

Special Meeting Minutes of  
Board of Zoning Appeals  
Held May 14, 2020

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

Excused: Tyo

Also Present: Eric Tuck-Macalla (Building Director)

Audience: Basma Ricaunte, Richard Klesta

*\*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 7:31 p.m.

North Depot, Ltd.  
On behalf of Basma Ricaunte  
31676 Lake Road  
**Tabled May 7, 2020**

The applicant is requesting a variance per C.O. 351.16 (restricting paving of the front yard to 40%) a (50% variance).

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

Mr. Norton explained that the agenda stated that it is a 50% variance request but it is actually a 100% variance. The variance being a 40% coverage in the front yard and the requested is for 80%. Mr. Norton asked if there discussion.

Mr. Burke asked if there was discussion by the homeowner or the representative.

Mr. Klesta, general contractor, explained that he was at the property and roughly lined up the western end of the driveway so the Board could have a better idea of what was requested.

Mr. Norton explained that he was at the property that day and the questioned why it was felt they had to have a throat to the drive that was so wide. (roughly 33')

Mr. Klesta stated that he believed it was closer to 27'. The access was already there because it was the old Lake Road and they utilized what was already there to give a wider access.

Mr. Norton discussed on their application that it was listed as one of the reasons to treat this different from all the other lots in the City, is to access Lake Road. Admittedly it is a busy street and it is better to be able to pull out frontward onto Lake Road as opposed to backing out. It is a reasonable request due to it being Lake Road versus a side street but to request double the amount of paving that is allowed, seems to be in way of access of fulfilling that kind of need.

With a two car garage and the amount of space in front of the garage, he felt a turnaround where you back out of a garage and swing 90 degrees and then pull out frontward onto Lake Road would be possible with a variance that was only a little bit more than the 40% allowed versus doubling the amount allowed. He asked if there were other reasons for such a big request other than having a turn around.

Mr. Klesta stated that the reason was because they wanted to be able to back out of the garage without having to move the other cars that would be in the driveway.

Mr. Norton asked how many cars would normally be parked there.

Mr. Klesta stated that there are two cars at this time but two others would be parked there because of their children. So a total of four cars. Also the neighbors would have the ability to use that area as well if they needed to. He explained that he had taken a picture from the County website to show how much driveway a lot of the other neighbors have used. He did not feel like it was that unreasonable of a variance request.

Ms. Young discussed the plans that were submitted with the application. On the drawing it shows a yellow portion that is permitted by the Building Department. She asked how it could be 100% variance with just the blue addition.

Mr. Tuck-Macalla explained that that is the percentage of the lot. It is not doubling the concrete, it is doubling the percentage of the lot.

Mr. Norton explained that what is shaded in yellow is actually more like 58% versus the 40%. The area shaded in yellow is way beyond what is normally allowed.

Mr. Burke asked if the yellow shaded area was the existing paving from the old house.

Mr. Klesta stated that it is a little bigger than the old house but from the front of the garage to the property line is 72'. Everything from there down is City property. South of the property was all paved already from the old road.

Mr. Bruno felt based on the map the numbers did not seem to add up to the allowance. In general based on the comments previously made, there have been similar requests. There does not seem to be any sort of uniqueness to this part of Lake Road lot compared to other Lake Road lots that the Board have heard in the past. It is a significant variance request. He is concerned about setting a precedent that would be inconsistent with the other previous decisions. He does not see any other hardships at this point.

Ms. Young asked if there was a reason why the driveway has to extend all the way to the eastern property line beyond the garage.

Mr. Klesta stated that it was just to give it a little more turning room. There seems to be a habit in the neighborhood of driving on one yard to the next to get out at times. This would make it easier for the neighbor next door to pull out as well.

Mr. Burke asked if he was the general contractor or the architect.

Mr. Klesta stated that he is the general contractor.

Mr. Burke asked that when the new house was designed, was the issue of the concrete considered.

Mr. Klesta stated that not at the time. They had talked about it but they were more concerned about getting the house up and going.

Mr. Bruno stated that given the lot size as far as where the garage does sit, there are opportunities for the general contractor and the homeowner to reconsider a different footprint of the concrete. There is plenty of room and he along with what he assumed most of the Board, have issue with the amount of the variance request relative to the Code allowance.

Mr. Norton agreed. If this request was for 45% versus 100% the Board would see it more favorably. Much beyond that would be setting a precedent that the Board will regret. This amount of request violates the spirit of the ordinance. The ordinance clearly did not want concrete front yards. He realizes the homeowner would like to get the project moving and if the Board wanted to consider allowing some additional above the 40% mark and the way it was configured was comfortable by the Building Department by measurements then we could deal with this tonight. Simply setting it as a percentage of front lot as opposed to seeing another configuration and delaying the project further could work.

Mr. Gess asked if the general contractor or the homeowner had thought of other configurations in preparation if this original plan was viewed negatively.

Mr. Klesta explained that he was originally thinking of asking for just the yellow portion on the drawing. (58%) The other option was to have two 12' approaches into the driveway. (He drew on his drawing to show to the Board what he meant.)

Mr. Norton stated that from his standpoint, he cannot clearly see. It would be very difficult to judge a specific layout/design without actually seeing it on paper in front of the Board. But to get around that, the Board can deal with what the percentage would be allowable by the Board if there was a mutual agreement. If the Board agreed to a certain percentage, it would be voted on and then they could work the design within that certain percentage. It is tough to design this on the fly. The applicant is allowed 40% and the request is 80%. It is a matter of the Board considering anything above the 40% would need a variance.

Mr. Klesta asked if the Board would be okay with a 58% request.

Mr. Burke stated that he would be uncomfortable with that amount.

Mr. Norton explained that the 58% is still almost a 50% request. Speaking for himself, it would be an ask too far.

Ms. Ricaunte thanked the Board and explained that the whole idea is to have the ability to back up the cars safely and to have a nice design and look that goes along with the other neighbors landscaping. They are able to play with the design. She asked what they should be filling the empty area with besides landscaping.

Mr. Norton explained that it can be filled with anything that is not considered paving.

Mr. Klesta asked if paving bricks would be considered paving.

Mr. Norton explained that if you can park a car on it, it would be considered paving.

Mr. Burke asked Mr. Tuck-Macalla to further clarify.

Mr. Tuck-Macalla explained that any improved surface, including gravel would be considered paving.

Mr. Norton explained that it could be grass, landscaping or flower beds. The spirit and intent of Council's Ordinance is to not make a parking lot out of front yard. There are a handful of properties that have been granted a variance for front yard paving that exceeds 40% but he believes that there has not been a request as high as this one. (45%-50% is a more typical request)

Mr. Norton asked if there was further discussion.

Mr. Klesta clarified that 45-50% would be the maximum that they should request.

Mr. Burke stated that they would have to see their suggestion in order to approve it.

Mr. Norton asked if there were other thoughts from the Board.

Mr. Burke asked the homeowner if they would like their request pending, withdrawn or revised.

Ms. Young asked if there have been discussions with the neighbor to the east who is also completing new construction that they would share a driveway when they installed theirs.

Ms. Ricaunte stated that she has and theirs is also narrow and will have to use theirs at times to get out. He has a very narrow side where it is even hard to put landscaping in that area between them.

Mr. Klesta explained that part of the asphalt out there, there is a pin 30' off the road on the eastern edge, part of that asphalt is actually their next door neighbor's concrete which can make it look deceiving. The yellow area on the drawing is roughly 58% and he believed 40% is not going to give them what they need.

Ms. Young explained that her concern is with the neighbor's lot being similar in size and the neighbor asking for a similar variance in the future. There would be a huge pad of concrete going across the two neighboring structures.

Mr. Gess wanted to point out to the Board that there is not really anything unique about this property, parcel shape, size or constraints. Granted Lake Road is busier than side streets but that was known when the property was purchased too. This is a particular use that doesn't necessarily meet the standard by which a variance is granted. He felt accommodations could be made with some additional turnaround space would be understandable. His concern is for precedent. The use is not a justification for a variance.

Mr. Norton asked Mr. Gess if he would be able to translate his thoughts into a percentage that he would be comfortable with.

Mr. Gess clarified the variance percentage calculations.

Mr. Burke concurred Mr. Gess' sentiments. He added that with the neighbor also asking for a variance it would seem either or both properties would require a variance. A ruling from the Law Director would be needed in order to know whether an easement would be required for common use between the neighbors.

Mr. Norton explained that he believes a driveway can go right up to the property line. If there was a cooperation between the neighbors, both properties could pour concrete right up to the property line and in affect join them so they can back out using each other's driveway. In the future, if the neighbors are not as good of friends, they could stop doing that. He does not think they would need an easement just to pour the concrete.

Mr. Tuck-Macalla explained that a driveway can go up to a foot away from the property line so it cannot go right up a property line. He would not base any kind of a variance on the cooperation of the neighbor. There is no hard evidence of that and one or the other neighbor could move away and the use of that driveway would be gone. Before either of the houses were being worked on, they used a portion of that driveway to turn around.

Mr. Miller pointed out that the neighbor to the east has a more circular shared driveway with a stamped concrete separation. The stamped concrete is probably 2'-2.5' wide and could easily be removed and replaced with grass so that in the future it could be removed.

Mr. Norton asked what the reaction would be from the Board for allowing a variance of 50% from the required 40% of the front yard. They could then leave it up to the home owners to take that 50% to design it in such a way that it served a purpose and was approved the Building Director.

Mr. Miller stated that he would support that.

Mr. Bruno and Mr. Burke stated that they could reluctantly consider that.

Mr. Bruno stated that he is still not seeing hardship with this property. Knowing the past precedent, he is a little reluctant.

Mr. Norton explained that the Board does have to be careful about setting precedent and one of the requirements is that there is something unique. He suggest that there is something that is unique to this particular property and its adjoining properties and it is that these houses were forced to move towards the road in their footprint. None of the houses are legally allowed to build any further back because of the common area that they share.

Mr. Burke stated that this was not a forced situation given the fact it was a newly designed and constructed home. He mentioned that it should be understood by the homeowner and contractor that this is not a binding agreement in the future.

Ms. Young brought up the previous discussion of having a turnaround in the City portion, more near the road much like the neighboring property did. They have a turnaround or parking spot in the City portion as opposed to the northern portion of the property which is also an option. If you didn't have a two car wide driveway exiting to Lake Road you would have room for a turnaround down there. She asked if that would be in consideration for the 40% rule. It would be in front of their property line using City land.

Mr. Miller stated that there are several properties east of Dover Center that use the spurs closer to Lake Road for placing a third or fourth vehicle.

Mr. Norton said it still comes down to what is considered the front yard from that right of way line back to the base of the garage and what percentage is occupied. From a standpoint of a variance, if the Board gets somewhat comfortable with a number it would give the homeowner the freedom to work the designs until it was acceptable to the Building Department.

Mr. Burke clarified that if the application is changed to a much smaller percent and no turnaround is included in that revised application, is there really any reason to grant any variance.

Mr. Norton said probably not and that would violate giving the variance at all.

Mr. Miller stated that he is of the opinion right now, that he would not support this extreme change in the variance. It is very much a huge ask and there is no cause to except such a change in the variance.

Ms. Ricaunte explained that she saw the Board's point and stated that she definitely would not want it for the sake of over asking. She just needs enough space where they can turnaround safely and give her room to create a nice design for the landscaping for her and the neighbors. She appreciated the Boards' opinions and stated that she would go along with whatever is decided and work out the design.

Mr. Gess stated that he does not feel that they have challenged themselves enough to find a non-variance required layout. They may find that only a 5-10% variance request may be needed. He

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feels there is a lot of excess per the drawing that needs to be scaled back and then they can make the case where more is needed beyond that.

Mr. Bruno agreed and stated that the Board would collectively prefer that they make an attempt at using the 40% that is allowed and come up with more alternatives. Without seeing it and the attempt, it is tough to approve any variance at this point.

Ms. Young stated that if they were to eliminate the 6' to the east side of the property line, it would take around 200 sq. ft. of concrete off the table which would reduce the coverage from 58% to 47%.

Mr. Bruno agreed and stated they could slim it down on the west side as well. He feels they can get closer to using the 40% and still be able to accomplish what they are wanting to accomplish.

Ms. Ricaunte asked if they could put landscaping between her driveway and her neighbor to the east.

Mr. Norton explained that her landscaping can go right up to the property line.

Ms. Young said that if they take it off the eastern line, they can incorporate it into a turnaround on the western side. But they still need to get it closer to the 40%. It is a pretty wide driveway as it stands.

Ms. Young asked how wide that portion was.

Mr. Klesta stated it was 6'10".

Ms. Young asked what the distance was to the southern property line.

Mr. Klesta stated it was 32'.

Mr. Burke asked Mr. Tuck-Macalla asked about calculating the basic area of the front yard, does it go to the edge of the right of way or does it go to the center line of Lake Road subject to the easement per right of way.

Mr. Tuck-Macalla said the right of way.

Mr. Burke asked where the right of way was located.

Mr. Tuck-Macalla explained that there is a line on the drawing that shows the right of way. It is not right on the sidewalk. It is calculated from the right of way and when visiting the site, there is a lot of property on the City side of the right of way. The original driveway was actually a large paved section on the City side of the driveway.

Mr. Norton said he was hoping to come up with a decision so they did not have to hold up the project further. There are two options, they could vote on it as is. Which sounds like it would be

turned down. Then the property owner could come back with a different request at a future meeting. The other option would be having the Board comfortable with a certain percentage and having the homeowner work within that.

Mr. Burke said that a third option would be to table it for tonight to permit the homeowner to revise the application.

Mr. Norton agreed and explained it would be difficult to create a decision on the fly.

Mr. Burke stated that he is not exceptionally comfortable with voting on something without seeing the drawing and having it reviewed by Mr. Tuck-Macalla prior.

Mr. Norton agreed.

Ms. Ricaunte asked for clarification and asked if it was the percentage that mattered the most or is it the final look and design.

Mr. Norton explained that it is the percentage. The Board is not interested specifically about the design. Their concern is about the ordinances and only making small adjustments. They need to think about how big a request is and how it affects property rights and how it sets precedent. Once a variance is granted, it lives with the property not with the property owner. The variance will be in affect forever no matter who is living there.

Ms. Ricaunte asked in the history of the lots in that area, how much of a percentage of variance was granted in general.

Mr. Norton explained that they would have to research all the files along that particular stretch of Lake Road to see what variances were granted and what size. To his memory, he does not recall any of them that are near this request in size.

Ms. Ricaunte said she will go with whatever the Board and City decides and she thanked the Board. She just needs enough area to turn around and have it aesthetically look pleasing.

Mr. Miller suggested they reach out to civil engineer or a landscape architect. They often have the tools to evaluate turn arounds and give the most appropriate response of sticking within 40%. He strongly encouraged them to withdraw their application or table it until they can come up with an alternative solution. There is great potential with the amount of space they have within the front yard setback given the uniqueness of the property and it will still fit within the decorum. The 100% proposed request is well beyond what the Board would approve.

Ms. Ricaunte asked if the Board would agree to 50% and then they could play around with the layout and design.

Mr. Miller stated that 50% is the very top maximum. They need to try and be closer to 40%. Mr. Gess stated that it has not been demonstrated that it cannot be achieved.

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Mr. Miller agreed.

Mr. Bruno agreed and suggested working with the 40% and come back to the Board.

Mr. Burke agreed and is uncomfortable guessing on what they would or would not approve.

Mr. Kelsta agreed to table the application at this time.

Mr. Norton asked if there was further discussion or a motion.

**Motion** by Mr. Burke, **second** by Mr. Gess that the application at 31676 Lake Road be tabled until a subsequent meeting that has yet to be determined to allow the applicant to submit a revised proposal.

**Roll Call Vote:**

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

**Nays-**

**Motion Passed-6-0**

**There being no further business to discuss the meeting adjourned at 8:34 p.m.**

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Jack Norton

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Kateri Vincent, Secretary