indicated that happened. The concrete, as Mr. Ebert was told, was not poured until the next morning. There was ample time to call and say we have a problem, do not deliver the concrete. Whether or not the concrete was already on the truck, whether the concrete was a special mix, Mr. Ebert stated he does not know the circumstances of that. But as far as the notice factor, the notice was given in ample time to stop the pour.

Mr. Ebert stated the concrete was not on the truck when the notice was given. You don't keep concrete overnight on a truck.

Mrs. O'Donnell stated that the aggregate, \$16,000, was on the truck.

Mr. Norton stated that Mrs. O'Donnell may have a case in that regard. And that's why the thought was possibly consideration would be given to a solution that would acknowledge the fact that this didn't go smoothly. Mr. Norton presented a sketch that he prepared to try to establish the facts, and secondly, possibilities that the Board might consider to eliminate the possibility of the extra portion of the driveway to the east being a parking spot. He stated, "It has been established that unless there is some permanent barrier, it can be architectural, it can be decorative, it can be good looking, the Board doesn't have any way to do anything about that. That was what discussed at the last meeting. Mr. Ebert mentioned that it be a permanent barrier and that the curb cut be reduced to the same face as the garage. The garage is about 20 feet of doors, about 26 feet overall. If that pavement is allowed for parking, which, besides the garage, four cars can park there, two deep, and two wide. And, a permanent barrier is made so the cars can't park to the east of that portion, then maybe the Board can consider that. That really isn't in front of us today unless you say it is."

Mr. Ebert stated that the minutes reflect the Board turned that variance down in December. There is no formal application. There was discussion of possible alternatives that maybe the Board would take under advisement, but there is no formal application. That original application is null and void because it has been turned down. There is a violation as it stands right now with the city's ordinance. There has not been an appeal of that in the time period of the statute of limitations which is 30 days from the last Board of Appeals meeting.

Mrs. O'Donnell addressed Mr. Ebert and stated that Mr. Ebert told her she had to get the picture together and bring it here.

Mr. Ebert stated the time to appeal to the Common Pleas Court has run out. This Board could entertain a new application for a new proposal, provided it is substantially different than the original one. The discussion last time was a possible fence. But that has not been formalized

Mr. Norton stated that there are several possibilities at this point. One is, we do nothing, and the procedure starts that the city formally notifies the O'Donnells that it is in violation. And, that process starts its way and ends up in court. A second possibility is that Mrs. O'Donnell consider this proposal, and see if the Board would even go along with it. Or, you can show these possibilities to your attorney and get his advice as to whether you should apply for a variance along these lines. Mr. Norton stated, "It is in your best interest. Unless you can say we really

want 8-car parking, if you do, the city definitely has a problem. If you say, no, we really don't have all that paving to just park on it, we don't have all that apron so we can get in and park 8 cars, if that's not really your goal, then, I think trying to get the Board to agree to something that is a compromise, if the drive is 26' wide, you would still have 52% of the front yard paved. Based on that you would still need the Board to get agree with giving you more than 40%. My guess might be that might be comfortable with the Board, again not speaking for the Board." And, install a decorative barrier."

Mrs. O'Donnell asked what sort of decorative barrier. Mr. Norton stated that if he were the architect for the O'Donnells he would probably suggest nice, concrete bollards, maybe even bollards that have a light in part of the top. He stated, "I wouldn't put steel posts in that looks like a parking lot at Sears, but there is a variety. You could do big pieces of stone; just so you can't drive through there. Or leave the pavement the way it is; it's a beautiful pavement. Or, you could do some landscaping; you could do a few raised beds or whatever you want. The city's objection is that they don't want more than 40% of a front yard driveway. Driveway means you can park on it. The second thing they say is the tree lawn has to be such that you can't drive on it, and the pavement has to be five feet from the fire hydrant. It is only two-and-one-half feet away from the hydrant. If you were comfortable with saying you really don't want to park on it, the city could say then you have to make it that way that you can't park on it. Because unless it's made that way the city assumes you're going to park on it. I think it would be o.k., and legal, that you could make a request to the Board – they haven't had it formally – that is along this line and along with what was said about permanent barriers, and the Board can give it consideration."

Mr. Burke asked if Mr. Norton was suggesting a formal application this evening.

Mr. Ebert suggested that Mrs. O'Donnell's architect or builder make an application with a deviation of what Mr. Norton is talking about and see if the Board would consider it. Mr. Ebert addressed Mrs. O'Donnell, stating, "Right now, the way it stands, you are in violation. You are in violation of C.O. 351.16. The city can tomorrow order you to remove the concrete. There was a lot of discussion at the last Board meeting about alternative ways that you may be able to make an application. There has been none formally filed with the Board as we speak tonight."

Mrs. O'Donnell stated that no one told her she had to submit a formal application. Mr. Cheatham stated that he told Mrs. O'Donnell and her husband on the phone that they had to submit something for tonight's hearing. Mr. O'Donnell sent a letter. Mr. Ebert stated it is not an application; it's not a drawing; it's not something the Board can consider. He stated, "You need to have your builder, or your architect, or your engineer, or whoever, make a drawing and formal application for you to sign to be submitted to the Board of Zoning Appeals for consideration. That needs to be done before the Board can take any further action." Mr. Ebert gave Mrs.

O'Donnell a copy of Codified Ordinance 351.16, of which the O'Donnells would need to ask for a variance. He stated, "The variance asked for on December 5, 2013 was turned down. There has to be substantial change in the application concerning what is there, otherwise the city will enforce the provisions that there is a violation. The problem is right now, you can't have an apron that's the width of the yard. That's a violation. The city won't allow that. The tree lawn is concrete; the city won't allow that."

Mrs. O'Donnell stated that the city allows all these other driveways. Mr. Ebert stated that every house is a case-by-case basis where there is a variance application to the Board of Zoning Appeals.

Mr. Norton stated the fact that a driveway existed prior to the ordinance doesn't mean that they had a variance for it, or they may have been grandfathered because maybe it was put in prior to the ordinance. The ordinance is pretty old. When you build new, you have to build according to the current codes. The fact that this existed before you tore the house down, your lawyer will tell you that is not going to be a precedent you can rely on.

Mr. Norton reiterated that a formal application to the Board of Zoning Appeals is necessary. Mr. Burke noted that this application should be on the city's forms and with drawings that are sufficient for the Board to determine what exactly is being requested and so the neighbors can also see what is being requested. Mr. Ebert added that the neighbors are given an opportunity to object.

Mr. Norton noted that there is nothing to vote on this evening, and the matter is closed for further discussion this evening.

Mr. John Faile addressed the Board regarding his potential purchase of a piece of property in Bay Village. Mr. Faile stated that there is a piece of property on Elmwood Road that is next to the old inter-urban rail line. The house has been on the market for two years. At one time it was purchased for approximately \$160,000. Mr. Faile thinks the home was purchased because the buyers thought they could build on the lot next door to it. Presently it is on the market for under \$100,000 and is still not selling. Mr. Faile explained that his brother is a builder, and he is an architect and thought this might be an opportunity to buy the home and sub-divide the lot. The problem is that there is a restriction of 7500 square feet for a buildable lot. If they cannot get the lot split they are not going to buy. Mr. Cheatham, Chief Building Official confirmed that the lots in Residence District No. 3 must be 7500 square feet, since the latest revision of the ordinance went into effect. Prior to that time, the lots were grandfathered in. Mr. Faile noted that most of the lots on Kenilworth and Elmwood Roads are 5700 square feet in size. The subdivision of these lots would create two lots at approximately 5900 to 6100 square feet. Mr. Cheatham noted that if the lot did not have a home on it and was already plotted it would be a buildable lot. Mr.

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Cheatham added that he is not permitted to allow a lot split that doesn't meet the current regulations. Mr. Burke suggested getting an option on the property or signing a contract subject to getting all the necessary approvals needed. Mr. Burke noted that all the Board of Zoning Appeals can operate on is formal applications by the owners of the property. The home is in foreclosure and is most probably owned by the bank.

There being no further business to come before the Board, the meeting adjourned at 8:16 p.m.

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Jack Norton, Chairman

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Joan T. Kemper, Secretary