

ZONING BOARD OF APPEALS
MINUTES
DECEMBER 11, 2018

The meeting was called to order by Chairperson Greg Constantino at 7:00 p.m. ZBA Members Chip Miller, Reed Panther, Tom Whalls and ZBA Student Intern Maddie Greenleaf were present. ZBA Members Matt Jones, Steve Lucchesi and John Micheli were excused. Also present were Village Planner Kelly Purvis and Recording Secretary Debbie Solomon.

Chairperson Constantino explained the procedures of the Zoning Board of Appeals (ZBA).

MINUTES

ZBA Member Panther moved, seconded by ZBA Member Whalls, to approve the minutes of the September 11, 2018 meeting. The motion carried unanimously with a voice vote.

On the agenda was a public hearing regarding the property at 1N480 Swift Road.

Chairperson Constantino stated all members of the Zoning Board of Appeals have visited the property and are aware of the proposed plans.

A motion was made by ZBA Member Whalls and seconded by ZBA Member Panther to open the public hearing for 1N480 Swift Road at 7:04 p.m. The motion carried unanimously with a voice vote.

PUBLIC HEARING – 1N480 SWIFT ROAD

MINHAJ UDDIN AHMED TRUST IS REQUESTING APPROVAL FROM THE GLEN ELLYN ZONING CODE AS FOLLOWS TO ALLOW THE CONSTRUCTION OF A FENCE AS TALL AS 9 FEET IN SOME AREAS TO BE LOCATED ON THE PROPERTY AT 1N480 SWIFT ROAD: 1. SECTION 10-5-5(B)4: FENCE - TO ALLOW THE CONSTRUCTION OF A FENCE AT A MAXIMUM HEIGHT OF 9 FEET ALONG THE REAR LOT LINE AND EXTENDING 100 FEET ALONG THE INTERIOR SIDE LOT LINES EASTERLY; THE FENCE WILL CONTINUE AT 8 FEET IN HEIGHT FOR APPROXIMATELY 65.5 FEET ALONG THE NORTH PROPERTY LINE AND APPROXIMATELY 214.8 FEET ALONG THE SOUTH LOT LINE. APPROXIMATELY 24.6 FEET OF FENCE WILL BE 8 FEET IN HEIGHT FROM THE SOUTHEAST CORNER OF THE PRINCIPAL STRUCTURE TO THE SOUTH LOT LINE. THE REMAINDER OF THE FENCE WILL BE COMPLIANT WITH THE ZONING CODE. THE PERMITTED HEIGHT FOR A FENCE, NO CLOSER TO THE STREET THAN THE PRINCIPAL STRUCTURE IS 6 FEET.

2. ANY OTHER ZONING RELIEF NECESSARY TO CONSTRUCT THE PROJECT AS DEPICTED ON THE PLANS PRESENTED OR REVISED AT THE PUBLIC HEARING OR AT A PUBLIC MEETING OF THE VILLAGE BOARD.

(Minhaj Uddin Ahmed Trust, owner of the property at 1N480 Swift Road)

All parties who wished to speak at this public hearing were sworn in.

Staff Presentation

Village Planner Kelly Purvis was present to speak regarding the proposed variation request and was sworn in. Village Planner Purvis stated petitioner Minhaj Uddin Ahmed Trust is the owner of the property at 1N480 Swift Road.

Village Planner Purvis stated the petitioner is proposing variations from the Glen Ellyn Zoning Code to allow a second driveway approach as follows:

1. Section 10-5-5(B)4: Fence - to allow the construction of a fence at a maximum height of 9 feet along the rear lot line and extending 100 feet along the interior side lot lines easterly; the fence will continue at 8 feet in height for approximately 65.5 feet along the north property line and approximately 214.8 feet along the south lot line. Approximately 24.6 feet of fence will be 8 feet in height from the southeast corner of the principal structure to the south lot line. The remainder of the fence will be compliant with the Zoning Code. The permitted height for a fence, no closer to the street than the principal structure is 6 feet; and
2. Any other zoning relief necessary to construct the project as depicted on the plans presented or revised at the public hearing or at a public meeting of the Village Board.

Village Planner Purvis stated that the subject property is located on the west side of Swift Road between St. Charles Road and North Avenue (just north of the Georgetown by the River condominium development) in the R4 Single Family zoning district in unincorporated DuPage County. Village Planner Purvis stated the land use immediately surrounding the subject property is largely comprised of unincorporated multi-family residential, with one single-family residential property to the north of it.

Village Planner Purvis stated notice of the public hearing was published in the November 26, 2018 edition of the Daily Herald, mailed to property owners within 250 feet of the subject property, and a placard was placed on the property.

Village Planner Purvis stated the property is currently located in unincorporated DuPage County, and the Village does not have a record of any building permits for the property. Village Planner Purvis stated the Village does not have a record of any previous variations for the property since it is located in unincorporated DuPage County currently.

Village Planner Purvis showed an overview map of the property and stated the Village staff have been negotiating an annexation agreement with the property owner of 1N480 Swift Road for the better part of a year. Village Planner Purvis stated the Village has annexation agreements in place with the single family property as well as the two townhome developments (68 units) to the north of the subject site, and it is anticipated that all of the properties will be annexed into the Village in the early part of 2019.

Village Planner Purvis stated Mr. Ahmed has been constructing the single family home on the lot through a building permit issued by the County and will likely finish that process with the County prior to annexing to the Village. Village Planner Purvis stated he has requested as part of the negotiation of his annexation agreement that the Village grant a fence height variation that would allow him to construct a fence that would provide a buffer between his new single family home and the multi-family developments surrounding his property. Village Planner Purvis stated upon annexation, his property will be zoned R2 as the construction of his home meets the requirements of the Village's R2 zoning district otherwise. Village Planner Purvis stated the petitioner is proposing to construct a 9 foot fence along the rear (west) property line, which abuts a large apartment complex (8 buildings, 3 stories tall plus parking lots and dumpsters). Village Planner Purvis stated the fence will continue to be 9 feet for approximately 100 feet easterly along the north and south property lines. Village Planner Purvis stated the fence height will be reduced to 8 feet along the remainder of the south lot line (adjacent to the garages for the Georgetown by the River condominium development). Village Planner Purvis stated the fence will step down in height to 8 feet for 65.5 feet along the north lot line and then will step down in height again to a code compliant 6 feet where it abuts the single-family home to the north.

Village Planner Purvis stated the petitioner has suggested that a grade drop of about 14 feet from the front to the rear of the property intensifies the appearance of the height of the westerly apartment development. Village Planner Purvis stated as part of the variation application, the petitioner has provided a narrative statement which further details the conditions surrounding the site. Village Planner Purvis stated while the application requests a variation for a basketball hoop as well, there is not a need for this variation request as the Village Board approved a Zoning Code text amendment eliminating regulations for basketball hoops earlier this year.

Questions from the Zoning Board of Appeals

ZBA Member Panther asked why the variance is not being done through DuPage County. Village Planner Purvis stated this variance is a part of the annexation negotiation as the fence will be built after the annexation. ZBA Member Panther asked what the maximum height of a fence is for DuPage County. Attorney for the petitioner, Mark Daniel, stated it is 6 feet.

ZBA Member Whalls asked to see a bigger picture of the overview map and asked where the fence will go on the west side. Mr. Daniel stated they have not retained a fence contractor as of yet, but they would definitely spot the roots and such. ZBA Member Whalls asked if the trees are on the property or the apartment complex property to the west. Mr. Daniel stated most of the foliage is on the apartment complex property as the fence will end up east of this foliage.

Petitioners' Presentation

Mark Daniel, attorney with Daniel Law Office in Oakbrook Terrace, Illinois, stated there still are some standards to meet for the annexation negotiation. Mr. Daniel stated the relief to be granted will not alter the character of the neighborhood. Mr. Daniel stated they are trying to maintain a 6 foot fence as much as they can around the property. Mr. Daniel stated the back of the property lot line abuts the apartment complex's parking lot where people park, where the dumpsters are located and where deliveries will happen. Mr. Daniel stated this will be noisy so the petitioner is requesting a higher fence here to buffer some of the noise as well as have more privacy. Mr. Daniel stated on the south property line are the garages for the Georgetown townhomes, and again, the petitioner is requesting a higher fence to buffer the noise and have more privacy. Mr. Daniel stated the annexation negotiation is driving the request for the variance now. Mr. Daniel stated if a 6 foot fence was done, this would leave the owner of the home in plain view of the apartment complex and the townhomes. Mr. Daniel stated there is hearsay that there is often police activity behind the property so a 9 foot fence here would help keep this to a minimum.

Mr. Daniel stated they cannot screen with a regulatory fence height as this is a single-family home that will not develop into a multi-family use in an area that is loaded with multi-family use. Mr. Daniel stated there is also a 14 foot drop in grade from the front to the rear of the property, from east to west. Mr. Daniel stated the fence would be installed in spring or summer of 2019 so they can first see the shrubs after they grown some. Mr. Daniel stated it is too costly to stage construction and then do the annexation which should possibly go through in February 2019.

Additional Questions from the Zoning Board of Appeals

ZBA Member Panther asked about the top of the fence going across. Mr. Daniel stated on the rear property line, the fence will be 9 feet tall and go straight across. Mr. Daniel stated on the north and south property lines, this will not exceed the lot lines.

ZBA Member Whalls asked if they would be using staggered fencing panels. Mr. Daniel stated if they do a wood fence, the slats would be next to each other, but if they do a vinyl fence, it would have the appearance of wood with slats. Mr. Daniel stated the proposed fence would be white or a wood tone in color.

ZBA Member Miller asked the purpose of the fence being 8 feet on the southeast corner of the property facing Swift Road. Mr. Daniel stated they could possibly take this down to 6 feet as they were doing 8 feet as the fence does need to taper down somewhere.

Persons in Favor of or in Opposition to the Variation Requests

None

Findings of Fact

ZBA Member Panther stated that petitioner Minhaj Uddin Ahmed Trust, owner of the property at 1N480 Swift Road, is requesting the construction of a fence at a maximum height of 9 feet along the rear lot line and extending 100 feet along the interior side lot lines easterly; the fence will continue at 8 feet in height for approximately 65.5 feet along the north property line and approximately 214.8 feet along the south lot line. ZBA Member Panther stated approximately 24.6 feet of fence will be 8 feet in height from the southeast corner of the principal structure to the south lot line, and the remainder of the fence will be compliant with the zoning code. ZBA Member Panther stated the permitted height for a fence, no closer to the street than the principal structure is 6 feet.

ZBA Member Panther stated the staff is negotiating an annexation agreement with the property owner so the variance is being done through the Village and not DuPage County. ZBA Member Panther stated the building permit was issued through DuPage County. ZBA Member Panther stated the Village is also negotiating the annexation of other surrounding properties.

ZBA Member Panther stated they heard from Attorney Mark Daniel that this property is surrounded by multi-family use properties which are zoned R4 Single Family in unincorporated DuPage County. ZBA Member Panther stated the property will likely be zoned R2 when it is annexed into the Village.

ZBA Member Panther stated there are an apartment complex parking lot with dumpsters and storage and townhome garages are adjacent to this property. ZBA Member Panther stated the property does have a 14 foot drop from east to west.

ZBA Member Panther stated no fence contractor has been retained as of yet so they are not sure where the fence will be, but the property owner would like to keep as much of the trees and foliage as possible.

ZBA Member Panther stated it is noted that there is frequent police activity on the adjacent property so the fence itself would provide a noise buffer and privacy. ZBA Member Panther stated the goal is to install the fence by summer of 2019.

Motion

ZBA Member Miller moved, seconded by ZBA Member Whalls, that the Zoning Board of Appeals recommended approval of the Findings of Fact.

The motion carried unanimously with a voice vote.

Additional Comments from the Zoning Board of Appeals

Student ZBA Member Greenleaf stated she noticed the area was very noisy when she visited it. Student ZBA Member Greenleaf stated she would vote yes for this fence if she could vote.

ZBA Member Panther stated he does see the unique circumstance for this fence as the property is surrounded by multi-family housing. ZBA Member Panther stated he suggests a 6 foot fence on the front of the property line.

ZBA Member Whalls stated he concurs with ZBA Member Panther, and he would support a 6 foot fence on the front of the property as well.

ZBA Member Miller stated he agrees that the east-facing fence on the southeast corner of the property should be 6 feet. ZBA Member Miller stated he has no problems with this request.

ZBA Chairperson Constantino stated he is in favor of recommending this variance and also supports the 6 foot fence on the front of the property. ZBA Chairperson Constantino stated this fence would not alter the character of the neighborhood as there is a practical hardship as this is a single-family use surrounded by multi-family use and a topographical issue with the grade drop. ZBA Chairperson Constantino stated this fence will protect the privacy of the home and the home owners.

Motion

A motion was made by ZBA Member Panther and seconded by ZBA Member Whalls to close the public hearing for 1N480 Swift Road at 7:36 p.m.

The motion carried unanimously with a voice vote.

A motion was made by ZBA Member Miller and seconded by ZBA Member Whalls that the Zoning Board of Approvals recommend approval of the zoning variation as requested by petitioner Minhaj Uddin Ahmed Trust to allow a 9 foot fence and an 8 foot fence be constructed as depicted on the proposed site plan on the property located at 1N480 Swift Road. The Zoning Board of Appeals hereby adopts the Findings of Fact in the petitioners' application packet and presented by the petitioner at the December 11, 2018 public hearing at the Glen Ellyn Zoning Board of Appeals as well as the findings included in the deliberations of the Zoning Board of Appeals. The Zoning Board of Appeals recommends approval of the requested zoning variance from Section 10-5-5(B)4 due to the following unique circumstances of this is a single-family home surrounded by tall multi-family buildings with a lot of traffic, and there is a 14 foot change in elevation from east to west.

The recommended variances are as follows:

1. Section 10-5-5(B)4: Fence - to allow the construction of a fence at a maximum height of 9 feet along the rear lot line and extending 100 feet along the interior side lot lines easterly; the fence will continue at 8 feet in height for approximately 65.5 feet along the north property line and approximately 214.8 feet along the south lot line. Approximately 24.6 feet of fence will be 8 feet in height from the southeast corner of the principal structure to the south lot line. The remainder of the fence will be compliant with the Zoning Code. The permitted height for a fence, no closer to the street than the principal structure is 6 feet; and
2. Any other zoning relief necessary to construct the project as depicted on the plans presented or revised at the public hearing or at a public meeting of the Village Board.

The recommendation is subject to the following conditions:

1. The project will be constructed in substantial conformance with the plans as submitted and the testimony presented at the December 11, 2018 public hearing of the Zoning Board of Appeals.
2. The east-facing sections of the fence on the southeast corner will be no higher than 6 feet 0 inches.

The motion carried with four (4) "yes" votes. The "yes" votes are as follows: ZBA Members Miller, Panther, Whalls and Chairperson Constantino.

Chairperson Constantino stated the ZBA has voted to recommend approval, and this should come before the Village Board at a January 2019 meeting.

On the agenda was a public hearing regarding the property at 689 Lake Road.

Chairperson Constantino stated all members of the Zoning Board of Appeals have visited the property and are aware of the proposed plans.

A motion was made by ZBA Member Panther and seconded by ZBA Member Miller to open the public hearing for 689 Lake Road at 7:40 p.m. The motion carried unanimously with a voice vote.

PUBLIC HEARING – 689 LAKE ROAD

PETITIONERS DAVID AND ALLISON NEILL ARE REQUESTING APPROVAL FROM THE GLEN ELLYN ZONING CODE AS FOLLOWS TO ALLOW THE CONSTRUCTION OF AN ADDITION OVER AN ATTACHED GARAGE THAT IS NON-CONFORMING TO THE REAR YARD SETBACK. 1. SECTION 10-8-6(B)4 TO ALLOW THE CONSTRUCTION OF A SECOND STORY ADDITION OVER AN EXISTING NON-CONFORMING ATTACHED GARAGE WHICH WILL HAVE A REAR YARD SETBACK ON 29.1 FEET IN LIEU OF THE REQUIRED 30 FEET. 2. ANY OTHER ZONING RELIEF NECESSARY TO CONSTRUCT THE PROJECT AS DEPICTED ON THE PLANS PRESENTED OR REVISED AT THE PUBLIC HEARING OR AT A PUBLIC MEETING OF THE VILLAGE BOARD.

(David and Allison Neill, owners of the property at 689 Lake Road)

All parties who wished to speak at this public hearing were sworn in.

Staff Presentation

Village Planner Kelly Purvis was present to speak regarding the proposed variation request and was sworn in. Village Planner Purvis stated petitioners David and Allison Neill are the owners of the property at 689 Lake Road.

Village Planner Purvis stated the petitioners are proposing variations from the Glen Ellyn Zoning Code to allow the construction of an addition over an attached garage as follows:

1. Section 10-8-6(B)4 to allow the construction of a second story addition over an existing non-conforming attached garage which will have a rear yard setback of 29.1 feet in lieu of the required 30 feet; and

2. Any other zoning relief necessary to construct the project as depicted on the plans presented or revised at the public hearing or at a public meeting of the Village Board.

Village Planner Purvis showed an overview map of the property and stated that the subject property is located in the R2 Zoning District on the east side of Lake Road between Oak Street and Essex Road. Village Planner Purvis stated the zoning and land use immediately surrounding the subject property is R2 single family residential and CR conservation recreation.

Village Planner Purvis stated notice of the public hearing was published in the October 26, 2018 edition of the Daily Herald, mailed to property owners within 250 feet of the subject property, and a placard was placed on the property.

Village Planner Purvis stated no Village records were found relating to the granting of any zoning variations for the subject property. Village Planner Purvis stated Village records indicate that the following building permits have been issued for the subject property – an Addition in 1988 and a Driveway in 2009

Village Planner Purvis stated David and Allison Neill, owners of the property at 689 Lake Road would like to construct an addition over their attached garage. Village Planner Purvis stated the garage is non-conforming to the rear yard setback, with a setback of 29.1 feet in lieu of the 40 foot setback required in the R2 zoning district. Village Planner Purvis stated the Zoning Code allows an exception for the construction of additions on non-conforming structures in Section 10-8-6(B)4 that will allow the construction of an addition above or within the perimeter of an existing structure as long as the following criteria are met:

- (a) The existing lot coverage ratio does not exceed 25 percent;
- (b) The existing front perimeter wall projects no more than 5 feet into the minimum required front yard setback for the zoning district;
- (c) The existing side perimeter walls project no more than two feet into the minimum required side yard setback for the zoning district;
- (d) The existing rear perimeter wall projects no more than 10 feet into the minimum required rear yard setback for an interior lot or no more than 15 feet for a corner lot;
- (e) That the sum of the first floor area and the second floor area not exceed the equivalent to a 40% lot coverage ratio; and
- (f) The addition or alteration is permitted in subsection (B)3 of this section.

Village Planner Purvis stated all requirements for this exception are met, except that the rear wall projects 10.9 feet into the rear yard setback, and is only permitted to project a maximum of 10 feet. Village Planner Purvis stated in order to construct the addition as proposed, the petitioners will need to be granted a zoning variation. Village Planner Purvis stated the property has an irregularly shaped rear yard that creates an irregular setback line, and if not for this irregular shape, the property owners would not need to request relief from the Zoning Code.

Questions from the Zoning Board of Appeals

ZBA Member Miller asked if there are any other lots in Glen Ellyn with an irregular shape such as this. Village Planner Purvis stated there are not many outside of this neighborhood, and the current Village code requires all lots to be rectangular.

Petitioners' Presentation

Jamie Simoneit, Principal Architect with z+o Architecture and Interiors, stated it seems that when the garage was built originally in 1972, it was built to possibly put an addition over the garage then. Mr. Simoneit stated the obvious hardship is the irregularly shaped property itself. Mr. Simoneit stated this is a very small variation request and showed a piece of board that represented what the variation request is in size.

Mrs. Neill stated they are intending to stay in the home for a great while. Mr. Neill stated he and his wife grew up in Glen Ellyn and were recently married.

Additional Questions from the Zoning Board of Appeals

ZBA Member Whalls asked why an administrative variation was not done. Village Planner Purvis stated this was considered and it was determined that the request is an exception to the Village Code, and not the actual setback requirement for which an administrative variation could not be granted.

Persons in Favor of or in Opposition to the Variation Requests

None

Findings of Fact

ZBA Member Panther stated that petitioners David and Allison Neill, owners of the property at 689 Lake Road, are requesting a variance to Section 10-8-6(B)4 of the Village Code to allow construction of a second story addition over an existing non-conforming garage with a rear yard setback of 29.1 feet in lieu of the required 30 feet.

ZBA Member Panther stated the property is located in the R2 Zoning district and is surrounded by R2 single family residential and CR conservation recreation.

ZBA Member Panther stated they heard from the property owners' architect Jamie Simoneit that the addition would be allowed per code, but the existing perimeter wall projects 10.9 feet

into the rear yard in lieu to the 10 feet allowed by code. ZBA Member Panther stated it seems the garage was set-up for a second story addition.

ZBA Member Panther stated they were showed that the variation would fit into a shopping bag. ZBA Member Panther stated the hardship is the irregular shape of the property, and the rear property line is not parallel to the street.

ZBA Member Panther stated this variation could not be processed as an administrative variation.

Motion

ZBA Member Whalls moved, seconded by ZBA Member Miller, that the Zoning Board of Appeals recommended approval of the Findings of Fact.

The motion carried unanimously with a voice vote.

Additional Comments from the Zoning Board of Appeals

Student ZBA Member Greenleaf stated she supports this variance and would vote yes if she was to vote.

ZBA Member Panther stated he supports this due to the irregular shape of the lot.

ZBA Member Whalls stated he supports this variance.

ZBA Member Miller stated he has no problem with the variance.

ZBA Chairperson Constantino stated he has no problem with the variance as the variation would not be needed if the property had a regular shape. ZBA Chairperson Constantino stated the variance would not be detrimental to the neighborhood's characteristics.

Motion

A motion was made by ZBA Member Whalls and seconded by ZBA Member Panther to close the public hearing for 689 Lake Road at 7:53 p.m.

The motion carried unanimously with a voice vote.

A motion was made by ZBA Member Miller and seconded by ZBA Member Whalls that the Zoning Board of Approvals recommend approval of the zoning variation as requested by petitioners David and Allison Neill to allow an addition to be constructed over their existing

non-conforming attached garage for the property located at 689 Lake Road. The Zoning Board of Appeals hereby adopts the Findings of Fact in the petitioners' application packet and presented by the petitioners at the December 11, 2018 public hearing at the Glen Ellyn Zoning Board of Appeals as well as the findings included in the deliberations of the Zoning Board of Appeals. The Zoning Board of Appeals recommends approval of the requested zoning variation from Section 10-8-6(B)4 due to the following unique circumstance:

1. The home is on a very odd-shaped lot that is roughly a parallelogram with the side of the yard not perpendicular to Lake Road causing a very small corner of the perimeter wall to be out of the zoning area.

The recommended variances are as follows:

1. Section 10-8-6(B)4 to allow the construction of a second story addition over an existing non-conforming attached garage which will have a rear yard setback of 29.1 feet in lieu of the required 30 feet; and
2. Any other zoning relief necessary to construct the project as depicted on the plans presented or revised at the public hearing or at a public meeting of the Village Board.

The recommendation is subject to the following conditions:

1. The project will be constructed in substantial conformance with the plans as submitted and the testimony presented at the December 11, 2018 public hearing of the Zoning Board of Appeals.

The motion carried with four (4) "yes" votes. The "yes" votes are as follows: ZBA Members Miller, Panther, Whalls and Chairperson Constantino.

Chairperson Constantino stated the ZBA has voted to recommend approval, and this should come before the Village Board at a January 2019 meeting.

On the agenda was a public hearing regarding the property at 787 Crescent Boulevard.

Chairperson Constantino stated all members of the Zoning Board of Appeals have visited the property and are aware of the proposed plans.

A motion was made by ZBA Member Whalls and seconded by ZBA Member Miller to open the public hearing for 787 Crescent Boulevard at 7:56 p.m. The motion carried unanimously with a voice vote.

PUBLIC HEARING – 787 Crescent Boulevard

PETITIONERS LEISHA MCCREADY AND JOHN KEEL ARE REQUESTING APPROVAL FROM THE GLEN ELLYN ZONING CODE AS FOLLOWS TO ALLOW A WALKWAY AND A PATIO TO REMAIN CLOSER TO THE LOT LINE THAT IS PERMITTED BY CODE. 1. SECTION 10-5-4(A)4(b) TO ALLOW A PATIO TO REMAIN AT A DISTANCE OF 1.3 FEET FROM THE PROPERTY LINE IN LIEU OF OBSERVING THE SAME SETBACK REQUIRED OF THE PRINCIPAL STRUCTURE ON THE LOT, IN THIS CASE 13.6 FEET. 2. SECTION 10-5-5(C)1 TO ALLOW A WALKWAY TO REMAIN AT A DISTANCE OF 1.68 FEET FROM THE PROPERTY LINE IN LIEU OF THE REQUIRED IMPERVIOUS SURFACE SETBACK OF 6.8 FEET (5% OF THE LOT WIDTH). 3. ANY OTHER ZONING RELIEF NECESSARY TO ALLOW THE PATIO AND WALKWAY TO REMAIN WHERE THEY ARE DEPICTED ON THE PLAT OF SURVEY DATED NOVEMBER 14, 2018.

(Leisha McCready and John Keel, owners of the property at 787 Crescent Boulevard)

All parties who wished to speak at this public hearing were sworn in.

Staff Presentation

Village Planner Kelly Purvis was present to speak regarding the proposed variation request and was sworn in. Village Planner Purvis stated petitioners Leisha McCready and John Keel are the owners of the property at 787 Crescent Boulevard.

Village Planner Purvis stated the petitioners are requesting a construction necessitated variation to allow a walkway and a patio to remain closer to the lot line than is permitted by the Glen Ellyn Zoning Code.

1. Section 10-5-4(A)4(b) to allow a patio to remain at a distance of 1.3 feet from the property line in lieu of observing the same setback required of the principal structure on the lot, in this case 13.6 feet.
2. Section 10-5-5(C)1 - to allow a walkway to remain at a distance of 1.68 feet from the property line in lieu of the required impervious surface setback of 6.8 feet (5% of the lot width).
3. Any other zoning relief necessary to allow the patio and walkway to remain where they are depicted on the plat of survey dated November 14, 2018.

Village Planner Purvis showed an overview map of the property and stated that the subject property is located in the R2 Zoning District on the south side of Crescent Boulevard, between Riford Road and Plumb Tree Road. Village Planner Purvis stated the zoning and land use immediately surrounding the subject property is R2 single-family residential.

Village Planner Purvis stated notice of the public hearing was published in the November 26, 2018 edition of the Daily Herald, mailed to property owners within 250 feet of the subject property, and a placard was placed on the property.

Village Planner Purvis stated Village records indicate that there were three variations granted by Ordinance for the property, and it would appear the 1983 and 1988 variations were granted for the same project and perhaps the variation expired prior to construction of the sunroom addition. Village Planner Purvis stated the variations are as follows:

1. 1978 – Side Yard Setback 8.92 feet for an addition on the east side of the home (connected garage to the principal structure).
2. 1983 – Side Yard Setback 4.0 feet for a sunroom addition on the west side of the home.
3. 1986 – Side Yard Setback 4.0 feet for a sunroom addition of the west side of the home.

Village Planner Purvis stated Village records indicate the following permits have been applied for on the property:

1. 1979 – Remodel
2. 1999 – Sewer Repair
3. 1989 – Sun Room Addition
4. 2013 – Re-roof
5. 2016 – Retaining Wall and Driveway

Village Planner Purvis stated the petitioners began construction on the walkway and patio on October 1, 2018, and on October 17, 2018, one of the Village's building inspectors came to the property to inform the property owners that a permit was needed for the construction of the patio and walkway. Village Planner Purvis stated the petitioners applied for the building permit on October 18, 2018 and were informed that a variation would be required for both the walkway and the patio on October 19, 2018.

Village Planner Purvis stated the property at 787 Crescent Boulevard is triangular in shape, creating a greater lot width than would be typical. Village Planner Purvis stated at the 30 foot setback line, the width of the lot is 135 feet. Village Planner Purvis stated the impervious surface setback and accessory structure setback requirement for the walkway and patio are based upon a percentage of the lot width. Village Planner Purvis stated to make matters worse, the survey that was provided to the property owners when they purchased the property in 1996 was found to be inaccurate when they had the property resurveyed as part of this process. Village Planner Purvis stated approximately 4 feet along the east side of the property actually belongs to the property owners to the east, making the property significantly more narrow on the east side of the house.

Village Planner Purvis stated prior to constructing the walkway on the east side of the property, there was a concrete walkway on the property, which is shown on the attached (inaccurate) plat of survey. Village Planner Purvis stated the walkway that was in this location would not be permitted today without a variation. Village Planner Purvis stated prior to the construction of the patio, there was a deck in this location, which would also not be permitted by today's zoning standards.

Village Planner Purvis stated the petitioners have indicated that they were unaware that a permit was needed for the construction of the patio and the walkway, and they immediately applied for the permit upon being told one was needed. Village Planner Purvis stated the petitioners have stated that they have tried without success in the past to plant ground cover on the side of the house (where the walkway is now constructed), but were unable to get anything to grow. Village Planner Purvis stated with two large dogs, the side of the house was always muddy. Village Planner Purvis stated the construction of the patio and walkway was an attempt to clean up the side and back of the house and to provide a path from the back and side doors of the home. Village Planner Purvis stated in order for the walkway and patio to remain in their existing location, the petitioners would need to be granted variations from the impervious surface setback requirements and the accessory structure setback requirements of the Zoning Code.

Village Planner Purvis stated if not granted a variation to allow the patio and walkway to remain, the petitioners would have to remove the entire walkway and patio. Village Planner Purvis stated By Code, a walkway 1.42 feet in width would be permitted and the patio would be constructed several feet west of the beginning of the patio door (which would be odd in appearance). Village Planner Purvis stated the petitioners have provided a diagram (attached) showing what a Code compliant walkway and patio would look like. Village Planner Purvis stated the petitioners have indicated that the patio and walkway reduced in this manner would not be useful and therefore would need to be removed. Village Planner Purvis stated the contractor that built walkway and patio, provided the petitioners with an approximate estimate of \$7,000 for the complete removal and disposal of the walkway and patio. Village Planner Purvis stated there would be additional cost to put sod or some other plant material in the place of the walkway and patio.

Questions from the Zoning Board of Appeals

Student ZBA Member Greenleaf asked if the patio is on the lot line. Village Planner Purvis stated there is a retaining wall on the lot line which is on the petitioners' property.

ZBA Chairperson Constantino asked if the retaining wall and walkway are fine under the code. Village Planner Purvis stated the Village's Stormwater Engineer Ray Ulrich can approve this, and

he was fine with it. Village Planner Purvis stated due to the lot being shaped as a triangle, this creates a greater lot width than would be typical, and the percent needed for setback goes up the wider a lot is. Village Planner Purvis stated with this property, 5% is required for impervious which is the largest you have to go per code.

ZBA Member Whalls asked about the incorrect plat. Village Planner Purvis stated this would have come from a licensed surveyor and the Village would have accepted it as an accurate and legal document. ZBA Member Whalls asked if the fence was on the prior survey to which Village Planner Purvis stated it is.

ZBA Member Miller asked about drainage on the walkway. Village Planner Purvis stated the Village's Stormwater Engineer stated he was good with it, but she can have Mr. Ulrich review this if need be. ZBA Member Miller asked if the petitioners would need this variance if the 4 additional feet of property was still there. Village Planner Purvis stated there would still be a variance needed, but it would be a smaller request.

Petitioners' Presentation

John Keel, co-owner of the home at 787 Crescent Boulevard, stated they are long-time Glen Ellyn residents. Mr. Keel stated there used to be a terraced wood deck in the back of the home with a concrete walkway on the side of the home. Mr. Keel stated since both of these existed when they purchased the home in 1996, they thought they were just improving on what was there, and they did not know they would need a permit.

Mr. Keel stated the hardship is that the shape of the lot creates large setbacks so they cannot do anything on the side or the rear of the property without a variance. Mr. Keel stated they did not think they needed to get a new survey.

Mr. Keel showed several overview pictures of the lot and pictures of the walkway and patio. Mr. Keel stated it has been difficult to get anything to grow on that side of the home which is why they wanted to put a walkway in which would help with drainage issues too.

Leisha McCready, co-owner of 787 Crescent Boulevard, stated they did not know they would need to deal with the setbacks issues and permit.

Additional Questions from the Zoning Board of Appeals

ZBA Member Panther asked when the deck was removed. Mr. Keel stated the wood deck was removed a while ago. Ms. McCready stated the deck posts were still there until October 2018.

ZBA Member Whalls asked how they will mow between the fence and the retaining wall. Ms. McCready stated there is no grass in that strip. ZBA Member Whalls asked what the petitioners would think if their neighbors took the fence down. Ms. McCready stated they are fine with this. ZBA Member Whalls asked about lighting being added. Mr. Keel stated there is no lighting now, and they are not looking to add any. ZBA Member Whalls asked what the retaining wall previously. Ms. McCready stated there were timbers there that were not retaining anything.

ZBA Member Miller asked if egressing the home in the rear might be difficult in an emergency to the muddy strip to which Mr. Keel stated it would be.

ZBA Member Panther asked about an under-drain along the walkway to take water away from the retaining wall. Ms. McCready stated there is no collection of water there even in heavy rains.

Village Planner Purvis stated in the Village code, it states as the width of a lot increases, the impervious setback surface of the lot increases as well. Village Planner Purvis stated that they get a lot of width due to the triangular shape of the lot.

Persons in Favor of or in Opposition to the Variation Requests

Mr. David Pearson, who resides at 791 Crescent Boulevard, stated he lives in the other home in question next door. Mr. Pearson stated they would like all structures in the neighbors' yard to be 1 foot off the property line to the west so the Pearsons can install a fence and fence posts and to keep things a bit clean and to have a bit of setback from their property. Mr. Pearson stated they did communicate this to Mr. Keel and Ms. McCready.

ZBA Chairperson Constantino asked how much setback there is currently. Mr. Pearson stated there is about 0.4 feet to the west and 0.8 feet to the north. ZBA Chairperson Constantino asked if the retaining wall encroaches on the Pearsons property. Mr. Pearson stated the driveway retaining wall does. ZBA Chairperson Constantino asked if the neighbors has sought a licensing agreement.

Duska Pearson, who resides at 791 Crescent Boulevard, stated the 4 neighbors met in June to try to come to an agreement on the installation of a possible new fence. Mrs. Pearson stated when they looked at the new survey that was done, this was the first time it was seen that the property lines from the previous survey might be wrong. Mrs. Pearson stated Ms. McCready and Mr. Keel stated their project, but the Pearson felt the property lines might be in dispute. Mrs. Pearson stated it was to their understanding that Ms. McCready and Mr. Keel would do a new survey when their project was completed. Mrs. Pearson asked whose property is being protected in this case.

ZBA Chairperson Constantino asked how far the petitioners were into the project when the Village inspector notified them about a permit. Ms. McCready stated they were about 85% complete, and they have not touched anything since then.

ZBA Member Panther asked if a permit is required for the driveway due to the impervious surface setback. Village Planner Purvis stated they would be required to have the same setback and to be 5% of the lot width.

Village Planner Purvis stated that the Village would not get involved with a property dispute among neighbors and this might need to be settled with legal counsel.

Findings of Fact

ZBA Member Panther stated that petitioners Leisha McCready and John Keel, owners of the property located at 787 Crescent Boulevard, are seeking construction necessitated variations to Sections 10-5-4(A)4(b) and 10-5-5(C)1 of the Village Code to allow a patio to remain at a distance of 1.3 feet from the property line in lieu of the required 13.6 feet and to allow a walkway to remain at a distance of 1.68 feet from the property line in lieu of the required 6.8 feet (5% of the lot width).

ZBA Member Panther stated there have been 3 variances granted for this property prior.

ZBA Member Panther stated the property is located in the R2 Zoning district and is surrounded by R2 single family residential.

ZBA Member Panther stated the petitioners had started construction when the inspector informed the petitioners a permit and a variance would be needed. ZBA Member Panther stated the hardship in this case is the side yard setbacks are based on the lot width, and the petitioners' triangular lot makes the lot function wider than a rectangular lot.

ZBA Member Panther stated the previously existing walkway and patio would not be permitted by current code, and the contractor that built the current walkway and patio estimated it could cost approximately \$7,000 for the complete removal and disposal of the walkway and patio.

ZBA Member Panther stated the Village's Stormwater Engineer does have any objections with the location of the retaining wall that has been installed.

ZBA Member Panther stated there has been some dispute around the new survey which shows there is an additional 4 feet of property on the eastern edge of the property line.

ZBA Member Panther stated they heard from the petitioners who say the shape of the lot is what is creating the hardship for them, and they did not realize a permit was needed because of the previously existing structures on the property. ZBA Member Panther stated the petitioners indicated the patio is smaller in size and scale than the deck that was there previously.

ZBA Member Panther stated the petitioners have indicated there is no collection of water even during heavy rains.

ZBA Member Panther stated they heard from David and Duska Pearson, who own the home next door. ZBA Member Panther stated the Pearsons indicated they would like to see any installed structures at least 1 foot from their property line to allow for possible construction of a fence on their property line.

ZBA Member Panther stated the Pearsons indicated in 2016, a permit was issued for 787 Crescent which does encroach onto the Pearsons' property, and there has not been a resolution between them as of yet. ZBA Member Panther stated the Pearsons did indicate the current excavation has encroached onto the Pearsons' property. ZBA Member Panther stated the Pearsons indicated in the current survey, the eastern face of the retaining wall that was installed is 0.4 feet from the Pearsons property line.

ZBA Member Panther stated the two parties indicated they met in June to discuss a new fence that was proposed to be installed, and at that point, they discovered discrepancies in the two surveys. ZBA Member Panther stated excavation in the area in question started before any sort of agreement on the two surveys had been reached.

Motion

ZBA Member Whalls moved, seconded by ZBA Member Miller, that the Zoning Board of Appeals recommended approval of the Findings of Fact.

The motion carried unanimously with a voice vote.

Additional Comments from the Zoning Board of Appeals

ZBA Member Miller stated there is a lot going on with this, and he has a problem since there was no permit pulled. ZBA Member Miller stated this seems to be the contractor's fault who should have made an inquiry about a possible permit. ZBA Member Miller stated he does not think he can find a way to recommend approval on this.

ZBA Member Whalls stated the ZBA has not had anything like this, and this seems to be a legal issue that needs to be settled. ZBA Member Whalls stated due to adverse possession, there seems to be nothing concrete right now.

ZBA Member Panther stated he is struggling with this as there are other factors involved. ZBA Member Panther stated he does see a possible issue due to the shape of the lot, but he thinks there needs to be resolution to the other factors before this is dealt with.

ZBA Chairperson Constantino stated all 4 ZBA Members would need to vote yes to recommend this variance, but that does not seem like it will happen. ZBA Chairperson Constantino stated they could continue this discussion to another meeting where more ZBA Members would be present to vote, or this could go to the Village Board where the petitioners would need 2/3 vote of the Village Board for approval. ZBA Chairperson Constantino stated the permit was not originally requested before the work was done, and the survey issue about the property lines might have been found then. ZBA Chairperson Constantino this 4 feet in dispute is creating issues.

ZBA Chairperson Constantino stated he feels the Pearsons have made a reasonable request to want some room to install a fence. ZBA Chairperson Constantino stated all of this will need to be resolved at some point, and adverse possession affects both sides.

ZBA Chairperson Constantino due to the open issues, he cannot vote to recommend approval on this so the petitioners do have an option to continue this public hearing to another meeting so the 4 neighbors can work on a viable solution, or the ZBA can vote now and then go to the Village Board for a vote.

Ms. McCready stated they would like the meeting continued so that they can work with the Pearsons on an appropriate solution. Ms. McCready stated they did not have a survey when they met in June.

ZBA Member Whalls stated he wants to ensure all the neighbors are taken into consideration.

Village Planner Purvis stated she will have the Village's Stormwater Engineer take another look at the property to review any possible stormwater issues.

Motion

At 9:05 p.m., a motion was made by ZBA Member Miller and seconded by ZBA Member Panther to continue the public hearing for 787 Crescent Boulevard to the January 22, 2019 ZBA Meeting.

The motion carried unanimously with a voice vote.

The motion carried with four (4) “yes” votes. The “yes” votes are as follows: ZBA Members Miller, Panther, Whalls and Chairperson Constantino.

Village Board Trustee Report

None

Staff Report

None

Adjournment

At 9:07 p.m., a motion was made by ZBA Member Whalls and seconded by ZBA Member Miller to adjourn the meeting. The motion carried unanimously by a voice vote.

Respectfully submitted,

Debbie Solomon
Recording Secretary