

Meeting Minutes of
Board of Zoning Appeals
Held March 5, 2020

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

Excused:

Also Present: Eric Tuck-Macalla (Building Director), Mark Barbour (Law Director),
Councilwoman DeGeorge

Audience: Gary Ebert, David and Danielle DiBenedetto, Wayne and Carol Orlando,
John Faile, Jenny Hartzell and Amy Coursen

**Full recording of the meeting is permanently available on the City of Bay Village website under City Government/Board of Zoning Appeals.*

Mr. Norton called the meeting to order at 7:32 p.m.

Mr. Norton explained that any comments or questions are welcome. He asked that when they do, please state your name and address loud enough so that it is recorded. We like to have that as part of the minutes as to who is making comments.

Motion by Mr. Bruno, **second** by Mr. Burke to approve the minutes of the meeting held February 20, 2020 as prepared and distributed.

Motion passed 7-0.

David DiBenedetto
PP# 201-11-016
Bradley and Huntington Woods Parkway

The applicant is requesting two variances per C.O. 1155.01(lot size) and 1153.02 (front set-back) to build upon a lot which is 12, 495 sq. ft. where a 14, 700 sq. ft. lot is required, 15% variance and requesting to encroach upon the front yard set-back 32', 36% variance.

Mr. Norton discussed the second agenda item and explained that the Board has had an opportunity visit the site and review the application.

Mr. DiBenedetto explained that they had Jim Razor, engineer, come out to the property and they brought the house up to make it even with the house to the south on Bradley Road. Both homes are 48' so they match. Jim Razor had the square footage of the lot at 12,430 sq. ft. When that is subtracted from the total square feet, it is 319.28 sq. ft. which is the variance request amount. He gave the Board an updated rendering from what was originally submitted to the Building Department and the Board.

Mr. Barbour asked that Mr. DiBenedetto give the Building Director the updated rendering.

Mr. Tuck-Macalla pointed out to the Board the line that indicated the right of way line. He explained that the neighboring house has nothing to do with the applicant's setback because it was built back before there were setback regulations.

Mr. Norton asked for clarification as to where the right of way and center lines were located per the rendering.

Mr. Tuck-Macalla pointed them out and explained that it is 147' from the rear lot line to the right of way line and is what he based his measurement on. The measurement was also based on the lot size of 147' by 85' which is 495'. It is required to have 14,700 sq. ft.

Mr. Norton clarified the neighboring house was grandfathered in.

Mr. Gess clarified that the dark line was the right of way.

Mr. Norton explained that on the new map it looked like the lot line.

Mr. Tuck-Macalla explained that the center line on the street has no bearing on the setback. The setback is taken from the right of way line.

Mr. Norton explained that that would void out what Mr. DiBenedetto was trying to accomplish.

Mr. DiBenedetto explained that they were trying to have more of a backyard and make it even with the house next door. They wanted to have more room for his daughter's two kids to play.

Mr. Norton explained that it seems like the County record says that the front of this property is on Parkway and not on Bradley.

Mr. Ebert explained that the applicant's lot originally had the Huntington Woods Homeowners Association sign located on it when it was built. The reason it wasn't built on at that time was because there was the main sewer located in the middle of the lot and the utility poles were used to feed the whole Huntington Woods Home Owners Association.

Mr. DiBenedetto said that the wires are above for 85% and not going into the development.

Mr. Ebert explained that originally the lot was on Huntington Woods but it was anticipated to be frontage on Bradley. Huntington Woods Parkway has an island located there and there is no way you could pull in and pull out.

Mr. Miller asked where the easements are actually located. They can talk about all the boundaries but if they have to know where the sewer and easements are placed.

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Mr. DiBenedetto explained that he will work on the electric after getting the variances. He is working with CEI to have the wires removed and rerouted as to not have them on the cut through across the lot.

Mr. Miller explained that he is not sure the Board can grant a variance on this without having the easements at least in process for a place.

Mr. Norton said that the other issue goes back to what street it is fronted on. It seems like it is understood that it is on Bradley, but the County says it is on Huntington Woods.

Mr. Ebert said it would not have frontage on Huntington Woods based on the placement of the island at the entrance of Huntington Woods. It would have to have frontage on Bradley Road. There would have to be an agreement with First Energy to be able to have the power lines removed/abandoned from that easement.

Mr. DiBenedetto explained that there was a storm sewer that went through Arlington Circle and as the houses were developed, it has been cut out and blocked. They are basically at the very end of it because there is one storm drain that they off set from the foundation. As long as it is not in the basement, they would off set it on the outside like they did through Arlington.

Mr. Ebert said that whatever the Board would do, the frontage would have to be on Bradley Road.

Mr. Norton stated that with a Bradley address, would have almost no setback. The old proposal had more front setback.

Mr. DiBenedetto agreed and said that that proposal did not have a good enough backyard. They were trying to make it even with the house next door to it so they would have more of a backyard.

Mr. Burke asked what the square footage was of the proposed house.

Mr. DiBenedetto said he did not have that information with him and he would have to get it from his wife.

Mr. Burke asked who the record of ownership was.

Mr. DiBenedetto explained that he has control over it from his dad. He is the executor. It would be under DiBenedetto.

Mr. Burke asked if he planned to use it for his family.

Mr. DiBenedetto explained that the plan was for his daughter to use it. (Danielle DiBenedetto)

Mr. Burke stated that the reason he asked is because he noticed there was a for sale sign on the lot.

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Mr. DiBenedetto explained that that is his brother, who is a realtor, and is trying to pick up business with the sign.

Ms. Young said that the Board has had similar cases in the past where the front of the house should be on one road but the address was on the side. Looking at the house, it looks like the front of the house is on a corner lot, different than what the address really is. She asked if it changed things if the Board assumed the Huntington Woods Parkway frontage.

Mr. Tyo said it was only 21'.

Mr. DiBenedetto agreed with Mr. Ebert in having the frontage off of Bradley because when you pull out of the driveway, you run right into the island.

Ms. Young agreed and mentioned that they would not have to have the driveway on that side.

Ms. Young asked where the driveway is now.

Mr. DiBenedetto said it was off of Bradley Road.

Mr. Burke asked if he was aware that when the lot was split, it was not a buildable lot at that point.

Mr. DiBenedetto said he was aware of that in the past.

Mr. Burke asked if anything has changed.

Mr. DiBenedetto said no, they are just trying to build a house for his daughter and children and is why he is here.

Mr. Burke explained that one of his concerns is over building a lot. The minimum is 14,700 sq. ft. and this is 12,430 sq. ft.

Mr. DiBenedetto asked if the lot size was the 14,700 sq. ft.

Mr. Tuck-Macalla said that 14,700 sq. ft. is what you need.

Mr. Burke mentioned that it is a substantial variance and the lot would need a smaller home.

Ms. Young asked for clarification on the rendering. (A piece of property that is owned by Wayne and Carol Orlando.)

Mr. DiBenedetto explained that his dad built the neighbor's house before the Orlando's owned it and they sold them the extra 50' to the original owner many years ago.

Mr. Norton explained that based on Mr. Tuck-Macalla's interpretation and the newest rendering, the new proposal has almost no setback. If they go back to the original rendering given to the

Building Department and looking at the 30% rule, they would need 25.5' and they have 31'. They would make the 30% rule. The rear yard setback originally proposed is almost in line with the allowed Code setback.

Mr. Tuck-Macalla showed the Board the setback and right of way on the rendering. The numbers on the drawing do not accurately represent what is there. He explained that you have 147' and you subtract the backyard and the house and it gives you the setback of around 30'. At this point they are asking for an 18' variance if you are looking at it from a Bradley Road address. To be in compliance with the backyard code, the house would have to be 18' smaller.

Ms. Young asked the neighbors, Wayne and Carol Orlando, were friendly. She asked what was on the one portion of land. She thought they could possibly transfer half of it to the applicant.

Mr. Orlando said that it was a sunken patio.

Mr. Norton said that based on the lot size he would have problem with the amount of setback that they need from the Code. It would indicate that they are trying to get too much house on too little lot.

Mr. DiBenedetto said the Orlando's were not interested in selling any of their lot so that is why they are doing it this way.

Mr. Norton suggested tabling the item to give it more thought. It sounded like they were not comfortable making it a smaller house. He explained that once it is voted on, there needs to be enough of a change in order for it to go before the Board again.

Mr. Gess said granting a variance is a bit premature until they have a memo from the power company stating that they agree to do it.

Mr. DiBenedetto said he would come back and bring that information.

Mr. Gess said that moving utilities is not the most economical thing in the world.

Mr. DiBenedetto said that most of the lines that are cutting across are mostly dead. He planned to have them off set and to add another pole or whatever is necessary in order to build the house.

Mr. Gess said that at minimum it would be beneficial to have that and an updated drawing that properly reflects the right of way, the variance requests and that the setbacks be accurately depicted. It is too soon to vote yea or nay on the variance request.

Mr. Norton agreed and said it would be hard to put together any kind of motion because they would be making some assumptions and the Board does not have enough information formally presented to them.

Mr. Tyo asked what the 36.5' setback was on the newest rendering.

Mr. DiBenedetto said that he believed it was a patio.

Mr. Gess said that he thought it was the reference of the setback.

Mr. DiBenedetto said they moved the house forward so they would have more of a backyard for the kids. He said he will bring in the plan and bring in the information from CEI.

Mr. Gess asked about the sewers.

Mr. DiBenedetto said there is one storm drain there and what they have done all the way down Arlington is that they have offset it so it is outside the foundation. They have never had a problem.

Mr. Miller said that the neighboring home to the south very dated/historical but it may not always live there forever. He suggested moving the building back to the 50' mark so they are not setting a precedent. You would only be using 100 sq. ft. to the backyard if it is brought back. Currently it showed that it is a 48' setback.

Mr. Tuck-Macalla pointed out that the setback is not from the center line. The setback is from the right of way line.

Mr. Bruno said he had less of an issue on the front setback.

Mr. Ebert explained that the development entrance sign used to be on the lot and it was not buildable. But things have changed.

Mr. Gess asked if there were any deed restrictions on house sizes.

Mr. Ebert said there are house size restrictions and setbacks on some but not all. Some of the new lots were sold off and they did not have the same restrictions. He presented the bi-laws for Huntington Woods Parkway.

Mr. Gess asked if the current proposal needed to reflect any of the deed restrictions if they exist.

Mr. Ebert stated that they were not included at that time. He mentioned he would get a copy to the Clerk. There are association forms and dues. There are some lots that are not obliged to deed restrictions because they were sold after to another developer.

Mr. Norton asked if the association owned any other property that they maintain.

Mr. Ebert said no. The entrance is City property. The association pays to maintain it there as well as on Arlington Circle and Kensington Circle. It used to be part of the association and then it was deeded back after the development was completed.

Mr. Norton said in one sense it would be nice to have something on there or a small house because it has gotten a little scruffy. He stated that they be aiming too high with the current

design as far as how much house the lot can take. He suggested they needed to pause and investigate the issues on the utilities and the engineering. They need clearer drawings from JR on the setbacks to the right of way and so on.

Mr. Burke agreed and said that hopefully the house also has a smaller design.

Ms. Young wanted to make clear on the record that there was an objection from the neighbors.

Mr. Norton clarified that the objection was in regard to the neighbor to the south of the property.

Another neighbor, who was asked to come to speak on the neighbor's behalf because they were out of town and could not make the meeting also had objection to the proposed application.

Mr. Ebert added that the association restrictions prevent chickens, pigeons and fowl livestock.

Mr. Norton asked if there was a motion to table this application to get further information presented to the Board.

Motion by Mr. Burke, **second** by Mr. Bruno that the application be tabled for further investigation by the applicant and thoughtful design changes be submitted to the Board of Zoning Appeals.

Roll Call Vote:

Yeas – Norton, Burke, Young, Tyo, Miller, Gess, Bruno

Nays-

Motion Passed-7-0

Mr. Norton explained that once further information has been submitted to the Building Department, it will be put on a future agenda.

John Faile
352 Plymouth Drive

The applicant is requesting a variance per C.O. 1153.03-(minimum side yards) to encroach upon the required 10' set-back.

Mr. Norton discussed the third agenda item and explained that the Board has had an opportunity visit the site and review the application.

Mr. Miller asked for clarification about the south east corner of the property line's dimensions to the property line.

Mr. Faile explained that there was 11' to the corner of the property line and 15' on the north side. That is what was shown on the survey.

Mr. Burke clarified that the application request was for 2'6" and that per the drawing it looked like he would only need 2'2".

Mr. Faile explained that he had a survey from when a fence was installed about 5 years ago. He explained that he drew it as best as he could using the County map and the survey. Based on what he measured, they would need 2'2" but because they want to make sure there are no future problems, he felt adding the extra 4" would be beneficial in making sure they were safe. He also explained that due to the angle of the property line with alignment of the house, once they get 5' off and where that corner encroaches on the property line when moving further west they are going to be in compliance. The addition is also far back at the back of the house. It does not encroach in any of the neighbors' views.

Ms. Young stated that the closest point of contact to the neighbor's house is the garage.

Mr. Tyo pointed out that the hardship is having a pie shaped lot.

Mr. Bruno asked how many feet there was from the neighbor to the garage.

Mr. Faile was not sure and did not have that information.

Mr. Miller clarified that the addition sits back around 80'.

Mr. Norton asked if there was any one else from the audience that was in attendance for this application that wanted to weigh in.

Mr. Norton asked if there was further discussion.

Motion by Mr. Bruno, **second** by Mr. Tyo that the application at 352 Plymouth Drive be granted a variance from the requirements C.O. 1153.03 to encroach upon the required 10' setback and granting a variance of 2'6" as per the drawings prepared and submitted.

Roll Call Vote:

Yeas – Norton, Burke, Gess, Young, Tyo, Miller, Bruno

Nays-

Motion Passed-7-0

Kevin Hoffman Polaris Engineering
On behalf of John Hudec and Bridget Ryan
23416 Lake Road

The applicant is requesting a variance per C.O. 1308.08-(post-construction water quality control plan) to encroach upon the riparian set-back as identified on the riparian set-back map.

Mr. Norton discussed the fourth agenda item and explained that the Board has had an opportunity visit the site and review the application.

Mr. Hoffman, from Polaris Engineering Survey, on behalf of John Hudec and Bridget Ryann introduced himself. He explained that they plan to do a major alteration of the existing home. He shared a map showing the home and the riparian setback. They plan to preserve the foundation

walls along the north side. The only new building portion that would be within the riparian setback limits is the front end. Part of the reason for the variance request is to have a first floor master. He explained there is no riparian per the map up front but by keeping the home where the existing home is, they are basically able to preserve the woods in the front. They also wanted to keep the home in line with the neighboring properties. In their opinion, it is the best place for the home.

Mr. Burke asked that Mr. Hoffman to bring the map a little closer to the Board and to have him point out the riparian setback.

Ms. Young asked Mr. Hoffman for clarification as to where on the map the existing house and the proposed house is.

He explained that the existing home is the purple on the map and the proposed home is in the shaded area. He explained that that on the east and north side is where the new portion of the home will be. He shared photographs as well.

Mr. Norton asked if Mr. Hoffman was aware of when the riparian map was issued.

Mr. Tuck-Macalla stated that it was from 2014.

Mr. Norton asked if there was one prior to that and if the accuracy of the map has been questioned.

Mr. Norton explained that it is used as a reference with determination as to its accuracy made at the time of application. In other words, he asked if there is any reason to think that since somebody drew up a map that this has changed and it should either be greater or less. To him, it is as if they are talking about a ditch.

Mr. Tuck-Macalla explained that that ditch drains the whole section of homes that are across the street. The map is used as a reference but when reading the ordinance, the ordinance states it is 25' from the edge of the water course. So that if the water course should change, that setback would change with it. The map shows which water courses have riparian setbacks in them. That riparian setback is based on the amount of drainage that the water course has whether it is one square mile or 5 square miles.

Mr. Norton clarified that the 25' would stay as the constant and if the width of the stream grew, the line would come back further and further.

Mr. Tuck-Macalla explained that both of the neighboring houses are within the riparian setback. The neighbor would be in the same position as the current applicant. If they wanted to change anything on his house, he would have to come before the Board of Zoning Appeals.

Mr. Norton clarified that as of right now, the applicant's foundation is grandfathered in because it was done in 2004 versus 2014.

Mr. Tuck-Macalla explained that the way the ordinance is read, you cannot do anything to the exterior of the house if a portion of it is within the setback. In the ordinance it states that you can remodel the inside but no changes on the exterior can be made and that is why a variance is required. Even if they wanted to tear the wall down and move it out of the setback, they would still need a variance. You literally cannot demolish a house, take down a tree, cut the grass, etc. That is the idea behind the variance and riparian zone. They are limited when it comes to the riparian setback.

Mr. Gess asked how much of the house was getting torn down.

Mr. Hoffman explained that it is basically being torn down.

Mr. Gess clarified that basically the house is going to be completely torn down and rebuilt.

Mr. Hoffman agreed and stated that it is pretty major. He explained that the foundation is staying.

Mr. Gess stated that if that is the case, it lends itself to a whole lot of creativity at their disposal to work around the setback. There seems to be plenty of opportunities that would be available instead of granting the variance into perpetuity.

Mr. Bruno asked if they planned to extend the current foundation or if they are filling it and digging around.

Mr. Hoffman explained that a wall will be maintained. On the west side of the property it doesn't meet the required setbacks as it is today and they will be changing those to have 10' side yard setbacks.

Ms. Young stated that she thought the existing house was getting remodeled.

Mr. Tuck-Macalla explained that when he called the builder to inform them of the setback issues, it was first presented to him as a new home per the application. At that point it became a remodel and parts of the walls were going to remain. As far as the Building Department is concerned, it is a new home.

Mr. Bruno asked where they stand from an EPA standpoint.

Mr. Tuck-Macalla explained that the FEMA map supersedes that and that is not within any of the floodplain areas.

Mr. Bruno asked what the measurement was to that area.

Mr. Norton said that it needed to be 25' but it is probably around 15'-18'.

Mr. Bruno wanted the measurement to be on record.

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Mr. Norton explained that one of the things that they refer to in the guidelines is that the BZA can make exceptions but it is a little tighter guidelines than they normally face.

Mr. Barbour added that there are specific guidelines to the riparian setback variances that are different than a use variance.

Mr. Norton stated that Mr. Tuck-Macalla had given the Board a beautiful tutorial on what the differences were.

Mr. Barbour explained that if the Board were to grant the variance they would need to state their basis more explicitly than they might otherwise because there are other riparian setback lots that will be coming before the Board.

Mr. Norton stated that the poured patio off of the north east corner be permeable. They are concerned about the contamination and water flow. It does come back to having a clean slate. Architecturally the applicant can get what they want in the house and respect all or most of the riparian setback. Saving a bit here and a bit there is almost forcing yourself into a partial footprint and trying to build around that. That footprint may not be a good condition anyway.

Mr. Burke discussed the ordinance and it calling for the service director to complete a report on the riparian, water quality, erosion, etc. He asked if that has been made yet.

Mr. Tuck-Macalla stated that it has not been completed.

Mr. Burke stated that he has serious concerns looking at the statute. There are a lot more particularities to it than what typically comes before the Board.

Mr. Norton explained that they do not want you to build a house that is going to be threatened. He does not feel that in this case the house would be threatened. The other aspect is that they do not want you to build a structure that will threaten the water course. Nobody is going to get flooded by putting a house in this position but the question is, what is the impact? Some of the trees are about ready to go because they have been undercut. If this is draining a pretty good piece of land, that is only going to get deeper and deeper and wider and wider. If you can design this so they are not impeding the future, it is much wiser.

Mr. Hoffman explained that they were entertained to fill the ditch, to pipe it and get an Army Corp permit. He asked if that was permitted and stated that it would basically take it out of the riparian setback.

Mr. Norton explained that they have put some in a culvert which is probably easier on the land. That is really a deep ravine even though it is small.

Mr. Tuck-Macalla explained that they could always entertain that and bring those designs and that engineering to the Building Department to look at. He would take a look and share it with the City engineer and the service department.

Mr. Tyo asked if that culvert was used to drain other properties.

Mr. Tuck-Macalla stated yes and that would be what Chagrin Valley and the service director would look at. If it would go that way, it would also have to get a permit from the Army Corp of Engineers. If that were the case, it would come out of the riparian zone and they would not need to go through this body. It is not a guarantee but it is one way of doing it.

Mr. Norton explained that it comes out of a culvert until you get to the north side of Lake Road. You may not even have to have the part up to the bridge put in the culvert. The question is if the existing culvert under the drive is the right size to continue it while also looking out into the future.

Mr. Norton explained that the Board could vote on the request tonight or it could be tabled or withdrawn.

Mr. Tyo said that tabling it would just bring it back again.

Mr. Norton asked if anyone else was present that was involved in this issue.

Amy Coursen from the City's Green Team had a question. She asked how much they were increasing the total square footage of the existing footprint.

Mr. Hoffman said he did not have that number off the top of his head. He showed her the map.

Ms. Coursen asked if it was about a 30% increase. She explained that as you increase the square footage of the home itself, you are also decreasing all the permeable surface in that riparian zone or all floodplain that leads to the riparian setback. You are increasing the pressure on that riparian setback because the storm water has nowhere to go. Riparian zones have a really specific ecological function besides just determining where the foundation is. It would be the request of the Green Team that they do not build within the riparian zone and that the area is restored with natural vegetation so that it can function as it is supposed to function.

Mr. Hoffman pointed out that it is pretty deep in that location.

Ms. Coursen agreed and said that makes it even more important to not disturb it. If vegetation was restored in that area it could act more as the floodplain and gather sediment right before it gets to Lake Erie. Due to the location being so close to Lake Erie makes it particularly important. This is the last stop for all of the sediment to get caught before it goes into the Lake. That sediment fuels algae blooms, habit loss, dead zones, etc. that are contributing to problems in our Great Lakes. From a scientific point of view, the best thing they can do is stay out of it and restore the entire area with natural vegetation.

Mr. Gess explained that the proposed house was aligned to respect the 10' setback on the west property line but based on the sketch, the existing house was closer than that setback was. Along the lines of a blank slate, it seems like a constraint on the east side might cause more understanding than encroaching on the west side due to the riparian setback.

Mr. Hoffman agreed and stated that it would be a compromise that they could maybe be able to work out.

Mr. Norton explained that that may help with the whole approach of redesigning it.

Ms. DeGeorge stated for the record. In terms of the ordinance, it is her understanding that they are written to meet the standards established by the North East Ohio Storm Weather Taskforce and that they satisfy the EPA requirements already. Being tasked with considering the spirit and intent of the Code and that it be upheld, the riparian setbacks are objective and fact based. They are not like the fence ordinance. This is a black and white issue and it is about the procurement and management of the environment. Once it is given away it is not something that is easily take back.

Mr. Hoffman stated that they will be withdrawing their application.

Mr. Norton stated that the minutes should reflect that the application has been withdrawn from the agenda.

Mr. Norton asked if there was any other business before the Board.

Mr. Barbour updated the Board that the Farina matter involving the air conditioner have filed an appeal with the Cuyahoga County Court of Common Pleas contesting the Board's decision. Briefs will be filed by each side and then the Court renders a decision. The briefs are not due until approximately April 10, 2020 for the Farina's and the Law Department's response due April 25, 2020. When there is a result Mr. Barbour will advise the Board.

Mr. Tuck-Macalla discussed a previous 4' fence application. The applicant had given the Board a list of other homes with 4' fences on Lake Road. Only one of the addresses did not have a variance and the rest of them did.

Mr. Norton clarified that they were all homes along Lake Road with the larger lots.

Mr. Tuck-Macalla explained that when the houses were remodeled and built new they were built with pillars, wrought iron and gates.

Mr. Miller confirmed that the eastern fence that was proposed was on his property line.

Mr. Burke explained that he was hoping that a neighbor to the west would put up a similar fence on the west lot line.

Mr. Barbour said he missed that meeting but thought he heard there was some discussion about the Fair Housing Act applying to this situation.

Mr. Miller explained that the Board's reflection was on a group home property on Bradley Road.

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Mr. Barbour stated that that was a Fair Housing Act because of the disability of the resident.

Mr. Norton complimented Mr. Tuck-Macalla on his well-prepared research and guidelines.

There being no further business to discuss the meeting adjourned at 8:32 p.m.

Jack Norton

Kateri Vincent, Secretary