

**MINUTES OF VIRTUAL MEETING
BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE
January 21, 2021**

AGENDA:

Old Business:

Approval of Minutes of Regular Board of Zoning Appeals Meeting held on December 17, 2020.

New Business:

- 1. 6824 Dora Blvd., Stacy & Elliott Kirth -** Requesting a variance to 1113.09(c) of 2' to permit a driveway to be 22' in width (20' permitted, 22' requested), and to be located on the property line (3' from property line permitted) and a variance to 1165.01 of 1' to permit an addition to be located 5' from the side yard (6' permitted, 5' requested).

The virtual meeting was called to order by Chairman Mark Moreal at 5:35 p.m. and the following responded to Roll Call:

PRESENT: **Mark Moreal, Chairman**
 Chris Walchanowicz, Councilperson
 Charles Bredt
 Carol Fortlage
 Pasquale Monteleone, Jr.

ALSO
PRESENT: **Gregory J. O'Brien, Law Director**
 Michael Gero, Building Official

Chairman Moreal stated that he wanted to ask the Board if there were any corrections, changes or additions to the December 17, 2020 Meeting Minutes.

A motion was made by Pasquale Monteleone, seconded by Councilperson Walchanowicz, to approve the Minutes of December 17, 2020 as presented.

ROLL CALL: **Yeas: Monteleone, Walchanowicz, Moreal, Bredt, Fortlage**
 Nays: None
 MOTION CARRIED

6824 Dora Blvd., Stacy & Elliott Kirth - Homeowners Stacy and Elliott Kirth were both in attendance and sworn in.

Chairman Moreal stated that just to refresh the Board, the applicants were in front of the Board in 2013 for a driveway to get around back and the width of the driveway out front. He stated that

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the variance expired. He stated that now they have brought to the Board the addition with other variance requests. There were three variances that they were requesting. He wanted them to explain to the Board. He wanted them to start by telling the Board why they need the variances and what they were looking for.

Mr. Bredt asked if the neighbors had been notified.

Chairman Moreal asked if there were any neighbors present? The Secretary stated that there were no neighbors. They were notified.

Mrs. Kirth stated that they contacted both neighbors to let them know what they were planning to do. They had been talking about doing a home addition for quite some time. When they originally went for the variance, obviously life happened, and now they are trying to redo it and ask for the variance once again.

She stated that they were asking for a variance in order to provide a driveway in order to get back to a proposed new addition to the back side of their home. She stated that they live in a very small home, and they got married, they had a son, and they just need some more additional space. She stated that they have bikes outside. They have toys outside. They have all kind of things. They really don't want to be moving from Independence and trying to make the best of our narrow lot which was really a hardship. She stated that was why they were asking for the variances.

Mrs. Kirth stated that they had one of the variances approved, but it did lapse and expire. She stated that was the same variance. She was also asking for one on the east side of the house due to it being a small lot and providing additional space in order to get into the turning radius.

Mr. Kirth stated that the lot was deep, it was just narrow.

Chairman Moreal stated that right now it stood as two lots. They would need to consolidate the lots.

Mrs. Kirth agreed. She stated that she planned to consolidate those lots.

Chairman Moreal stated that he wanted to go back to the previous time they were in front of the Board. He stated that he knows that he and Mrs. Kirth discussed this earlier. He stated that it was a little different as far as the side yard. They were going to be 1 foot 2 inches, that was what the Board gave them last time; and he doesn't know if it was 1 foot 2 inches of concrete and then the pavers. He stated that he didn't remember if it was landscape pavers or permeable pavers throughout; but they were granted a 1 foot 2 inch variance. Now they were asking to be on the line just so everyone was on the same page.

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Mr. Kirth agreed. He stated that after thinking about it they were going to do a turf stone on that side; but the way when he talked to his concrete guy and the way they would pitch it would keep that water more onto their pavement and flow outward.

Chairman Moreal stated that the 22 foot, the apron would remain the same and then they would widen out 22 feet at the widest point.

Mr. Kirth agreed.

Chairman Moreal stated that he thought the drawing stated 23 feet. Would it be 22 feet or 23 feet?

Mr. Kirth stated that it was dependent on how you would look at it. He stated that they could cut some of the concrete down that would be in their existing drive to make that smaller; but that was what it would end up being with the 23 feet with going right on the line.

Mr. Bredt asked if Mr. Kirth was specifically on the line or would there be 6 inches?

Mr. Kirth stated that he would probably keep it maybe an inch or 2. The forms would be set on the line for sure.

Mr. Bredt asked if a professional survey had been done?

Mr. Kirth stated that it had been done.

Chairman Moreal stated that he saw the stake in the backyard. He didn't know if there was one up in the front.

Mr. Kirth stated that there should have been 3 out there. The one that was in the front, and then there was one that was a separation of the 2 lots; and then there was the farthest one of that second lot. He stated that they were all on the same line. That didn't change.

Mr. Bredt stated that he would like to make a couple comments for everybody's discussion. He stated that he was out there this afternoon. He believed that Mrs. Kirth saw him come to the door, and she was on the line with the ABR.

Mrs. Kirth stated that she would have liked to been able to talk, but they were on with the ABR.

Mr. Bredt stated that he was just refreshing his memory from quite a few years ago; but he did notice a couple of things, and that was now they want to build right on the property line with a solid concrete surface. He stated that on their drawing they show a dotted line to the west side of the house which he believes they were representing the overhang of the one-story roof.

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Mr. Kirth stated that was where some shrubs were and the utilities were underground in that section. He didn't want to cover that up with concrete in case they would ever need to access that.

Mr. Bredt stated that the overhang was 24 inches, he measured it; so coming off the house they would be 24 inches, and they were asking for 7 feet which would take them to within an inch of the property line. He stated that most wheelbases of decent size vehicles were right at 7 feet. He stated that sometimes a couple of inches more, sometimes a couple less. He stated that it looked like they had some pickup trucks and some construction equipment that he would be very fearful going around those corners where they would either clip the overhang with a high pipe rack for instance; or they would be naturally drifting onto your neighbor's property which obviously they don't want to see. He asked how would they address that potential problem?

Mr. Kirth stated that during the warmer months, and if the ground would be hard enough to drive on; he was able to take his truck into the back. He has already tried this, and he was able to get back there and not where it would be tight. He stated that he had no problem getting back there and maneuvering that. He stated that they only need the concrete to be on the line on that section there just by their house between the houses. He stated that once they would get further back, it would taper back in.

Mr. Bredt stated that he saw that. He stated that he wished the neighbor was on line so they could speak to them. He asked if the neighbor did understand what Mr. Kirth was applying for.

Mr. Kirth stated that he has reached out to him years ago when they talked about this, and he was okay with it then. He did a refresher call with him and told him that they were going to go for the variance; and he stated that he did not have a problem. He stated that the Board was more than welcome to give him a call. He could talk to them. He stated that if there was any damage done to his grass during construction, he was sure that Mr. Kirth would fix it. He stated that the neighbor did not have a problem.

Chairman Moreal stated that he did stop there and rang the doorbell a few times and there was no answer. He stated that he knows he saw him from his Ring doorbell, but never got a chance to get ahold of him.

The Chairman stated to Mr. Bredt that he mentioned utilities. He asked where the utilities were.

Mr. Kirth stated that he thought what Mr. Bredt had mentioned, up against the side of the existing house. He stated that there were some utilities right next to the sidewalk there. He stated that there were the storm drains. There was a sanitary line there. He stated that there was also the gas line.

Chairman Moreal asked if Mr. Kirth would be pouring all new concrete to the house.

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Mr. Kirth stated that he wouldn't pour the concrete all the way to the house because he wanted to keep that section open if they ever needed access into those utilities.

Mr. Monteleone asked Mrs. Kirth to let the Board know that they don't have a basement.

Mrs. Kirth stated that they do not have a basement.

Mrs. Fortlage asked if they were putting one under the addition?

Mrs. Kirth stated that they were not.

Chairman Moreal stated that if the Board wanted to move on to the next variance request. It would be the 1 foot side yard on the east side of the house. He asked if they could address that one now. He asked why they would need the 1 foot instead of staying in line with the house and meet the 6 foot side yard. He stated that he guesses that was where he was going.

Mr. Kirth stated that it would all go back to that way the drive is and the turning radius back there. He stated that it originally started out, and the Board didn't know that portion. When they were with the architect, he wanted them to go for 3 feet plus for a variance; and he stated that it was too much. He stated that he was able to keep what they would need for the vehicles to get back there; and he shrunk it down with their architect already to 1 foot. He thought that was a reasonable amount to say that they only needed 1 foot. He stated that once you would start adding in; he stated that they were doing brick on the addition. He stated that once you would start factoring in the brick work, the sheeting, the framing; that wall starts to get real thick. He stated that they needed that extra space just to make sure, even his truck was so long that he needed to get in there and get past the garage door and be able to close it and still walk behind the truck or in front of the truck. He stated that otherwise it would be too tight to park that truck in there.

Mr. Bredt asked how deep would the vehicle base be?

Mr. Kirth stated it was about 25 feet. The garage door would be set in a little bit from the wall. He stated that they were set in a little bit which would squeaks you in a little bit more. He stated that where the addition was going, the adjacent property was a vacant lot. They would not be abutting to somebody else's home or anything like that, it was a vacant lot.

Mrs. Fortlage asked Mr. Kirth where he was pointing at a vacant lot.

Mr. Kirth stated that it was on the east side of the property. He didn't know if the Board had that view.

Mrs. Fortlage stated that they were double deep lots.

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Chairman Moreal asked who was Lot 38?

Mr. Kirth stated that he couldn't see what the Board was looking at.

Mrs. Fortlage stated it was Claudette Mathews.

Mr. Kirth stated that Claudette Mathews was Lot 15.

Mrs. Fortlage stated that behind her was Lot 38.

Chairman Moreal asked who was Lot 38? He stated that it was Claudette also.

Mr. Kirth stated that he spoke with her already as well, and informed her what they were doing as well.

Law Director O'Brien stated that property backs up to a paper street.

Chairman Moreal agreed. He asked the Law Director to define the paper street. He stated that he knew it was a paper street, but would anything ever happen with that, or would it just be landlocked in there.

Law Director O'Brien stated that it was a very simple question with a long answer. He wanted to state that the City would require the applicants to consolidate; and the more houses that consolidate, the less likely that paper street will go in. He stated that it was designed and essentially planned for back in the 1950's. He stated that candidly, he couldn't say never, but he didn't foresee that paper street ever going in.

Mr. Kirth stated that they were following the setbacks. He stated that even though it was a street, they were still following the setback. They would be way within the setback.

Chairman Moreal stated that once they would consolidate, they would be within 40 feet of the rear yard.

Mr. Kirth stated that it was probably more.

Chairman Moreal stated that both the neighbors own the parcels all the way back so they would not be (inaudible), they were rear lots.

Law Director O'Brien stated that when the Building Official and he looked at the application, most of the property owners own the properties in the rear; and over time some have consolidated them.

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Mr. Monteleone stated that his concern was on the one foot for the building, now that Mr. Kirth explained that he really needed it. He stated that helps him makes his decision a little bit clear. He stated that he understands the truck radius turning and all that; he was so concerned that it will be so tight for that driveway going back there. He stated that it would not be easy to get back there.

Several people began speaking at once.

Mrs. Fortlage stated that she didn't understand. She stated that there seemed to be more than one person speaking.

Mr. Monteleone stated that he was just concerned about the one foot. He stated that the one foot overhang on the left side, he didn't understand that.

Mrs. Fortlage stated that she heard Mr. Monteleone, she stated that there was something after that.

Mrs. Fortlage asked Mr. Kirth if he was speaking.

Mr. Kirth stated that he did a test run back there with his truck, and he stated that he even has a dump trailer which was larger than his truck, and he was able to safely get it back there.

Councilperson Walchanowicz asked Mr. Kirth if the house to the west still a rental?

Mr. Kirth stated that it was.

Chairman Moreal asked if the house up against the driveway was a rental?

Councilperson Walchanowicz replied yes.

Chairman Moreal asked that the person that Mr. Kirth notified, was it the owner or the person who lives there now.

Mr. Kirth stated he spoke to the owner. He contacted him directly.

Mr. Monteleone stated that was good information to know.

Councilperson Walchanowicz stated to Mr. Bredt that he mentioned about concern of potentially driving on the neighbor's grass on the west going into the back. He asked if they would curb that section so they couldn't go over and get into the neighbor's grass? He stated that it might help water flow down the driveway, instead of spilling into the neighbor's yard.

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Mr. Bredt stated that he thought that was a reasonable request. He stated that it didn't even have to be the typical curbing. He stated that he wanted them to recognize that the amount of concrete in the back to service the 3 garage doors, there would be a substantial amount of concrete no matter how you would look at it. He stated that it did not appear on the drawings, or did he take a survey himself of the topography. He stated that they were always worried about the amount of water that would run somewhere where it would find its natural course. He stated that the 7 foot, yes the owner and applicant could creep towards his own house and drive over the gravel that would protect the utilities rather than drift onto the neighbor's property, regardless of whether it was a renter living there now or the owner. He stated that he was truly concerned about the overhang as you would go in and out of the corners so to speak. However, that damage would be to their house and their vehicle, so as long as the applicant would be cognizant with it, he was looking for a solution that would address the water issue also.

Councilperson Walchanowicz stated that he was really good friends with the owners 2 doors down from Mr. Kirth, and every time it rains he sees what kind of water comes in their garage that they had built a few years ago. He asked what kind of water were the Kirths getting back there that building the addition they wanted would divert towards either direction with the amount of water that they get back there.

Mr. Kirth stated that was a great question. He stated that they did factor that in. He stated that he had looked at it many times, and they were very close; but he would like to make things happen naturally and flow outward. He stated that would come in with having the right concrete guy as well and getting the right base underneath and having that flow and pitch going the right way.

Mrs. Fortlage stated that she didn't understand. She stated that Mr. Kirth said outward twice, what would outward mean to Mr. Kirth.

Mr. Kirth stated that it would be towards the front of the property.

Chairman Moreal asked if City Engineer Ramm was there. He stated that Don Ramm was the City Engineer. He asked if he could chime in on the matter and give the Board his thoughts. He stated that he was sure that the City Engineer heard because of the topography and water situation. He asked if the City Engineer could help out the Board.

City Engineer Ramm stated that they discussed the matter briefly earlier this afternoon at the ABR meeting that because of the expansive impervious area that they would be creating with the roof and the concrete and also being so close to the property lines, they would need to manage the stormwater appropriately and not dump it onto the neighbors and/or hurt themselves with an attempt to tie into their own existing system for the gutters and downspouts. He stated that based on the topography, it looks like the water was trying to run from southwest to northeast through the lot. He stated that there was no problem in the back. He stated that nothing would be

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impeded, but it might be appropriate to put a drain, pitch the concrete inward to a center location and then pipe it out with an adequate pipe to handle the roof and concrete itself because there was no room to put a swale on a side yard because they would be going so close. He stated that something would need to be considered, and he thought the owners mentioned having some drainage issues already that they would like to improve with the project. He stated that it seemed like it was something that they were already looking and thinking ahead and planning for with the project.

Chairman Moreal asked the City Engineer if there were any catch basins that he knew of in the rear of the property or anywhere along the back?

City Engineer Ramm stated that he didn't get that far. He stated that he didn't believe there was.

Mr. Kirth stated that there was a natural swale that would head in that direction. He stated that once they do the addition that will all be cleaned up and probably re-addressed to get that water to flow to where it would need to naturally. He stated that there was a basin in the roadway back there. He stated that it was not behind their property, it was closer to 21. He stated that the swale was natural, and it did carry the water in that direction.

City Engineer Ramm stated it was west to east.

Mr. Kirth agreed. He stated that he was not just speaking for his yard. He stated that if everybody had maybe considered putting in a swale in their yard, it would probably help everybody's yards with runoff of water because the swale back there does work. He stated that it does run, and it was pitched good. He stated that it was just getting the water to it. He stated that he thinks it would have a great impact for everybody, but he never went around and addressed that with everyone, but it would help. He stated that they were planning on doing that with their property, including the east side where they talked about earlier.

Councilperson Walchanowicz asked Mr. Kirth if he had intentions of putting the drain in the driveway like the City Engineer had mentioned?

Mr. Kirth stated that he did consider it. He considered it more for a secondary backup during a hard rain. He stated that he would like to see things happen more naturally; so he didn't have basins to be cleaning out. He stated that his goal would be to have it happen more naturally than rely solely on the drain. He stated that he thought that would maybe be the easier way out for their property to do that, but it was not what he wanted to see happen because he doesn't want to be out there cleaning it out all the time.

Law Director O'Brien stated that unfortunately Mr. Kirth would be putting in a great deal of impervious surface; and unless they would deal with that artificially, he doesn't think the natural terrain would be able to absorb that quick.

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Mr. Kirth stated that it could be a combination of both, working hand in hand.

Councilperson Walchanowicz stated that in the last, and the City Engineer could back him up on that, in the last year or so they have had a tremendous amount of water issues where that was a very sore subject with the Engineering Department currently. He stated that he feels that just because of the water issues they were having all around town, he would want a drain in the driveway, even though Mr. Kirth would want to go more natural, he would feel more comfortable if that was in the Minutes for a drain in that driveway.

Mr. Kirth stated that again he did consider it, and he was not in disagreement with it.

Chairman Moreal asked Mr. Kirth if he was putting drains in the garage?

Mr. Kirth stated that he would most likely put drains in the garage.

The Chairman stated that he would put one in the driveway then. He would have the best of both worlds there.

Mrs. Fortlage stated that she thought the Board was discussing design issues. He stated that the water was clearly going to be an issue because of so much impervious, but they have a character of Independence that was not remotely friendly to zero lot lines; and she stated that she has grave qualms of being that close to the neighbor's property. She stated that those things were not about the next 4 years, they were about the next 40, 50 and 60 years. She stated that it was beyond her ability to feel she could approve something that would sit on the lot line like this, and would be such an enormous change to the neighborhood. She stated that was a huge building that was planned for the property. She stated that furthermore she has not heard anything that was in fact a practical difficult as it was recognized under the statute. She stated that the fact that somebody can't put a work boot in the space of a ballet slipper was not a practical difficulty because the house exists and was suitable for residents. She stated that it might not be suitable for business vehicles, but that was not the issue that Independence has ever tried to address in the code. She stated that she didn't see a way to support this.

Mr. Bredt stated that it was interesting to him when he looked at the design of the building, which he assumes ABR has looked at; and as he drove up at first and he saw a relatively small building that was going to become very large, looking straight at it, it was oh my; but then when you drive north or south, and you would look across the front yards of a couple of the other buildings which were larger, certainly not as large as the proposed addition, it felt a little bit better. He was coming back to something Mrs. Fortlage said, and he said to start off, he just doesn't like building on the building line. He stated that Mrs. Fortlage said it better than him, 20, 30, 40, 50 years from now, people move in and move out; and he believes they would be setting the City up for issues that, from a water standpoint, concern him gravely.

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Mr. Kirth stated that they were not building the home on the line; they have quite a bit of space there on the east side. He stated that it was just the driveway portion between the 2 houses, and then it would come right back over.

Mrs. Fortlage asked if that was the west side?

Mr. Kirth stated that was the west side, correct. He stated that again they don't have a basement in the existing house. They do not have an adequate attic for storage; and they have lived there for 20 years. He stated that the problem was they love their home he guesses because they are staying there. He stated that he tried to say that maybe they should move, but they love their home. They love their town. He stated that they were not looking to do the wrong thing, they just don't want to do this and say well they just did it, but they weren't happy with it.

Mr. Monteleone stated that for the Minutes when they say the building line, he doesn't understand when they say building line; he stated that he sees the building line being closer by a foot, but they still have room. He stated that he was concerned about the driveway.

Chairman Moreal stated that was the line they were talking about.

Mr. Kirth stated that was the only portion, like he stated, between those 2 houses, once they get past that, then it goes right back in again.

Mrs. Fortlage stated that the only possible way to deal with snow in that area was to put it on their neighbor's property, and she didn't think that was acceptable. She did not believe they should be able to do that.

Mr. Kirth stated that when Councilperson Walchanowicz mentioned that curb, he thinks that if they do the curb there, that would probably prevent that as well.

Mrs. Fortlage stated that it didn't prevent snow, and furthermore, it was a matter of inches and a curb would take up 4 inches, maybe more. She stated that it didn't work in that space.

Chairman Moreal stated that for the record, as everyone knows, he voted for at the time, he voted for the driveway which he stated earlier was 1'2" away; so it wasn't on the property line. So, the Board does have a different variance that they were looking at, and per Mrs. Fortlage and Mr. Bredt's comments, he stated that they accepted it 7 years ago. He asked if they could make it work at a foot like it was before.

Mr. Kirth stated that it goes back to the curb, and then they would be squeezing themselves even more. He stated that if they would be doing a paver there because they were still doing hard surface; and then they were doing a paver there which was going all the way against it. He stated

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that because it was removable; so it was acceptable because it was removable. He stated that it wasn't a permanent structure.

Mr. Bredt stated that he was on the Board at that time too, and as he recalls, the permeability of that surface was important. He stated that he thought it was reflected in the Minutes, plus at the time Mr. Kirth was trying to support access to shed or an accessory building, not a new building with 3 garage doors, basically doubling their existing residence in size. He stated that he just wishes there was a way around it.

Mr. Monteleone stated that he came up with a little quick solution in his mind when the Board said permeable pavers. He stated that he could permeable pave in between the homes; but when Mr. Kirth would put the structure up, and they could get to the garages; so the permeable pavers would be a good idea for water runoff and stuff like that. He stated that everyday driving, they would move a little bit, and if they would go to take it up, how would they ever get back to the garages once they put the garages up.

Mr. Kirth stated that they could put a phenomenal base down, but they would still be pavers.

Mr. Monteleone stated that they do move.

Chairman Moreal stated that he was going to ask Mr. Kirth because the Board asks everyone else, was there a plan B or option B. Based on everything they were hearing, do they have anything in their back pocket that they were thinking could solve some of these issues or a different design plan. The Chairman stated that he was just asking.

Mr. Kirth stated that he didn't look at it too much. He stated that once he talked to the owner of the property, and he was okay with Mr. Kirth doing that; he didn't have any qualms about it at all. He stated that this was probably be best for them to get back there. Mr. Kirth stated that he thought if they shortened that; they could do it. He stated that they could probably still get back there, but what they would do, the 1 foot couple of inches would just squeeze it tighter where it would be easier for a tire to slip off and rut up the yard.

Chairman Moreal stated that he wanted to ask Mr. Kirth, the neighbor knows about the driveway. He asked if the neighbor saw the plans for what they were looking to do in the back. He asked if he knew about the addition and the size and all that.

Mr. Kirth stated that the neighbor didn't physically come over and talk to him, he talked to him on the phone; but he let him know what they were doing back there and the purpose of it. Mr. Kirth stated that the neighbor had his garage, so he understands.

Chairman Moreal stated that he saw the view of all the other houses, and there were some big garages back there. He stated that it was a big structure, but it plays into it a little bit. He stated

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that there were a lot of questions here. The Chairman stated that the Board could vote on the variances; he thinks that the Board has brought up a lot of questions and a lot of thoughts. He knows that it was the one foot on the side, Mr. Kirth doesn't want to move the house in; but that would eliminate one variance. He stated that if the Board would vote on the variances this evening, and it would be a no, then Mr. Kirth could not come back and ask for the same thing. He asked if Mr. Kirth's thought was to go back to the drawing board maybe and think about it and come back. The Board could table it.

Mr. Kirth stated that their biggest hardship of the whole thing was they were on a narrow lot.

The Chairman stated that he knows.

Mr. Kirth stated that if they had 3 more feet on their lot, it would change everything. He stated that it was not what they intentionally wanted to do, they were trying to use their property the best that they can. He stated that he wanted his wife to be happy. She has been on his back for years, and that was his biggest thing. He stated that she was sitting there quiet, but once the Board leaves, it will be different for him. He stated that he was just letting the Board know, they were trying to use their property to the best of their ability.

Chairman Moreal stated that Mr. Kirth mentioned that he drove his truck back there. He asked if there was any chance, and he was just throwing it out there, that the Board tables the matter and Mr. Kirth parks the truck on the side and kind of measure it up and lay it out and see if it would have to be on the property line. Mr. Kirth says yes; 7 years ago it was a foot. The Chairman was just trying to help Mr. Kirth out here; he was overstepping his job here, but he knows that they want this. He stated that he would have to make sure that it would work.

Mr. Monteleone stated that he had a quick question. The paper street, since they own the lot behind them; and he didn't know anything about paper streets, but there would be access to come from a paper street if you would own the lot.

Law Director O'Brien stated that there was no road, there was no improved road back there. For them to have access, they would have to put essentially a City codified street back there which would be hundreds if not a million plus.

Several people began speaking at once again.

Mr. Kirth stated that it was a recorded road. He stated that they have driven on it. He stated that when they were improving Dora Blvd. that was the access to a lot of properties was to use that street; and it was used at that time to gain access to your home.

Law Director O'Brien stated it was greenspace right.

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Mr. Kirth agreed. He stated that they were doing it in the middle of summer where it was dry enough to do so, but it had been used to get back to their properties.

Mrs. Fortlage stated that she could certainly appreciate the desire to stay in the house they love and in the community they love, but the standards of the community were part of what makes it what it is. She stated that the people do, but also having some parameters that keep the City looking like a spacious place; and this project would just go against the character of the community and the spirit of the code. She stated that she just can't see that even the minor little things that the Chairman mentioned would make a difference. She stated that it was a narrow space on a narrow lot, and it would not be conceivable to create it so that it will accommodate a 7 foot plus vehicle on a regular basis.

Mrs. Kirth stated that she could appreciate Mrs. Fortlage's opinion. She stated that when she purchased the home she was a single girl. It was perfect for her at the time. She stated that obviously needs change and grow, and she also knows that when they went through this before, she took pictures. She stated that there were people who, and actually Councilperson Walchanowicz brought up Mike and Mal. She knows that when they had their lot surveyed, their drive, if it was not on the line, it was very near the line. Mrs. Kirth stated that she knows that it is possible, and obviously she could provide those homes in which the drives she has seen are on the line. She stated that there was one that was just down the street where he added onto his property as well. She stated that they own another lot that was a couple of doors down, and his concrete was right on the line. She stated that they were not the only people who have ever done this.

Mr. Kirth stated that there were narrow lots on the street.

Chairman Moreal stated that he was looking at that now. He stated that the neighbors were on the line.

Mrs. Kirth agreed.

Mr. Kirth stated it was their lots over there, it was not them. He stated that it was the way they line up, and he thinks that everyone was using their space the most that they can.

Councilperson Walchanowicz stated that Mal's house was similar in size as the Kirths. He asked if he would be wrong by saying that.

Mrs. Kirth stated that he was probably right, and obviously they added on that garage. She stated that the garage was not attached, but her drive was on the line.

Several people began speaking at once again.

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Councilperson Walchanowicz stated that you have to drive past the house in order to get to the back.

Mrs. Kirth agreed.

Councilperson Walchanowicz stated that he saw that, and he had been to her house a million times for his daughter.

Chairman Moreal stated that if it would mean anything, he would like to revisit and take a look at those for his own sake. He stated that he would be able to table the matter. He stated that the Board could talk about the matter all night. They could table it and revisit it.

Building Official Gero stated that he would like to remind everybody, and everybody should keep in mind that the image that they were looking at on the screen was not necessarily an accurate portrayal of where the lot line was located. He stated that even though they look at it, and it looks like all the driveways were on the lot line; if they would take the lot lines and shift all the lines over to the left a little bit, all the driveways are off the lot lines. He stated that was what they deal with through the County. He stated that it was not a true image. He stated that only a survey could give an accurate location.

Chairman Moreal stated that they do look close to the other houses though, and that was his concern too as to how close it was to the house.

Mrs. Kirth stated that was what they discussed the last time that they came before the Board, and the Chairman did say that to her. He told her to go out and look and see; so they did. They went up Elmerge. She stated that there were homes that she feels were even closer than theirs that she felt that they were right there. She stated that she may or may not still have those pictures; but she knows the houses were still there. She stated that she would be happy to take those pictures. She stated that she understands what they were doing, and she understands that they were asking for something, but obviously they need the variance. She stated that in order to continue to live here and be able to access their property and utilize it and stay here, they need to be able to get back there.

Mrs. Fortlage stated that they need a different house and a different lot to achieve what they need because whether or not others have done it; then there's the question of whether they did it by permit if they were breaking the rules. That was not what guides the Board. She stated that they have a code, and there was a reason for it and a spirit behind it. She stated that the use of the width of the property would not fit that spirit.

Mr. Kirth stated that in that respect, he believes that they do have some photos, Councilperson Walchanowicz mentioned Mike and Mal; and he was not using them as leverage here, that was not his point. He stated that they took some photos when they had their lot surveyed for that

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building to go in and how close that existing concrete was to that lot line. He stated it was right there.

Mr. Bredt asked if there was a variance issued?

Mr. Kirth stated and a few doors down as well. He stated that when they did their addition, they had to go for permits, and it had to, he was sure that an inspector had to look at it as well; and it was right on the line. Mr. Kirth stated that was a lot that they own down there. He stated that he was not throwing this back into the Board, but this was everybody's difficulty with the 60 foot wide lot on the street.

Mrs. Fortlage asked if they owned the property that they were talking about down the street?

Mr. Kirth stated that he did own the property. He stated that he didn't have an issue with it; he didn't have a problem. He knows the neighbor, he knows him. Mr. Kirth stated that he understood the situation; he would never tell him no he doesn't want them doing that driveway because he understands the circumstances.

Chairman Moreal stated that Mr. Kirth knows the Board's concerns right now, and Mrs. Fortlage makes a lot of good points. The entire Board all kind of bring up some points. He stated that the driveway, he knows that Mr. Kirth's heart is in it, and the Board was trying to help them. He stated that there was concern with the one foot bump out. The Board was not even touching on that one that much, but the addition. He stated that personally he would not like to give a variance. He stated that it was a foot. The Board had talked about that. He asked Mr. Kirth if it was worth the Board tabling the matter. He asked what the rest of the Board thought. The Chairman stated that they could talk about it all night.

Mrs. Fortlage stated that she thought it was time to call the question, unless the applicants want to postpone it.

Councilperson Walchanowicz stated that he thought for the Kirths best interests, it would be to table it so then everyone could get out and look at those couple houses down and just see how close some of those driveways were to the property lines. Then this way the applicants would not be losing their opportunity. He stated that it would just prolong it for another 30 days or 60 days. He stated that he thought it would be better for them.

Mrs. Kirth asked if it would be helpful for her to provide a list of addresses and/or pictures of properties in which she has witnessed this.

Mrs. Fortlage stated that it was not the Board's job to do the research on this; so she wouldn't think so. She stated that she would like a comment from the Law Director on it.

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Law Director O'Brien stated a comment of other houses that have driveways that were on the lot line. He stated that he thinks to provide that, it may be persuasive to one or more of the Board members; but it was not dispositive. He stated that when variances, and the Board has heard this, so he apologizes, but for the applicants, they need to prove what is called "practical difficulties", and that was from case law. He stated that one practical difficulty that was not included in the case law was everybody else has done, and therefore they were entitled to a variance. In fact, it would be just the opposite. He stated that he was not saying it wouldn't be persuasive to some of the Board members want to opine in; but it wouldn't dictate whether or not a variance was warranted or not. That was all he was saying.

Mrs. Kirth stated that she understood. She stated that she was not saying that she felt she was entitled to it; she was trying to provide, when they came before the Board before, the Board had said they needed to explain what their hardship was. Their hardship was that they were on a 60 foot wide lot, and their house was set where it was set; and in order to be able to utilize their property and be able to get back there, they have to put a drive back there. She stated that her husband was in construction. He has a large truck. They don't drive a Yaris; so they have to have a drive that would at least accommodate that. She stated that obviously when they go back there, she doesn't want to be pushing over onto the neighbor's property or having turf stone kicking out and moving and/or they were shoveling and it would be coming up. They want to do it right. They want to do it the right way.

Mrs. Fortlage stated that Mrs. Kirth understands with a zero lot line, there wasn't any way to do it right besides pushing the snow onto the neighboring property and that was specifically not allowed. They would be responsible for their own snow. She stated that was just one example, and it would lead to bad neighbor relationships. She stated that she would be unable to justify setting that up for a future time.

Law Director O'Brien stated that if he inferred that the applicants felt they were entitled to it, he didn't take it that way at all. He was just trying to provide some guidance. He stated that one thing that the applicants have to keep in mind too was that the variance would run with the land; so when neighbors would change, the variance would still be there. He stated that while one neighbor may be accommodating, a new neighbor buying a property may not. He stated that he wanted them to keep that into consideration as well.

Chairman Moreal stated he had a couple of things. He would like to table it to give the applicants a chance to maybe work it out. He stated that he would like to see the lot line where the driveway, other than just eyeing up the pins. He asked if Mr. Kirth could pull a string or something and show where they want to put their driveway so the Board could physically see it. The Chairman stated that he would like to talk to the neighbor. He didn't get a chance to talk to him; he wasn't there, or whoever owns the house. It would be nice so that he knows for sure what was going on.

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Mrs. Fortlage stated to the Chairman that they need to be careful because neighbor's opinions needed to be represented by themselves and not by the petitioner.

Mr. Monteleone asked if at this point the applicants be offered to table the matter; and if they don't table, then the Board could go ahead and take a vote. He stated that he wanted the applicants to know those were the choices the Board had in front of them.

Chairman Moreal stated that he didn't know if things were going to change, but he would motion to table the matter.

City Engineer Ramm stated that he wanted to show the Board one quick slide. He stated that one thing that came up in another area of the neighborhood about the mass of a structure and whether it fit. They attempted to give the Board a view of what the back addition would look like from the house. They started out a little bit crudely earlier this afternoon, but they tried to refine it and be more in keeping with their one section view. He stated it was to give the Board an idea of the rear structure that would be taller. He stated that they asked the applicants to maybe look at providing this more accurately so that everyone could see and feel what it would look like.

Chairman Moreal stated that it looked pretty good as far as compared to the houses that were right and left. He stated that they were both two-story houses. He stated that when you were standing there, he stated that he liked the shot looking at it. He stated that it didn't look so massive from a street view.

Mrs. Kirth stated that they were planning on having their architect provide another drawing that was actual so that everyone could see the structure from the street, so that everyone could see that they were trying to step it so it would fit in with the look and feel of their neighborhood. She stated that they were not trying to put in something that would not be aesthetically pleasing to the neighbors. She stated that they want to do it right. They want to do it in the right way.

Chairman Moreal stated that was good. He wanted the applicants to give the Board some more things to look at, and his motion to table the matter was still out there.

Mrs. Fortlage stated that she just wanted to stated that she was not really comfortable stringing along the applicants by tabling the matter which they did not request because the Architectural Review Board did a similar thing this afternoon. She asked when would it end for the applicants.

Chairman Moreal stated that was a good point.

Mr. Bredt stated that while everyone was mulling that over, he had a question for the applicants. He asked what would happen to the existing garage.

Mr. Kirth stated that it would stay as the mechanical room that it was.

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Mr. Bredt stated that it was a one vehicle garage right now.

Mr. Kirth stated that there was no room for a car.

Mrs. Fortlage asked by mechanical room did they mean that they have their hot water tank and furnace in there.

Mr. Kirth agreed.

Mr. Bredt stated that they had no basement.

Chairman Moreal stated that they could not even make the front of the house a two-car garage because they don't even have a one-car garage.

Mr. Kirth stated that was right. He stated that was why he would need that access back there. He stated that if they did the curb or if he stayed off of it a little bit. He stated that when he stated that he would be on the line, he was not anticipating putting the concrete right on the line. He stated that there would forms, but it would be close enough he would guess.

Mrs. Fortlage stated that the request before the Board would be on the line just so Mr. Kirth would know; and that if the Board would approve that, that is what it would be. She stated that if Mr. Kirth means to stay 6 inches off the line, he should be asking for that.

Mr. Kirth stated that he would think with the forms and doing the work, they will be on the line doing the work; but once it would be over with, they would remove the forms, repair their lawn and that would be it.

Mr. Monteleone stated that he hated to say it, but the Board would need to come up with something really soon here. He asked if the Board was making a motion to approve the variances?

Mrs. Kirth stated that she just thinks they need to table it. She stated that she was requesting to table it; she would like to be able to provide additional, like the Chairman stated, she didn't mind having Mr. Kirth string it so the Board could see. She stated that maybe there was a little bit of play in there. She doesn't think that there was much; but if they could do that and resubmit it.

Chairman Moreal stated to Mr. Kirth that he should look at the one foot on the other side. He stated that he and Mr. Kirth talked about that, try to look at that please and see if they could make it work and stay in line with the house.

Mr. Monteleone stated that he had one more thing. He stated that Mr. Kirth was probably leaving a foot under, maybe 2 feet under the overhang; he may have to box out that little area and

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bring the concrete in. He stated that Mr. Kirth would have to be careful. It was his car, his house, and he saved a foot, and he would be gold. He stated that Mr. Kirth would have to hug the house a little bit more and box out the area where the utilities are; and he could be back there.

Mr. Kirth stated that when Mr. Bredt mentioned that earlier about making that turn, they have that adequate room that we don't get into the house.

Several people began speaking at once again.

Mr. Kirth stated that they would be careful, there was no question about that. He stated that it would give them a little leeway to prevent anything.

Mr. Monteleone stated that he heard Mr. Kirth.

Mrs. Fortlage asked if there was a motion on the table without a second for tabling?

Chairman Moreal stated that there was a motion out there.

Mr. Bredt stated that Mrs. Kirth was in favor of the tabling.

Mrs. Fortlage stated yes, but she didn't get a vote. She asked if anyone was seconding the motion?

Mr. Bredt stated that if Mrs. Kirth would withdraw her application, the Board would not have to vote at all.

Law Director O'Brien stated that he thought the applicant was asking to table the application until next month to provide additional information.

A motion was made by Chairman Moreal, seconded by Councilperson Walchanowicz, to table the application.

ROLL CALL: Yeas: Moreal, Walchanowicz, Bredt, Monteleone, Fortlage

Nays: None

MOTION CARRIED

Mrs. Fortlage wanted to ask the Chairman a question. She asked if this would fit where the Board was not supposed to try to solve their problem for them?

Chairman Moreal stated that he stated that.

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Mrs. Fortlage stated that was what got them into trouble here the first time and again now. She stated that the Board should let the applicants present their case and rule on it.

Law Director O'Brien stated that perhaps you want to adjourn the meeting.

Mrs. Fortlage stated that she would say it was business.

A motion was made by Chairman Moreal, seconded by Councilperson Walchanowicz, to adjourn the Board of Zoning Appeals meeting of January 21, 2021.

**ROLL CALL: Yeas: Moreal, Walchanowicz, Monteleone, Fortlage, Brett
 Nays: None
 MOTION CARRIED**

There being no further business, the Board of Zoning Appeals meeting of January 21, 2021 was adjourned at 6:34 p.m.

Chairman Mark Moreal

Debi Beal, Secretary

Minutes Unapproved at Time of Release 01/28/21