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

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

Excused: Mr. Dostal

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


Chairman Norton called the meeting to order at 7:45 p.m.

Mr. Norton called for the approval of the minutes of the Board of Zoning and Appeals held January 5, 2017. Motion by Bruno, second by Burke, to approve the minutes of the meeting held November 17, 2016.

Motion passed 5-0.

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 announced that the agenda item for Todd Kalish, 30200 Lake Rd (continued from 1/5/17) C.O 1153.02(1) will be postponed until March 2, 2017.

Robert Drake
602 Elmwood

C.O. 1176.08 Requests a variance to use temporary lights on a temporary ice rink.

Mr. Norton explained that the Board of Zoning Appeals consists of 7 members by ordinance and by ordinance you need to have the approval of the majority of the 7 members. Tonight there are 5 members present in which that changes the odds because you have to have 4 positive votes to grant a variance or special permit.

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

Mr. Burke questioned if the request by Mr. Drake should not be a request for a variance but a request to an appeal of an order of the building department. Mr. Burke asked Mr. Grassi if this was a written or a verbal cease and desist order.
Mr. Drake stated that there was no cease and desist but more of a request of good faith not to have the lights on. He stated that he received a note on his door from the city and Mr. Drake said he called back and someone from the city came to his property. They discussed the situation and they said it would be better if he did not use the lights.

Mr. Tyo asked Mr. Drake what time he normally turns the lights on and off. Mr. Drake explained they are usually on the ice until about 8 pm on the weekdays and on Friday and Saturday nights until about 10 or 11 p.m.

Mr. Burke asked Chairman Norton and the applicant if we should consider this request from Mr. Drake to be an appeal form the building department even though it was more of request and not an order.

Mr. Norton stated “we are also charged with hearing a complaint from a neighbor, but we don’t have a formal complaint from a neighbor because it sounds like there was a phone call to the city and then the city commented to you. So it does not sound like a formality.”

Mr. Ebert stated this is more of a complaint. He explained when Westerly School put in new lights in their parking lot, there were concerns from neighbors who suffered from the lights shining into their homes. Mr. Ebert explained this is a unique situation because usually lighting issues and concerns happen in commercial areas not residential.

Mr. Miller asked if there was a way to adapt a shield to the utilitech fixtures to cut off the lighting and reflection. Mr. Drake explained that the light is shining straight down onto white ice and does not believe a shield would help in this situation.

Mr. Burke asked if there were any neighbors present concerning the agenda item for Robert Drake. There were no neighbors present.

Mr. Bruno stated that he did not have an issue regarding the lights, however he explained there should be a time restriction when the lights can be used.

The board members discussed in length the time restrictions in which the lights can be operated.

Motion by Burke, second by Bruno in response due to a complaint that was lodged with the city and the request by the applicant for a response and clarification that the applicant Robert Drake at 602 Elmwood Road be permitted to use the currently installed lighting of the ice rink in the backyard provided that from Sunday through Thursday night the lights will be turned off by 9 p.m. and shall not be on later than 10 p.m. on Friday and Saturday nights. Mr. Bruno asked for an amendment that all the lights be up to code. Also that the applicant will comply with all applicable building codes including electrical and all other ordinances regarding noise.

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

Motion Carried 5-0
Edward Pavicic
24211 Wolf Road

C.O. 1153.02 Variance request for a front-yard setback. (Constructing home beyond variance limits granted by BZA March 17, 2016 – stop work order issued.)

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

Mr. Burke asked Mr. Pavicic how is there a difference from what the Board of Zoning Appeals granted on March 17, 2016 and what you are requesting tonight. Mr. Burke stated that it is his understanding the request has something to do with how the property line was measured.

Mr. Kevin Hoffman from Polaris Engineering and Surveying explained that when Mr. Pavicic met with the board back on March 17, 2016 he believes there was some confusion and miscommunication as to the interpretation of the variance. Mr. Hoffman stated in a letter he submitted to the Board of Zoning Appeals. The minutes he received from SAFEbuilt, “indicate a maximum variance of between 5.38’ and 21.85’ the 42’ front yard based on a conceptual “box” that was submitted.” Furthermore, Mr. Hoffman explained “upon final design of the house plans by my client’s architect, the dimensions were fine-tuned and a wraparound porch were added on the left side of the home to provide more character. This caused the house to be shifted slightly to the east which pushed the NE corner of the house closer to the Wolf Road right away; however the front of the house was still consistent with the front of the former house so we believed we were in compliance.”

Mr. Burke referred to the letter that was submitted and asked if the wraparound porch had not been added would the request of the variance that was requested and granted on March 17, 2016 have been sufficient. Mr. Burke asked if the wraparound porch extended north towards Wolf Road and if the house remained the same even with the front porch. Mr. Hoffman stated that corner remained the same and the house remained the same with the front porch.

Mr. Tyo asked if the house is still on the original footprint of the house or if it is extended.

Mr. Hoffman stated the original footprint was based on a “conceptual box.” Mr. Hoffman then stated the front setback is consistent with the previous home and will remain the same across the lots.

Mr. Burke stated that the drawing that was submitted with the original application from the applicant shows the 42 foot front setback line drawn in, with a request by the applicant for 5.38 feet on the north west corner and 21.85 feet on the north east side which was granted. Mr. Burked stated “I am still puzzled how you came up with the need of something additional.”

Mr. Pavicic answered and stated that in the original application that he submitted back in March before he even owned the lot he did not do a lot square. The previous owners who Mr. Pavicic
bought the lot from did. He explained that if he would have kept the house and do a remodel he would not have needed a variance. He proceeded and stated that when he spoke with John Cheatham it was discovered that it would make more sense to demolish and start fresh. When he submitted the initial application he stated that he wanted to maintain the existing setback.

Mr. Burke stated that Mr. Pavicic has referenced that his initial request was based on “conceptual drawings”. However, Mr. Burke explained that the drawing that was submitted seems to be more than conceptual. The variance requests that were asked were down to the hundredth of a foot and that seems more than “conceptual”.

Mr. Pavicic explained that he understands, however, when he is looking to buy a new lot he uses one of his existing homes and places it on the lot to see if it would fit. He stated that he always looks at the worst case scenario. He stated that he believes the map translated back to the board was a concept.

Mr. Burke asked if the lines run perpendicular to the drawn setback line or do they run at an angle from the street.

Mr. Norton asked if Mr. Hoffman was also the surveyor. Mr. Hoffman explained that he is the engineer but Polaris, the company he works for, also does the surveying.

Mr. Norton, stated that there needs to be an accepted engineering practice in establishing setback dimension. In this case is it going from a line that is parallel to the side yard line or whether if it is perpendicular to the point of the curve. He stated that he believes the engineering firm set this up for failure because they established a number; the number was asked and granted. Now it turns out that it is not, it is not up to the City Building Department to figure out what these dimensions are. There is a method of off set that is easily determined for the builder to place his tape measure on and say this is the point; same with the building department they are not going to resurvey this. If the engineering firm is not using acceptable engineering practices to establish a form of track then you are setting your client up for failure, and you are putting the city in an awkward position.

Mr. Hoffman stated that he believes that the lot is where it should be.

Mr. Norton disagreed because now there is a third set of dimensions because they was a notation of an 18 foot plus or minus and another of 25.5 feet plus or minus. He stated this is not an engineering expression.

Mr. Norton explained that this is a relativity minor request since the numbers are fairly small. An additional 1.12 feet and 2.15 feet per side. However, this situation has come to the board because of, perhaps, poor engineering.
Mr. Pavicic stated that up to 4-5 years ago when the city had a full time city engineer we used to have staking inspections. He explained he used to physically meet the engineer at the site and go over the staked lines.

Mr. Burke asked Chairman Norton for the additional numbers that are needed. Mr. Norton explained that on the one side there is either a 1.12 foot difference or 1.55 foot. The request is for the 1.55 foot. The other side there is 3.90 feet request verses a little over 2 foot probable request. Mr. Norton, believes the only way since the cement is already in the ground is say “as built.”

Mr. Pavicic stated that he has no problem with this, and before final grading he will produce the exact numbers. Mr. Norton wanted to make sure that the numbers that are in the files are accurate.

Mr. Ebert stated that in the future when you submit a request to the Board of Zoning Appeals it is what to be built by, not “conceptual”. Mr. Ebert stated that he was not involved yet but believes this came up after BZA granted the variance and Mr. Grassi and Bramhall were looking at the final where it was poured and both said that’s not what BZA granted. Once it was discovered that the foundation did not match what was granted from BZA, Mr. Ebert stated this is when he became involved. Mr. Ebert stated that once he was notified a stop work order was issued. He explained that the applicant needed to go back to BZA, because once BZA grants a setback that is what it is, there is no deviation. Mr. Ebert explained that Bramhall is contacted by the city to conduct the surveys in which they look at the original plans and what was done, and if it is different then Jeff Grassi is contacted. Mr. Ebert asked Mr. Grassi if this is correct and Mr. Grassi agreed.

Mr. Burke had a few questions for Mr. Ebert. One, since a variance runs with the land, he explained he would feel more comfortable in keeping the foundation as built but not to exceed specific numbers. Second, Mr. Burke asked if this can be moved as an amendment to the previous request that was granted. Mr. Ebert agreed.

Mr. Norton asked if anyone from the audience had any comments.

Mr. Eric Tuck-Macalla, a resident, asked if there is currently a stop work order on the property, and who issued the permit. Mr. Norton explained that a stop work order was issued from the Building Department after speaking with Law Director Ebert. Mr. Tuck-Macalla asked if there is currently a house on the property. Mr. Norton answered there is only a foundation.

Mr. Tuck-Macalla asked if there is a set of plans. Mr. Ebert said there are plans, however what was poured is different than what was granted by the BZA, therefore this is what prompted the stop work order.

Mr. Tuck-Macalla stated he is trying to understand how we are in this situation.
Mr. Hoffman stated there was a plan approved by the Building Department but it didn’t match what BZA had because that was based on “a conceptual” plan.

Mr. Tuck-Macalla asked if plans were submitted to the Building Department and if those plans were approved by the Building Department.

Mr. Ebert explained that the house is not built yet, however the foundation was poured and what was poured does not match the variance that was granted for Mr. Pavicic on March 17, 2016.

Mr. Tuck-Macalla asked if the applicant poured the foundation according to the plans that were submitted to the Building Department or did they pour the foundation according to what the BZA granted.

Mr. Norton stated I don’t think the Building Department had a full set of plans, they had a site plan.

Mr. Tuck-Macalla asked “then how can they approve without a full set of plans.”

Mr. Norton stated as an example, if you come to the BZA and say here is the footprint that I would like to build a house on, and I also want to be allowed to build 2 feet closer to my sideyard. He explained this in when BZA will determine from the footprint if a variance can be granted.

Mr. Tuck-Macalla stated that “you are going to let them build a house on that piece of paper”. Mr. Norton, stated they cannot build a house. This is establishing a footprint.

Mr. Ebert explained that when you are building a house on a curve it was discussed how is it measured. Do you measure perpendicular, or do you take the radius and you take the average? The foundation was determined that if you take the measurement differently it doesn’t match the variance that was granted by the Board of Zoning Appeals on March 17, 2016. Since the variance did not match what was granted a stop work order was issued immediately for the property until they came back to BZA to clarify the issue.

Mr. Norton stated that you can establish the dimension in more than one way.

Mr. Tuck-Macalla asked if the foundation was installed per the set of plans that had your signature on that are down in the Building Department.

Mr. Norton explained that the foundation was built according to one engineering interpretation. Therefore, there is a difference in how you are establishing that line, because the house is not perpendicular to the front line and also the front line which is the reference point is a curve. Mr. Norton continued and explained that architectural firms have more than one interpretation. The City followed procedure and issued a stop work in order to establish the correct dimensions, and
there is more than one way to interpret the dimensions. Mr. Norton stated the applicant is off by 1.55 feet from the plans.

A resident stated that he believes Mr. Tuck-Macalla issues to be problematic, and states that there have been no complaints by the adjacent neighbors he does not understand Mr. Tuck-Macalla’s issues. Mr. Tuck-Macalla stated his issue is procedure and what you bring before the Building Department and what is approved by the city. He proceeded and stated “because they represent us as citizens that’s a contract that the builder makes with us. All we are trying to do is make sure they follow that contract, and if they cannot then they need to get a variance.”

Mr. Ebert explained than when it was discovered that the calculations were done incorrectly by the City Engineer that is when a stop work order was issued. He stated that Mr. Pavicic is here tonight because the poured foundation does not meet what the BZA granted him and in order to proceed with his building he needs BZA to approve his request, or if BZA does not approve than he cannot continue. He stated that when it was discovered the city did everything properly and issued a stop work order. There has been a lot of discussion with how the dimensions are calculated either perpendicular or by taking the radius. The only way Mr. Pavicic can continue building is if the BZA grants him a variance for the additional feet.

Mr. Bruno stated that tonight we will be voting on a change from the original variance to a new variance that we will amend based on consulting with multiple engineering firms and building departments on how an engineering calculation can be interpreted. Mr. Norton and Mr. Tyo agreed.

Mr. Tuck-Macalla stated that to him it is very simple, you have a drawing and then you build it to that drawing, and then if you don’t, you don’t.

Mr. Norton questioned then what is the purpose of the BZA? The purpose of the BZA is to take situations where the law may state something but the BZA can interpret that law just a little to make a situation practical, because the law cannot account for every situation.

Lydia DeGeorge, resident, had concerns where the applicants used words such as “conceptual” plans. Mr. Norton agreed and stated that is very poor terminology because if something says 5.38 feet that is not conceptual, that is precise. He explained that what he believes Mr. Hoffman was meaning is they tried to establish a footprint early on in the process to see if they could fit a house on that piece of land, and from that stand point it can be referred to as “conceptual.” However, from a mathematical standpoint it cannot be viewed as “conceptual.”

Ms. DeGeorge referenced the minutes from March 17, 2016 and it was stated that the board was aware of the peculiarity of the lot. So why is it almost a year later that the foundation gets poured and we have a history with applicant and no one is going to make him dig up the foundation; it’s a pattern. Mr. Norton stated that we are discussing the item of 24211 Wolf
Road, not past items and history. He explained that this is a different situation because this has to do with an engineering and architectural problem.

Ms. DeGeorge stated that the board should be looking at the whole picture and history with the applicant. Mr. Norton stated that the response from the City, the BZA, the Law Department and the Building Department has been very professional and aggressive. Ms. DeGeorge, stated but things have not changed. Mr. Norton stated the BZA took 3 houses and reduced them to 2, and it took a grading issue. He stated we are not overlooking anything.

**Motion** by Burke, **second** by Tyo regarding the property at 24211 Wolf Road, a previous motion granting a variance was referred to as the property immediately west of 24201 Wolf Road that the property be granted a variance from the front setback requirements of C.O. 1153.02. This is an amendment to the previous motion from March 17, 2016 so that the total variance to the front yard setback be granted be the point at which the foundation is currently placed but not to exceed 6.93 feet variance at the northwest corner of the structure to a variance not to exceed 25.75 feet at the northeast corner of the structure. The intent is where the structure is now placed, but not to exceed those numbers on the variance.

**Roll Call Vote:** Yeas – Bruno, Burke, Norton, Tyo
Nays– Miller

**Motion Carried 4-1**

The meeting adjourned at 8:41 p.m.

Jack Norton, Chairman

Kristine Jones, Secretary