

Meeting Minutes of
Board of Zoning Appeals
Held June 15, 2023

Members Present: Jack Norton, Scott Bruno, Dan Gess, Terry Burke, Clete Miller

Excused: Jan Saurman, Caroyln Young

Also Present: Eric Tuck-Macalla (Building Director), Lauren Oley (Secretary)

Audience: Pat McNamara, Gary Kreis

**Full recording of the meeting is permanently available on the City of Bay Village website under Government/Board of Zoning Appeals/View Most Recent Agendas and Minutes/Media*

Mr. Norton called the meeting to order at 7:30 p.m. and introduced the first item on the agenda the approval of the minutes that were held May 18, 2023.

Motion by Mr. Burke to approve the minutes as prepared and submitted subject to a minor edit on one motion which as been brought to the clerks' attention.

Motion Passed 5-0

Before moving on, Mr. Norton explained the quorum rules advising that if the applicant would like to wait for a vote they're welcome to do so.

1) Gary & Wendy Kreis 498 Oakmoor	Applicant is seeking a variance to Section 1149.01 to build a garage closer than the required 3' from the property line. The request is to place the new garage 1' from the property line making the requested variance 2'.
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Mr. Norton introduced the next item on the agenda as 498 Oakmoor advising that the board has had an opportunity to review the application and visit the site.

Mr. Bruno stated that he has gone by the property and lives in the neighborhood. He then inquired why this garage can't be placed to code.

Mr. McNamara replied that it can't be. He approached, showing additional photos, and advised there are patios located around the existing building. This home is on the corner of Oakmoor and Osborn. He showed a garage that was built directly across the street which was built to these specifications.

Mr. Bruno commented that he's empathetic to the size of the lots. He would like to bring to the boards attention that it is a corner lot so from an access perspective, but he just doesn't understand why it can't be placed to code.

Mr. Kreis stated that he started this process 38 years ago when he bought the house. He wanted to do it then and it was denied back then. Throughout the years he's requested this same thing 3 other times and it's been denied.

His first concerns are financial – if you don't build a two-car garage it won't pay. The second issue is that between where his garage sits now he has 3' of absolutely nothing being used there. The lot behind him abuts up to that and they have nothing on that fence line like they're talking about. He has a problem with the water in the neighboring yard which is seeping under his garage and that's what is wrong with his garage. The water is coming up underneath and it's rotting the garage. What he wants to do is build a slab so the water can't come up from underneath. The 2' there won't impact anybody because there is nothing there now – except for the neighbors have a shed and playground. It won't impact the garage. There is enough room for vehicles to sit in the driveway – he's just looking to get equity from his money.

Mr. Bruno stated that they could provide for the fact that the garage wall would need to be fire rated. While there is nothing there now – the other property owner may put up something, like a garage, 3' from the property line. He would be more comfortable with the west and south facing walls being fire rated or even all 3 walls – with the variance they're asking for.

Mr. Miller commented that the south wall would be 15 or more feet from the property line.

Mr. Tuck-Macalla stated that buildings need to be 5' away from each other which is why Bay Village code is 3' - so that both properties can accommodate.

Mr. Kreis stated that the property behind him on the south side is on the property. There is no variance. Part of her concrete is on his property. This was done quite a few years ago. He has a 16' patio behind his garage. He's not coming closer to them and they can't come closer to him.

Mr. Bruno pointed out that may not always be the case.

Mr. McNamara stated that would be at huge expense for the neighbor to the west.

Mr. Kreis stated that they have a 'she shed' on their property which he isn't sure if it's supposed to be there because it has electricity and he was told in the building department that it's not to code.

Mr. Gess inquired what the distance was between the back of the house and the current garage.

Mr. McNamara commented that it's at least 20' and advised that the proposed garage is 18'x20'.

Mr. Norton stated that the problem he has is that if this variance was to be approved, the applicant won't be able to build or paint that garage without being in the neighbors property.

Mr. Kreis and McNamara replied that they're leaving a foot.

Mr. Norton stated that if the neighbor puts a fence up on the property line, then they have to squeeze through a 1' space. The neighbor could technically then do the same thing and then they've got 2' between two structures and Ohio code calls for 5'. In other words, they'd force the neighbor to lose their rights.

Mr. McNamara commented that 'it's whoever gets there first'. He does three car garages in Avon and it's the same thing. You need to have 16' in-between and they've been able to get the same kind of variances through.

Mr. Burke stated that he noticed on the lot line there appears to be overhead electric lines. He was curious if there was an easement.

Mr. Tuck-Macalla stated that there would be an easement, but that's an automatic easement – it's not something the building department controls. It's controlled by first energy it's basically just understood. If the person next door to this property tears his house down and they want to rebuild then this garage, being non-complaint, puts a restriction on that owner's ability to be able to use his property.

Mr. Gess replied, to that point, that to him the most that should be considered would be a 1' variance. That would put him 2' off the property line and then the other property would be okay at 3' and they'd still have 5' between. Granted he wouldn't be able to get the same 1' variance that this applicant received, but you wouldn't be depriving him on the surface of anything he doesn't already have.

Mr. Burke replied that then they get into the precedent issue.

Mr. Miller commented that they've had some garages that are detached and within 18" of the property line.

The board discussed previous situations where they believe similar variances were granted and the logic behind them.

Mr. Burke inquired again why the applicant can't build the building to code?

Mr. Kreis replied that it's because he's losing greenspace. The only greenspace he has. The gentleman across from him, which you can see, he pushed it over. This is unusable space. He doesn't understand how a person could build a house so close to the back of their lot and be in compliance which would have a garage. That house behind him will be a knock down, they all know that...

Mr. Bruno advised that they don't want to deprive the owner of the property on Huntmere of their property rights by allowing this building to be so close to the property line.

Mr. McNamara stated that no architect is going to put a building so close to the garage. He knows that.

Mr. Norton stated that they can't take one property owners rights away. They have the same rights as the applicant.

Mr. McNamara replied that he gets that, but if it's going to be a knock down, they're not going to put a garage right next to another garage. No new home is going to have a detached garage. No homes are being built in Bay without an attached garage.

Mr. Gess inquired if there was any consideration to a 16' garage to save greenspace so that they could maintain the required 3' setback?

Mr. Kreis stated that a 16' garage costs \$22,000 and he doesn't have \$22,000 and this garage is going to cost him \$28,000. On resale value for his home and his property – if he's going to pay out this much money, he wants it to be worth something. A 16' garage isn't a true two car garage. The first thing a realtor has said to him is, 'you need to build a new garage' and the city has said the same thing for years.

Mr. Gess advised that, unfortunately, financial concerns are not something that this board can consider when making their decisions.

Mr. Norton added that by law they're not supposed to take that into consideration.

Mr. Kreis stated that he'll just move it over – he'll move it over. He doesn't care really. It just doesn't seem fair to him. They have to stick with their codes. That's fine.

Mr. McNamara commented that across the street the guy got a variance. He's not sure what it was - he's like 2' from the line.

Mr. Tuck-Macalla advised that they can check, but when he looked, he didn't find anything. They don't have a variance that he's aware of.

Mr. Kreis stated that the neighbor across the street built his garage maybe 10 years ago.

Mr. Tuck-Macalla stated that the code changes over time. It's possible that the garage was built to the code at time. If that garage was to be removed and he wants to put in a bigger garage he's going to have to put it in 3' from the property line. There are a lot of old homes in the city that are out of compliance with the current zoning code. When they're taken down, they have to be built to the zoning code as it's written today.

Mr. Kreis advised that all he's asking is for them to match the neighborhood. If he doesn't get it, he doesn't get it. He's been there 38 years. He's sided it once when they denied it. He can keep doing the same thing.

Mr. Gess inquired what the rules are in revisiting variances which haven't been approved. They've talked about how it needs to be substantially changed. Is there a time limit on that?

Mr. Norton inquired, of the applicant, if this variance has been denied?

Mr. Kreis replied that it was turned down when he first bought the property 38 years ago. His dad came over with plans and everything else. He applied for a variance – at that time it cost him \$75. They told him to reapply, which he did – and it was denied again. So, then he decided to reside the garage and that's the way it's been. The water underneath it now is causing it to sink. That's all there is to it. He wants to approve it, but he can't afford to waste money. He's 70 years old and he'll move it over, lose green space in our beautiful city. It's fine by him.

Mr. Norton advised that that the applicant is welcome to request a vote and suggested they make a motion.

Mr. Miller stated that there is merit to what Mr. Gess suggested so that they aren't impacting the neighboring property and forgoing their rights.

Mr. Kreis stated that he knows what is happening. The property at 501 is a problem and he's had to live with it for the 10 years that they've been there and he's tried to do everything they can...he doesn't want to do anything off his property, he's not going to build over there – we can think they are; we can say they are, but no one is going to build anything on that one foot of property. If it's not going to happen - it's not going to happen. He's tried to comply with everything they've done – he's had rejections before.

Mr. Burke stated that where he was going with that...

Mr. Kreis interjected with where they're going with it is that he's going to cut out greenspace and put a stand-alone garage that he's now practically living in.

Mr. Burke clarified that where he was going was that they could table this item for when they have all 7 members.

Mr. Kreis commented that he's been waiting 38 years for this and he keeps hearing the same thing. This is just like the last time. If they're not interested then he's fine. He'll go on from that.

Mr. Norton suggested that they decide it tonight.

Motion by Mr. Burke, **Second** by Mr. Bruno, that the property at 498 Oakmoor be granted a variance of 2' from the rear yard set back requirements under 1149.01 to build a new garage within 1' of the property line as submitted in the application.


Roll Call Vote:

Yeas

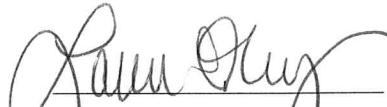
Nays – Miller, Gess, Bruno, Norton, Burke

Motion denied 0-5

There being no further business to discuss the meeting adjourned at 8:00 p.m.



Jack Norton, Chairman



Lauren Oley, Secretary