

MINUTES
ZONING BOARD OF APPEALS
June 22, 2021

The meeting was called to order by ZBA Chairperson Gregory Constantino at 7:04 p.m. Zoning Board of Appeals Members Michelle Covington, Katie Crudele, Matt Jones, Chip Miller and Reed Panther were present. ZBA Member Tom Whalls was excused. Also present were Planning Manager Kelly Purvis, Trustee Liaison Anne Gould and Recording Secretary Lindsey Kaminsky.

Chairperson Constantino stated tonight's meeting is called pursuant to notice by statue that was published in the Daily Herald on June 4, 2021 and June 7, 2021.

Chairperson Constantino stated this meeting will be conducted by audio or video conference without a physically present quorum of the Glen Ellyn Zoning Board of Appeals (ZBA) because of a disaster declaration related to COVID-19 and public health concerns affecting the Village of Glen Ellyn. The Chairperson of the Zoning Board of Appeals has determined that an in-person meeting at the Civic Center is not practical or prudent because of the disaster. The Chairperson, members of the Zoning Board of Appeals, Village Manager, and Village Attorney will not be physically present at the Civic Center because their attendance is unfeasible due to the disaster. Physical attendance at the Civic Center by the public is also not feasible because of the disaster.

Chairperson Constantino stated it is important that the cases scheduled tonight be heard to continue critical Village business which will enable ongoing construction, development, protection of property values, and the promotion of the Village's economic vitality.

Chairperson Constantino stated the Glen Ellyn Zoning Board of Appeals is advisory in nature and the actual variances that are being requested can only be granted by the Village of Glen Ellyn Board of Trustees. The ZBA's function is to listen to whatever testimony is offered by the petitioner and others. We take significant evidence, agree on the facts which we have found from the evidence, consider and deliberate among ourselves and then we make a recommendation to the Village Board.

Chairperson Constantino stated if the ZBA makes a recommendation favorable to the granting of the variation(s) requested, then the Village Board requires a majority vote for the final approval of the ordinance to grant the variation(s). If the ZBA makes a recommendation to deny the requested variation(s), it would then require a two-thirds vote of the Trustees of the Glen Ellyn Village Board to pass an ordinance approving the variation(s) requested.

EMERGENCY RULES OF PROCEDURE

ZBA Member Jones moved, seconded by ZBA Member Covington, to approve the emergency rules of procedure. The motion was carried with 6 "yes" votes and 0 "no" vote. The "yes" votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Jones, ZBA Member Miller and ZBA Member Panther.

MINUTES

ZBA Member Crudele moved, seconded by ZBA Member Miller, to approve the minutes of the May 11, 2021 meeting. The motion was carried with 6 “yes” votes and 0 “no” vote. The “yes” votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Jones, ZBA Member Miller and ZBA Member Panther.

On the agenda were public hearings regarding the properties located at 551 Geneva Road, 85 Sunset Avenue and 523 Fairway Court.

ZBA Chairperson Constantino stated all members of the Zoning Board of Appeals have visited the properties and are familiar with the plans that were submitted.

A motion was made by ZBA Member Jones and seconded by ZBA Member Covington to open the public hearing for 551 Geneva Road at 7:11p.m. The motion was carried with 6 “yes” votes and 0 “no” vote. The “yes” votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Jones, ZBA Member Miller and ZBA Member Panther.

PUBLIC HEARING – 551 GENEVA ROAD

PETITIONER SUZANNE CARTY, ON BEHALF OF THE GLEN ELLYN HISTORICAL SOCIETY, IS REQUESTING A RECOMMENDATION OF APPROVAL OF THE FOLLOWING VARIATIONS FROM THE GLEN ELLYN ZONING CODE: 1. A VARIATION FROM 10-4-1(c) TO ALLOW ACCESSORY STRUCTURES (GARAGE, SHED, AND DRIVEWAY) TO REMAIN ON THE PROPERTY WITHOUT A PRINCIPAL STRUCUTRE AFTER THE PRINCIAPL STRUCUTRE IS EMOLISHED; AND 2. ANY OTHER ZONING RELIEF NECESSARY TO CONSTRUCT THE PROJECT AS DEPICTED ON THE PLANS PRESENTED OR REVISED AT THE PUBLIC HEARING OR A PUBLIC MEETING OF THE VILLAGE BOARD.

(Suzanne Carty, on behalf of the Glen Ellyn Historical Society, owner of the property located at 551 Geneva Road).

Staff Presentation

Planning Manager Purvis was present to speak regarding the proposed variation request and was sworn in.

Planning Manager Purvis stated the petitioner is Suzanne Carty, on behalf of the Glen Ellyn Historical Society, owner of the property located at 551 Geneva Road. Mrs. Carty is the President of the Board of Directors for the Glen Ellyn Historical Society. The subject property and the properties to the immediate west and south are zoned R2-Residential District and improved with single-family homes. The lot to the immediate east is zoned C2-Community District and is the

location of Stacy's Tavern which is also owned by the GEHS. Stacy Park, zoned CR-Conservation Recreation District is to the north of the property.

Planning Manager Purvis stated the petitioner is requesting a recommendation of approval from the following variations from the Glen Ellyn Zoning Code:

1. A variation from 10-4-1(c) to allow accessory structures (garage, shed, and driveway) to remain on the property without a principal structure after the principal structure is demolished; 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.

Planning Manager Purvis stated the Village has no record of any variations being previously granted to this property. Planning Manager Purvis stated the Village has granted the following permits to this property: electric service, 1986; electric service, 1986; garage, 1995; sewage connection, 2012; sewer repair, 2014; clearwater compliance, 2014.

Planning Manager Purvis stated the Glen Ellyn Historical Society received the property located at 551 Geneva in 2014 as a gift to the organization. The original plan was for this property to be incorporated into the Museum Campus with a "period barn" or other structure to showcase Glen Ellyn's agricultural heritage and to provide storage for the museum. The petitioner has indicated that the GEHS is funded by private donations and that they do not have the means at this time to develop the property.

Planning Manager Purvis stated the principal structure was used as the home of the Society's Executive Director until 2018, when the house was found to have mild and structural issues, deeming the house uninhabitable. The petitioner has indicated that the cost of remediating the mold and fixing the underlying structural issues are prohibitively high, prompting the Glen Ellyn Historical Society to demolish the principal structure of the property. They would like to continue to get some benefit out of the property by using the existing garage and shed to store items that may be heavy or that need to be easily accessible for their staff.

Planning Manager Purvis stated the petitioner is proposing to demolish the principal structure located at 551 Geneva due to mold and structural issues while keeping the accessory structures on the property for storage. As shown on the Plat of Survey, the garage is approximately 450 square feet in area and 144 feet from the front lot line. The shed is 64 square feet in area and is tucked behind the garage. Each of the accessory structures are compliant with the Zoning Code in terms of size. However, they are considered legally non-conforming due to their placement from the property line. The garage is 3.85 feet from the east lot line and the shed is 1.8 feet from the south lot line (at their closest points) where 5 feet is required.

Planning Manager Purvis stated the petitioner has indicated that the GEHS does not have funds available at this time to develop the property, but would like to keep the flexibility to sell the property in the future should they need to do so. They are therefore requesting a variation to allow the accessory structures to remain on the lot without a principal structure, rather than consolidating the lot with the

adjacent museum property. In addition to storage, the lot will occasionally be used in conjunction with the museum site for special events (as they currently do). The petitioner has stated that their current storage on the History Center property is inadequate in size and infested with mice. Keeping the garage and shed located at 551 Geneva will give the Glen Ellyn Historical Society more room for storage, which is vital to their organization's mission (keeping the history of Glen Ellyn without having to incur greater expense for off-site storage).

Questions from the Zoning Board of Appeals

ZBA Member Covington asked if the lot can be used for fundraising needs. Planning Manager Purvis stated it can't be used for fundraising needs as it is zoned R2.

ZBA Member Crudele asked why the neighbors are concerned about it being rezoned. Member Crudele asked if this variation is approved if the zoning would change. Planning Manager Purvis stated the zoning will only change if a petition goes forward to the Plan Commission.

ZBA Member Jones asked if Village staff has any recommendations to keep this property zoned as R2 or to make it commercial. Planning Manager Purvis stated the Historical society would like to keep this property flexible and would like to have the option to sell the property in the future.

ZBA Member Jones asked if the lot can be consolidated to eliminate the need of the zoning variations. Planning Manager Purvis stated a consolidation cannot occur due to split ownership of the property. Planning Manager Purvis stated the Historical society would like to keep this property flexible and would like to have the option to sell the property in the future.

ZBA Member Panther asked if the house is too expensive to fix. Planning Manager Purvis stated she will let the petitioner speak to that questions.

ZBA Chairperson Constantino stated the ZBA is only discussing if an accessory structure can remain on the lot without a principal structure. ZBA Chairperson Constantino stated if the principal structure is removed, then a variation would be required to allow the accessory structure to remain. ZBA Chairperson Constantino stated the ZBA is not discussing future zoning of the property. ZBA Chairperson Constantino noted if the property is sold in the future, the property would need to come in compliance. Planning Manager Purvis confirmed this.

Petitioners' Presentation

Sworn in for the Petitioner's Presentation was Suzanne Carty, petitioner on behalf of the Glen Ellyn Historical Society, owners of the property located at 551 Geneva Road.

Ms. Carty stated she believes this is a straight forward variation request. Ms. Carty stated the principal structure (the house) has mold all throughout it. Ms. Carty noted the house was built in the 1890's, and is actually two homes put together. Ms. Carty noted as well as mold, there are structural and sewer issues. Ms. Carty stated the circumstances around the property is unique, which is what

should allow the variation. Ms. Carty stated the property is right next to the Museum Campus and Stacy's Tavern. Ms. Carty stated at some point, the Historical Society would have liked to incorporate the subject property into the Museum Campus, but noted they do not have the money at this time. Ms. Carty stated the Historical Society is in need of storage that is readily available, which is why this property is perfect. Ms. Carty noted the Historical Society may be need to sell this property in the future. Ms. Carty stated the garage is reasonably set back and is in line with the neighbor's garage. Ms. Carty noted she understands that if the property is sold, the variations are removed and the property needs to come into compliance with the Village Code.

Additional Questions from the Zoning Board of Appeals

ZBA Member Jones asked which portion of the house was built in the 1890's. Ms. Carty stated she was unsure, but mentioned the house is two buildings that were put together. Ms. Carty stated the Historical Society would ideally fix the house, but they do not have the funds for that.

ZBA Member Jones asked if money was not an issue, if the Historical Society would be more inclined to tear down the house or to have it part of the Museum Campus. Ms. Carty stated if there were unlimited funds, this property would be included in the Museum Campus and work would be done to make it match Stacy's Tavern.

ZBA Member Jones asked if the long term goal is the sell the property and use that money for Stacy's Tavern. Ms. Carty confirmed this as a possibility.

ZBA Member Jones asked if the Historical Society has the funds to demolish the property. Ms. Carty confirmed they have these funds from a private donor.

ZBA Member Miller asked if the request is denied, where the Historical Society would store the items already in the shed and garage. Ms. Carty stated without this storage, the Historical Society would run out of storage space and would have to purchase off-site storage.

ZBA Member Panther asked if any of the storage is outside of the shed or garage. Ms. Carty stated all storage is inside, and they would intend to update landscaping with period gardens.

ZBA Member Panther asked if there will be any parking and/or event parking on site. Ms. Carty stated they will continue to use the property for parking, as done is the past.

ZBA Chairperson Constantino asked if the Historical Society is comfortable with the condition that if the property is sold, the property would need to come into compliance with the Zoning Code. Ms. Carty confirmed they are comfortable with this condition.

Persons in Favor of or in Opposition to the Variation Requests

None.

Findings of Fact

ZBA Member Panther stated the following findings of fact: the subject property is located at 551 Geneva Road; the subject property is an interior lot on the south side of Geneva Road between N. Main Street and Highland Avenue; the property is currently zoned as R2 with a mix of zoning districts surrounding the property; the petitioner is Suzanne Carty, on behalf of the Glen Ellyn Historical Society; the petitioner is requesting a recommendation of approval of the following variations of the Glen Ellyn Zoning Code: 1. A variation from 10-4-1(c) to allow accessory structures (garage, shed and driveway) to remain on the property without a principal structure after the principal structure is demolished; the property was gifted to the Glen Ellyn Historical Society in 2014; the Village owns the property to the east (Stacy's Corner); the garage and shed and considered legal non-conforming; the garage has a 0 foot impervious surface setback and is also considered legal non-conforming; the house is in disrepair with structural and mold issues; it is prohibitively expensive to repair; there is a petition of support from the neighbors and the neighbors have expressed interest in keeping the property zoned R2; staff recommended to add a clause to the approval that the property be brought into compliance with the Zoning Code if sold.

ZBA Member Panther continued the findings of fact: petitioner Suzanne Carty stated there are mold and structural issues to the house; two buildings were combined to make one structure, which has also caused structural issues; Ms. Carty has no objection to the approval clause noted by staff; the Historical Society is in need of the storage provided by the shed and garage.

Motion

ZBA Member Covington moved, seconded by ZBA Member Crudele that the Zoning Board of Appeals recommend to approve the Findings of Fact. The motion was carried with 6 "yes" votes and 0 "no" vote. The "yes" votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Jones, ZBA Member Miller and ZBA Member Panther.

Additional Comments from the Zoning Board of Appeals

ZBA Member Covington stated she is in support of the request with the proposed condition.

ZBA Member Crudele stated she is in support of the request with the proposed condition.

ZBA Member Jones stated residents have noted they would like the zoning of this property to stay R2 and noted if the property is sold or incorporated into the Museum Campus, it would likely change the zoning. ZBA Member Jones stated the Historical Society would like to sell of build on the property and noted either would bring the demolition of the garage. ZBA Member Jones stated this is a temporary fix the storage problem and that he is not in favor of the request.

ZBA Member Miller stated this is the definition of a unique request and noted of the gems in Glen Ellyn uses this space for storage. ZBA Member Miller stated he is in support with the proposed condition.

ZBA Member Panther stated he is in favor of the request with the proposed condition. ZBA Member Panther noted there is not real hardship, but noted this is a unique circumstance.

ZBA Chairperson Constantino stated he is in support of the request with the proposed condition. ZBA Chairperson Constantino stated this is an unique circumstance and noted the Historical Society is unable to consolidate the lots and that it is too costly to repair and too costly to obtain off-site storage.

Motion

A motion was made by ZBA Member Crudele and seconded by ZBA Member Covington to close the public hearing for 200 N. Montclair Avenue at 7:51 p.m. The motion was carried with 6 “yes” votes and 0 “no” vote. The “yes” votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Jones, ZBA Member Miller and ZBA Member Panther.

A motion was made by ZBA Member Miller and seconded by ZBA Member Crudele as follows:

Having considered the application of Suzanne Carty, on behalf of the Glen Ellyn Historical Society, owner of the property located at 551 Geneva Rd., Glen Ellyn, for a zoning variation from Section 10-4-1(C) to allow a driveway, garage and shed to remain on the property without a principal structure, the Zoning Board of Appeals hereby adopts the findings of fact in the petitioner’s application packet and presented by the petitioner at the Zoning Board of Appeals public hearing conducted on June 22, 2021, as well as the findings included in the deliberations of the Zoning Board of Appeals and recommends APPROVAL based upon the following hardship(s) or unique circumstance(s):

1. This property is unique in its location next to the Stacy’s Tavern Museum Campus and that it was gifted to the Glen Ellyn Historical Society.
2. The existing home is in a non-usable and non-livable condition and needs to be demolished.
3. The existing on-site garage and shed are used for storage by the Glen Ellyn Historical Society and without the storage on this property, the Historical Society will run out of space and would need to start renting off-site storage.

Subject to the following conditions:

1. The project shall be constructed in substantial conformance with the plans as submitted and the testimony presented at the June 22, 2021 public hearing of the Zoning Board of Appeals.
2. If the property is sold or transferred, the legal nonconforming structures must be removed to be

brought into compliance to the Village Code.

The motion was carried with 5 “yes” votes and 1 “no” vote. The “yes” votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Miller and ZBA Member Panther. The “no” votes are as follow: ZBA Member Jones.

A motion was made by ZBA Member Jones and seconded by ZBA Member Crudele to open the public hearing for 85 Sunset Avenue at 7:54 p.m. The motion was carried with 6 “yes” votes and 0 “no” vote. The “yes” votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Jones, ZBA Member Miller and ZBA Member Panther.

PUBLIC HEARING – 85 SUNSET AVENUE

PETITIONER MICHAEL FOLTZ IS REQUESTING A RECOMMENDATION OF APPROVAL OF THE FOLLOWING VARIATIONS FROM THE GLEN ELLYN ZONING CODE: 1. A VARIATION FROM SECTION 10-5-5(C) OF THE ZONING CODE TO ALLOW AN IMPERVIOUS SURFACE SETBACK OF 3 FEET 3 INCHES WHERE AN IMPERVIOUS SETBACK OF 5 FEET IS REQUIRED; 2. ANY OTHER ZONING RELIEF NECESSARY TO CONSTRUCT THE PROJECT AS DEPICTED ON THE PLANS PRESENTED OR REVISED AT THE PUBLIC HEARING OR A PUBLIC MEETING OF THE VILLAGE BOARD.

(Michael Foltz, Manager of 85 Sunset LLC and owner of the property located at 85 Sunset Avenue).

Staff Presentation

Planning Manager Purvis was present to speak regarding the proposed variation request and was sworn in.

Planning Manager Purvis stated the petitioner is Michael Foltz, manager of 85 Sunset LLC, which owns the property located at 85 Sunset Avenue. The subject property is an interior lot located on the east side of Sunset Avenue between Sunset Court and Fairview Avenue. The subject property and all surrounding properties are zoned R2 – Single Family Residential District and are all improved with single-family homes.

Planning Manager Purvis stated the petitioner is requesting a recommendation of approval from the following variations from the Glen Ellyn Zoning Code:

1. A variation from Section 10-5-5(C) of the Zoning Code to allow an impervious surface setback of 3 feet 3 inches where an impervious setback of 5 feet is required; 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.

Planning Manager Purvis stated Village records indicate that there are no previous variations granted

to this property. Planning Manager Purvis stated the following permits have been issued for the property: Plumbing, 1975; Roof Addition, 1975; Tool shed, 1977; Plumbing, 1983; Driveway Approach, 1997; Sewer Repair, 2002; Sewer Clean Out, 2002; Fence, 2003; Sewage Connection, 2018; SFH Demolition, 2018; SFH New Construction, 2018; Lawn Sprinkler Installation, 2020.

Planning Manager Purvis stated the subject property is approximately 1-acre in size with a lot width of 144 feet. The property owners designed the attached garage to allow their John Deere tractor to enter and exit from the side of the garage (the tractor is 6.5 feet long and 4.5 feet wide without any attachments). The side door of the garage, which is located on the southeast side of the garage, measures only 8 feet 11 inches. The petitioner has indicated that the garage door width provides very little room to maneuver when moving the tractor from the garage to the front driveway. In the attached letter, the applicant's contractor stated that when the tractor was delivered to the site, they noticed right away that the tractor could not make a zero-turn radius from the side garage door onto the walk as originally planned. He admits that he suggested moving the sidewalk 36 inches south of the original (approved/permitted) location while also maintaining the 6-foot wide sidewalk to allow enough room for the tractor to travel on. The contractor also indicates, if the walk was maintained at its original location, 6 feet 3 inches from the south lot line, the home owner would not be able to use the walk as originally intended without the risk of hitting the side of the garage when pulling the tractor in and out and potentially damaging the grass and tacking mud into the garage. These suggested field changes resulted in the sidewalk being installed in the side yard approximately 3 feet 3 inches from the property line, which deviates from the 5-foot setback required for this lot. Note, impervious surface requirements are based upon a sliding scale percentage of the lot width. For single family lots, the 5 foot setback is the maximum requirement for impervious surfaces.

Planning Manager Purvis stated the petitioner is proposing to maintain the sidewalk/impervious surface in its existing location per the attached Final Grading Plan. According to the contractor, allowing the sidewalk to remain will allow the safe travel of the tractor in and out of the garage and provide enough room to accommodate the intended stormwater swale for impervious surfaces.

Planning Manager Purvis stated per Section 10-10-12 of the Glen Ellyn Zoning Code, the petitioner is requesting approval of a construction necessitated zoning variations from the Zoning Code to allow form the maintenance of an existing walkway with a 3 feet 3 inches impervious surface setback. In order for the walkway to remain, the abovementioned variation will need to be granted. Petitioners of support for the variation request were received from the property owners at 81 Sunset Avenue (adjacent lot the south), 90 Sunset Avenue (adjacent property to the west), and 75 Sunset Avenue (one lot south of neighbor).

Questions from the Zoning Board of Appeals

ZBA Member Jones asked if this was a 50 foot wide lot, would the impervious setback be 1 foot. Planning Manager Purvis confirmed this.

ZBA Member Jones asked if there was any difference in the Zoning Code between a sidewalk and driveway. Planning Manager Purvis stated they are considered the same in the Village Code in regards to impervious surface.

ZBA Chairperson Constantino asked if there are any drainage or stormwater concerns. Planning Manager Purvis stated the property has a drywell and swale and noted Senior Civil Engineer McKenna has reviewed the plans and has no stormwater concerns.

Petitioners' Presentation

Sworn in for the Petitioner's Presentation Michael Foltz, Manager of 85 Sunset LLC and owner of the property located at 85 Sunset Avenue; Tracy D. Kasson, petitioner's attorney; Brian P. Casey, petitioner's architect.

Mr. Foltz stated the side door on the garage is to be used for both the tractor and as well as a wheelchair ramp. Mr. Foltz stated if the sidewalk is moved closer to the garage, the tractor wheels would be on the swale and would potentially impact the use of the swale. Mr. Foltz stated the side door on the garage provides the most effective means to using the tractor. Mr. Foltz stated the sidewalk has been placed in the current location to allow for easy snow removal during the winter months. Mr. Foltz stated there are no issues with their neighbors. Mr. Foltz also noted the setback requirement was missed and he was unaware that due to the lot size he would need a larger setback.

Mr. Kasson stated this property leads to practical difficulties and a unique circumstance. Mr. Kasson stated the lot size requires a larger impervious surface setback requirement. Mr. Kasson stated the requested variation is needed to accommodate the tractor and wheelchair use. Mr. Kasson stated the request will not alter the character of the neighborhood and noted there is neighbor support to leave the sidewalk where is. Mr. Kasson also stated this variation request will preserve the current landscaping on the property.

Additional Questions from the Zoning Board of Appeals

ZBA Member Crudele asked if the need to use the wheelchair would provide a safety concern/hardship. Mr. Foltz noted the home was built to accommodate his wife's needs and noted she is unable to use stairs.

ZBA Member Miller asked if a wheelchair is able to make the turn on the original planned sidewalk. Mr. Foltz stated his is correct and there is no issues with the wheelchair using the sidewalk as originally planned. Mr. Foltz stated the principal use of the side door on the garage will be for the tractor, which will be used to clear snow for use of the wheelchair.

ZBA Chairperson Constantino if the decision to move the concrete/sidewalk was made once it was realized the tractor would not make the turn as originally planned. Mr. Casey confirmed this.

Persons in Favor of or in Opposition to the Variation Requests

None.

Findings of Fact

ZBA Member Panther stated the following findings of fact: the subject property is located at 85 Sunset Avenue; the subject property is an interior lot located on the east side of Sunset Avenue between Sunset Court and Fairview Court; the subject property and all surrounding properties are zoned R2 and are all improved with single-family homes; the petitioner is Michael Foltz, manager of 85 Sunset LLC, which owns the subject property; the petitioner is requesting a variation for a construction necessitated zoning variation from Section 10-5-5(C) to allow an existing impervious surface to remain on the property approximately 3 feet 3 inches from the property line where 5 feet is required the property is approximately 1 acre with a 114 foot lot width; the approved plan had a sidewalk running along the south side of the wall; during construction it was realized the tractor could not make the turning radius out of the rear garage door to the sidewalk; the contractor shifted the sidewalk 3 feet 3 inches to the south to accommodate the turning radius of the tractor; there are letters of support for the neighbors, including the neighbor directly next to the subject property; the impervious surface setback is based on a sliding scale with the max setback of 5 feet; the removal of 1 foot 9 inches would bring the sidewalk into compliance.

ZBA Member Panther continued the findings of fact: Michael Foltz, Tracy Kasson and Brian Casey were present for the petitioner's presentation; the petitioners stated the sidewalk was designed for tractor and wheelchair access; the sidewalk was designed to keep mud and dirt out of the garage as well as protect the swale; the hardship is created by the impervious surface sliding scale; the sidewalk could remain as is if it was built on a 90 foot lot; the garage was part of the original construction of the home and not part of the addition.

Motion

ZBA Member Covington moved, seconded by ZBA Member Jones that the Zoning Board of Appeals recommend to approve the Findings of Fact. The motion was carried with 6 "yes" votes and 0 "no" vote. The "yes" votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Jones, ZBA Member Miller and ZBA Member Panther.

Additional Comments from the Zoning Board of Appeals

ZBA Member Covington stated she is leaning toward not approving this request. ZBA Member Covington stated the only unique circumstance regarding the property is that a homeowner's use of a wheelchair. ZBA Member Covington noted the wheelchair is able to make the turn from the garage as originally planned. ZBA Member Covington stated she does not see the hardship related to the request.

ZBA Member Crudele stated she is on the fence with this request. ZBA Member Crudele stated this request was reviewed by the Village's Senior Civil Engineer, and there were no concerns regarding

stormwater. ZBA Member Crudele stated a hardship is created by the need of a homeowner to use a wheelchair.

ZBA Member Jones stated he is in favor of this request. ZBA Member Jones noted the sidewalk is not build right on the lot line and stated their neighbor is in support of the request. ZBA Member Jones stated the variation request is minimal. ZBA Member Jones stated a lot width of 120 feet is not common, which makes this a unique circumstance. ZBA Member Jones also stated the ZBA has approved variation request similar to this in the past.

ZBA Member Miller stated this is an impervious surface issue, not just a lot line issue. ZBA Member Miller stated a wheelchair can fit through the garage and sidewalk with the original plans. ZBA Member Miller stated he understands the most efficient way to get the tractor out of the garage is the side door, but noted that is not a hardship.

ZBA Member Panther stated he agrees with the comments made by ZBA Member Miller. ZBA Member Panther stated he is not in favor of this request as he does not see a hardship.

ZBA Chairperson Constantino stated he agrees with the comments made by ZBA Member Jones. ZBA Chairperson Constantino stated the lot size creates a unique circumstance. ZBA Chairperson Constantino stated the Village's Senior Civil Engineer did not have any stormwater concerns and noted he would like to reduce the amount of time the tractor needs to be on the swale. ZBA Chairperson Constantino also noted there is neighbor support of the request. ZBA Chairperson Constantino stated he is in favor of the request.

ZBA Member Covington stated she is not in favor of this request.

ZBA Member Crudele stated she is in favor of this request.

ZBA Chairperson Constantino explained to the petitioner that as the vote currently stands, the motion will not pass, but the variation will still be considered by the Village Board.

A ten minute break was observed between 8:52 p.m. and 9:02 p.m. to allow the petitioners to discuss the vote and next steps.

Mr. Kasson stated the sidewalk was not made wider and noted it was just moved. Mr. Kasson noted the drywell and swale will remain in the same location and noted there are no concerns from the Village's Senior Civil Engineer. Mr. Kasson stated the neighbors are in support of this request. Mr. Kasson also noted the current location of the sidewalk maximizes the best use of the tractor.

Motion

A motion was made by ZBA Member Miller and seconded by ZBA Member Crudele to close the public hearing for 85 Sunset Avenue at 9:02 p.m. The motion was carried with 6 "yes" votes and 0 "no" vote. The "yes" votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Jones, ZBA Member Miller and ZBA Member Panther.

A motion was made by ZBA Member Jones and seconded by ZBA Member Crudele as follows:

Having considered the application of Michael Foltz, owner of the property located at 85 Sunset, Glen Ellyn, for a construction necessitated zoning variation from Section 10-5-5(C) to allow an existing impervious surface to remain on the property approximately 3 feet 3 inches from the property line where 5 feet is required, the Zoning Board of Appeals hereby adopts the findings of fact in the petitioner's application packet and presented by the petitioner at the Zoning Board of Appeals public hearing conducted on June 22, 2021, as well as the findings included in the deliberations of the Zoning Board of Appeals and recommends APPROVAL based upon the following hardship(s) or unique circumstance(s):

1. The lot size dictates a greater setback than a smaller lot.
2. Moving the sidewalk to the location in the approved plans will impact the stormwater swale as the tractor will need to drive on it, and this may cause potential drainage issues.

Subject to the following conditions:

1. The project shall be constructed in substantial conformance with the plans as submitted and the testimony presented at the June 22, 2021 public hearing of the Zoning Board of Appeals.
2. The concrete walkway must be maintained.
3. The dry well on the property must be maintained.

The motion was not carried with 3 "yes" votes and 3 "no" vote. The "yes" votes are as follow: ZBA Chairperson Constantino, ZBA Member Crudele and ZBA Member Jones. The "no" votes are as follow: ZBA Member Covington, ZBA Member Miller and ZBA Member Panther.

A motion was made by ZBA Member Panther and seconded by ZBA Member Covington to open the public hearing for 639 Newton Avenue at 9:10 p.m. The motion was carried with 6 "yes" votes and 0 "no" vote. The "yes" votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Jones, ZBA Member Miller and ZBA Member Panther.

PUBLIC HEARING – 523 FAIRWAY COURT

PETITIONER MICHAEL FISHER IS REQUESTING A RECOMMENDATION OF APPROVAL OF THE FOLLOWING VARIATIONS FROM THE GLEN ELLYN ZONING CODE: 1. SECTION 10-5-4(A)4b TO ALLOW AN ACCESSORY STRUCTURE (PERGOLA) WITHIN 10 FEET OF THE PRINCIPAL STRUCTURE TO ENROACH 16.23 FEET INTO THE REAR YARD, WHICH RESULTS IN A REAR YARD SETBACK OF APPROXIMATELY 23.68 FEET IN LIEU OF THE REQUIRED MINIMUM 40 FOOT YARD SETBACK; 2. ANY OTHER ZONING RELIEF NECESSARY TO CONSTRUCT THE

PROJECT AS DEPICTED ON THE PLANS PRESENTED OR REVISED AT THE PUBLIC HEARING OR A PUBLIC MEETING OF THE VILLAGE BOARD.

(Michael Fisher, owner of the property located at 523 Fairway Court).

Staff Presentation

Planning Manager Purvis was present to speak regarding the proposed variation request and was sworn in.

Planning Manager Purvis stated the petitioner is Michael Fisher, owner of the property located at 523 Fairway Court. The subject property is a corner lot on the north and east side of Fairway Court, just west of Cumnor Avenue. The subject property, as well as all surroundings properties, are zoned R2 – Residential District and improved with single-family homes.

Planning Manager Purvis stated the petitioner is requesting a recommendation of approval from the following variations from the Glen Ellyn Zoning Code:

1. Section 10-5-4(A)4b to allow an accessory structure (pergola) within 10 feet of the principal structure to encroach 16.23 feet into the rear yard, which results in a rear yard setback of approximately 23.68 feet in lieu of the required minimum 40 foot rear yard setback; 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.

Planning Manager Purvis stated Village records indicate that no variations have been previously granted to this property. Planning Manager Purvis stated the Village has granted the following permits to this property: New Home Construction, 2019; Patio and Retaining Wall, 2019; Irrigation, 2020; Sump Pump Connection, 2020.

Planning Manager Purvis stated the petitioner submitted a building permit application on October 1, 2019 for construction of a pergola, patio and retaining wall. Staff issued the first review of the proposed improvements on October 23, 2019 requesting additional information about the pergola (among other things). A second review of the proposed improvements was issued on November 14, 2019 noting that the location of the proposed pergola was not compliant with the Village Code. On November 23, 2019 the petitioner's architect submitted a review response letter to the Village indicating that the pergola had been removed from the permit application, and the property owners would be seeking a variation to construct the pergola. The plans were then approved by Village staff on December 9, 2019. A variation application to allow the pergola to be constructed on the property within 10 feet of the principal structure was not submitted to staff. A final inspection of the property was performed in February of 2021 in an attempt to close out the permit. At that time, staff noted that the pergola had been constructed without the granting of a variation. The property owner was contacted by staff on February 18, 2021 and given a deadline for submission of a Construction Necessitated Zoning Variation application.

Planning Manager Purvis stated the subject property has a 10-foot wide stormwater management easements that runs through the rear yard and corner side yard at an angle that limits the usable area of the property. The principal structure is constructed up to the 40 foot rear yard setback, and the pergola is approximately 5.6 feet from the house. The Zoning Code requires that all accessory structures within 10 feet of a principal structure meet the same required setback as the principal structure. In other words, because the pergola is within 10 feet of the house, it needs to meet the minimum setback requirements of the principal structure (40 feet from the rear lot line, 30 feet from the front lot line and 10 feet from the side lot lines). Pergolas are permitted to encroach into any required yard, provided there are 10 feet from the principal structure and at least 10 percent of the lot width from any property line.

Planning Manager Purvis stated the petitioner has indicated that a unique circumstance exists due to the stormwater management easement that runs diagonally across the property. The pergola has been constructed as close to the easement as it can be. It is approximately 23.7 feet from the rear lot line (encroaching 16.23 feet into the required rear yard). The pergola is 210 square feet in area and 10 feet tall. Outside of its placement on the property, it is otherwise compliant with the Zoning Code.

Planning Manager Purvis stated the petitioner is requesting to maintain the pergola in its existing location. A variation from Village Code Section 10/5/4(A)4b would need to be granted in order to allow the petitioner to keep the pergola in its current location. Without the granting of the variation, the petitioner will need to remove to pergola. It could be reconstructed in a compliant location on the property. Property owners of eight adjacent properties submitted petitions of support of the variation request.

Questions from the Zoning Board of Appeals

ZBA Member Jones asked if a PUD was put in place when this development was being built. Planning Manager Purvis stated there was not.

ZBA Member Miller asked in which direction the water flows. Planning Manager Purvis stated the water flows from the northeast to the southwest from Cumnor Ave.

ZBA Member Panther noted the patio encroaches into the stormwater easement and asked if that was allowed. Planning Manager Purvis stated that the patio should have not been built there but also note Senior Civil Engineer McKenna has allowed the patio to remain as is.

Petitioners' Presentation

Sworn in for the Petitioner's Presentation was Michael Fisher, owner of the property located at 523 Fairway Court, and Kevin Wallace, petitioner's landscaper.

Mr. Fisher stated he purchased this new construction in November of 2019. Mr. Fisher stated the patio and pergola was a significant component of why his family purchased the home. Mr. Fisher stated the patio was designed with shade as the main priority. Mr. Fisher stated all work was done

through a builder and landscaper. Mr. Fisher stated he was unaware of the stormwater easement when they purchased the home, and noted the swale take up 20 percent of usable land in the back of the home. Mr. Fisher stated he was under the impression everything was approved by the Village and he was never made aware of the variation requirement for the patio and pergola. Mr. Fisher stated it will take approximately \$20,000 to tear down and rebuild the pergola. Mr. Fisher stated he was surprised and concerned to learn that the permits were not approved by the Village, and once he learned there was an issue, he immediately started working with Village staff to resolve it. Mr. Fisher also noted he has support from 8 direct neighbors. Mr. Fisher also noted without the patio and pergola, his family will not be able to enjoy the backyard in the summer.

Mr. Wallace stated when the pergola was denied by the Village, he was aware a variation would be needed to allow the pergola to be built as proposed. Mr. Wallace stated when the patio permit was issued, it also allowed the footings of the pergola to be installed. Mr. Wallace stated this was not an error by the builders or homeowners but stated it was 100 percent his fault. Mr. Fisher stated his office dropped the ball regarding the variation. Mr. Wallace stated this is the only placement that the patio and pergola can be built due to the stormwater easement.

Additional Questions from the Zoning Board of Appeals

ZBA Member Covington asked if the builder lied to the Fisher's regarding the permits. Mr. Fisher stated he had full trust in the building to handle all permits. Mr. Fisher stated clearly there was not effective communication with him and the building, and didn't think to ask if all permits were approved.

ZBA Chairperson Constantino asked if Mr. Fisher saw the email between Village staff and the architect where it was noted the pergola has been removed from the application. Mr. Fisher stated he was never aware of that email. Mr. Fisher stated during the buying process, he visited the property on several occasions. Mr. Fisher stated during the visits, he discussed the design of the pergola and took the advice he was given at face value. Mr. Fisher stated during this process, he was never made aware of the issues surrounding the pergola.

ZBA Member Miller asked who hired the architect. Mr. Fisher stated the landscapers did.

ZBA Chairperson Constantino asked when Mr. Fisher closed on the property of the home was completed. Mr. Fisher stated it was not complete, but had a temporary certificate of occupancy.

ZBA Member Covington asked if any other ideas were explored to provide shade (trees, patio furniture, etc.) Mr. Wallace stated the pergola is the only option that was explored. Mr. Fisher stated there are two large bushes that were installed to help reduce sunlight from the west, but noted there is not relief from the sunlight from above. Mr. Fisher also noted they have a patio umbrella to help create shade.

Persons in Favor of or in Opposition to the Variation Requests

None.

Findings of Fact

ZBA Member Panther stated the following findings of fact: the subject property is 523 Fairway Court; the subject property is a corner lot on the north and east side of Fairway Court, just west of Cumnor Avenue; the subject property, as well as all surrounding properties, are zoned R2 and improved with single-family homes; the property owner is Michael Fisher, owner of the property; the petitioner is requesting a construction necessitated zoning variation from Section 10-5-4(A)4b to allow an existing pergola on the property to remain within 10 feet of the principal structure and to encroach 16.23 feet into the required rear yard resulting in a setback of approximately 23.68 feet where 40 feet is required; this is a new home construction with a permit issued in 2019; a permit application for the pergola was submitted in 2019 and staff noted the location of the proposed pergola was not compliant with the Village Code, and the architect indicated that the pergola had been removed for the permit application and that the property owner would be seeking a variation to construct the pergola; a permit for the construction was issue and upon final inspection staff realized the pergola had been installed with no permit or variation request; a stormwater management easement runs diagonally across the property limiting the location where accessory structures can be placed; the pergola is 5.6 feet from the house and 210 square feet and 10 feet tall; if the pergola was located 10 feet away from the principal structure the structure would be complaint.

ZBA member Panther continued the findings of fact: petitioner Michael Fisher purchased the home in November of 2019; the improvements to the home, including the patio and pergola, were agreed to with the builder prior to purchasing the home; he was not aware of the emails from the architect stating the pergola would be removed and a variation would be request.

ZBA Member Panther continued the findings of fact: the petitioner's landscaper, Kevin Wallace, stated his company designed the patio and pergola; the footings were installed with the patio; the pergola was built without a permit or zoning variation request;; the cost to tear the pergola down would be approximately \$4,000 to \$5,000 and to move the pergola would cost approximately \$20,000.

ZBA Member Panther continued the findings of fact: petitioner Suzanne Carty stated there are mold

Motion

ZBA Member Covington moved, seconded by ZBA Member Jones that the Zoning Board of Appeals recommend to approve the Findings of Fact. The motion was carried with 6 "yes" votes and 0 "no" vote. The "yes" votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Jones, ZBA Member Miller and ZBA Member Panther.

Additional Comments from the Zoning Board of Appeals

ZBA Member Covington stated this is a tough decision because the variation request is coming to the ZBA after the fact. ZBA Member Covington stated it is difficult to believe that with all individuals who were involved in this process, nobody asked the question if this was approved. ZBA Member Covington stated she sees the challenge that there is no other location to build the patio and pergola.

ZBA Member Crudele stated she agrees with the statements made by ZBA Member Covington. ZBA Member Crudele stated it is upsetting there was email communication stating the pergola has been removed from the plan just to have it built. ZBA Member Crudele did note the property and land leads to a unique circumstance. ZBA Member Crudele stated she is in favor of the request due to the land/shape of the lot.

ZBA Member Jones stated he agrees with the statements made by ZBA Member Covington and Crudele. ZBA Member Jones stated if this request came to the ZBA before the pergola was built, he would be in favor of it.

ZBA Member Miller stated it is a dangerous precedent to set to approve this request. ZBA Member Miller stated he would if this request came to the ZBA before the pergola was built that he would be in favor of it. ZBA Member Miller stated he is not in favor of the request due to the fact that it was built without a permit.

ZBA Member Panther stated if this request came to the ZBA before the pergola was built, he would be in favor of it. ZBA Member Panther stated there is a hardship due to the land and swale easement. ZBA Member Panther stated he is in favor of the request, but noted it was frustrating that the pergola was built without the required permits.

ZBA Chairperson Constantino stated he is upset that nobody involved caught this error. ZBA Chairperson Constantino stated they went through the permit process, and should have known a problem existed. ZBA Chairperson Constantino stated if the request was brought to the ZBA before the pergola was built, he would be in favor of it. ZBA Chairperson Constantino stated he is overall not in favor of this request.

ZBA Member Covington stated she is not in favor of this request and is concerned about the precedent it would set to have the ZBA approve this request.

Motion

A motion was made by ZBA Member Miller and seconded by ZBA Member Covington to close the public hearing for 523 Fairway Court at 10:20 p.m. The motion was carried with 6 “yes” votes and 0 “no” vote. The “yes” votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Jones, ZBA Member Miller and ZBA Member Panther.

A motion was made by ZBA Member Panther and seconded by ZBA Crudele Jones as follows:

Having considered the application of Michael Fisher, owner of the property located at 523 Fairway Ct., Glen Ellyn, for a construction necessitated zoning variation from Section 10-5-4(A)4b to allow an existing pergola on the property to remain within 10 feet of the principal structure and to encroach 16.23 feet into the required rear yard resulting in a setback of approximately 23.68 feet where 40 feet is required, the Zoning Board of Appeals hereby adopts the findings of fact in the petitioner's application packet and presented by the petitioner at the Zoning Board of Appeals public hearing conducted on June 22, 2021, as well as the findings included in the deliberations of the Zoning Board of Appeals and recommends APPROVAL based upon the following hardship(s) or unique circumstance(s):

1. House sits on an existing non-conforming corner lot causing the inability to add a second story without zoning relief. They are not increasing the footprint of the property.

The motion was not carried with 3 "yes" votes and 3 "no" vote. The "yes" votes are as follow: ZBA Member Crudele, ZBA Member Jones and ZBA Member Panther. The "no" votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington and ZBA Member Miller.

Staff Report

Planning Manager Purvis stated there is one case in que that may come to the ZBA in July. Planning Manager Purvis stated there are a few applications in process, but not ready to be brought to the ZBA. Planning Manager Purvis also stated a new Planner will be starting on July 7.

Trustee Liaison Report

Trustee Gould stated the Village Board met to discuss the Streetscape project and lane configuration. Trustee Gould stated the moratorium on cannabis was extended to allow the new trustees to get up to speed on the issue.

Adjournment

At 10:32 p.m. a motion was made by ZBA Member Miller and seconded by ZBA Member Panther to adjourn the meeting. The motion was carried with 6 "yes" votes and 0 "no" vote. The "yes" votes are as follow: ZBA Chairperson Constantino, ZBA Member Covington, ZBA Member Crudele, ZBA Member Jones, ZBA Member Miller and ZBA Member Panther

Lindsey Kaminsky
Recording Secretary