

MINUTES
ZONING BOARD OF APPEALS MEETING
NOVEMBER 9, 2021

Call to Order and Roll Call

The meeting was called to order at 7:03 p.m. by Board Chairperson Greg Constantino, who explained the advisory role of the Zoning Board of Appeals, and the body's operation in rendering a recommendation. He announced the topic of the evening's Public Hearing: the property at 333 Indian Drive.

Roll was called. Present: Chairperson Constantino and Board Members Matthew Jones, Katie Crudele, Michelle Covington, Chip Miller, Reed Panther and Thomas Whalls. Absent: Maggie Wachter. Chairperson Constantino reviewed procedure for the Hearing and introduced Village Planning Manager Kelly Purvis, Planner Atrian Fard, Board of Trustees Liaison Anne Gould, and Recording Secretary Barb Dutton.

Approval of Meeting Minutes

Following a motion by Chip Miller, seconded by Reed Panther, to approve the draft minutes of the August 24, 2021, the motion carried unanimously by roll call vote.

Public Hearing for 333 Indian Drive

A motion was made by Katie Crudele, seconded by Michelle Covington, to open the Public Hearing concerning consideration of a zoning variation for 333 Indian Drive. The motion passed upon voice vote.

Staff Presentation

Sworn in were Kelly Purvis, Planning Manager; Atrian Fard, Planner; and Steve Witt, Building and Zoning Official, all of 535 Duane Street, Glen Ellyn. Ms. Fard stated that the Applicants are requesting three Construction Necessitated Zoning Variations: the encroachment of a building addition into the front and interior side yard setbacks, and to allow the addition to be closer to the street than the closest principal structure, which is to the south. The subject property and the properties to the north, west, and south are all zoned R2 – Single Family Residential District and are all improved with single-family homes. The property to the east across the East Branch of the DuPage River is ComEd owned right-of-way in unincorporated DuPage County and is currently vacant. Planner Fard reviewed the history of the case: A permit for an addition was issued in July 2013, and construction ensued from 2013 but then slowed due to finances, though continues to this day. During these years, continued Ms. Fard, homeowners Vladimir and Tatiana Gatalo received multiple permit extensions and requested several inspections. Though a foundation survey was required after footing inspection to validate the location of the addition relative to the property lines, related Ms. Fard, Village records show none was submitted, yet work continued, with further inspection requests from the homeowners. Upon Village's request, a new plat of survey was submitted in November 2020, and an ensuing inspection identified a 2.52-in. encroachment to the 6.6-ft. side yard setback. In January 2021 the homeowners notified the Village that they wished to pursue a Construction-Necessitated Zoning Variation to legalize the new building addition. The Plat was revisited by Lambert & Associates, noted Ms. Fard, and an updated survey provided with two notes indicating that setback measurements reflected on the plat of survey are measured from the walls of the structure, not from the foundation; and the concrete foundation is another .14 ft. and .16 ft. away from the property line, a lesser encroachment.

She stated that while the Petitioner attributes the unlawful addition to mistakes made by the concrete contractor, the homeowner is listed as the concrete contractor in the Village records.

In August 2021, staff found an encroachment of 1.8 in. into the front yard setback. Moreover, the building addition seems to be approximately 1' closer to the street than the closest building to the south. These nonconformities triggered the second and third variation requests. The case was considered at the August 24 meeting Zoning Board of Appeals, which was split as to whether there was a practical difficulty, with some members seeing the hardship mainly created by the Petitioner, as plans of construction were not followed. Other members saw the infractions as minimal. Due to insufficient votes to recommend approval, the Village Board remanded the matter back to the ZBA for further consideration due to lack of clarity, and with the charge that contact information for the concrete provider be provided. Staff requested this, and the Petitioner claimed the provider was Frank Spacil, though records indicated that Spacil has not done work in the Village, where he is registered. When contacted, Mr. Spacil said he didn't recall working with the Petitioners. And while he was asked to check his company records, Ms. Fard said he was not responsive to follow-up calls and e-mails, prompting Staff to request an affidavit of truth signed by the Petitioner to confirm the name and contact information of the contractor and his involvement in the concrete work. Per the Board request for a cost estimate of work to remedy the setback, the Petitioner provided an estimate of \$56,196, while the Village Building & Zoning Official obtained from another builder a quote of approximately \$35,000 to move the offending wall and cut 4-inches from the foundation. Ms. Fard concluded by stating that the Building & Zoning Official anticipates additional building issues upon further inspection of the project.

Z Questions

Board Member Jones asked how many inspections still need to be done before the final one. Steve Witt listed several that were supposed to have been done but were not, and listed several yet to be performed, including electrical and mechanical, and said the project needs to be reviewed for changes. Board Member Jones asked how much longer it would take a full crew to finish the job. Mr. Witt responded that it could probably take two to three months. Citing in particular a span of concern, Mr. Witt suggested that further issues could emerge. Board Member Whalls what Code specifies for the bay window relative to setback. Ms. Fard stated that it is not a bay window encroaching, but an overhang –an issue yet for resolution. Mr. Whalls asked if the issue of being closer to the front yard than adjacent neighbor shouldn't have been discovered upon foundation inspection. Mr. Witt replied that building inspectors are not surveyors, so are reliant on the survey. He said he doesn't know why the discrepancy wasn't picked up, since the inspection was before his time, but deemed such a rare occurrence. Mr. Whalls asked about permit extension policy. Mr. Witt responded that this seems to be an ongoing issue, and explained that people have life experiences that interfere with progress. He said that as long as permits are kept current, Staff has no "threshold" and that stopping an unfinished project is counterproductive. Mr. Whalls asked if there was no drywall in part of the building. Mr. Witt, said, "Yes." Mr. Whalls asked for clarification of the setback variation. Chairperson Constantino remarked that the revised survey indicates less of an encroachment than previously thought. Ms. Fard responded that the side is .84 inches, and that the front is a micro inch, but indicated that the distance from the front as compared to the neighbor is still significant. Board Member Covington asked if inspectors go on a property without a plat of survey. Mr. Witt said Village inspectors "religiously" pull the project file and take photos of what to inspect from the Plat of Survey, but can't attest to how things were done years ago.

Ms. Covington said she was trying to gain an understanding of the time period of activity. Ms. Fard said a foundation survey needs to be provided to advance a project, and one was never submitted in this case. Some requested inspections passed, she reported, while some failed and were addressed. The Village eventually requested a plat of survey, she continued, and subsequent review of the property found more nonconformities. Board Member Panther asked if the variance relative to the front lot line compared to the neighbor should have been caught when the permit was issued. Ms. Fard said she had little knowledge of the initial permitting, and that Code could have changed. Mr. Panther asked if there is a tolerance for margin of error. Mr. Witt said he couldn't answer that, as he didn't know what industry standard would be. He said that Staff has to rely on Lambert, as their submittal provides for certification.

Board Member Miller asked for details of Staff's communication with Frank Spacil. Ms. Fard said that in her conversation with Mr. Spacil she sensed he was uncomfortable answering her question about a project from a couple of years ago, and that he told her he didn't recall working on the project and claimed he didn't know the Gatalos, she insisted he check his records. (She thought the Petitioner might be able to talk about a call she believed they subsequently received from Spacil.) Upon receiving no response to her attempts at follow-up, she said Staff decided to obtain an affidavit of truth from the Homeowners.

Board Member Crudele asked how recently the Petitioner took ownership of the concrete. Referencing a form filed at the time of permit application, Planner Fard explained that Staff can't keep track of contractor changes, but said that Mr. Gatalo could have reported a contractor change, though no change was entered. Ms. Crudele asked if the Plat of Survey was done recently. Ms. Fard replied that the version under discussion was performed in October 2020, but that two notes concerning setback were submitted today. Board Member Miller asked the original date of the permit application. Staff responded that it was May 30, 2013 (and that the building permit issued July 15, 2013).

Chairperson Constantino asked if the overhang is an issue. Planner Fard indicated that it is, but said Staff's approach is to have the homeowner cut it back to be in compliance. Perceiving that open items remain, the Chairperson asked if the ZBA is premature in considering the matter. Thinking the Body could be seeing the case again, he expressed concern about taking a piecemeal approach in the protracted case. Ms. Fard acknowledged that more (specifically building) issues are probable. The Chairperson asked if the Petitioner will be able to proceed with the project without resolution of the issues at hand. Ms. Fard stated that not until approval is granted. The Chairperson said he fears recommendation of the variation requested, and six months from now the subject property will be back in the Village's lap, and expressed that he wants to avoid further zoning issues. Planning Manager Purvis stated she believes that most issues will be inside building items, and that the Petitioner will be asked to correct the overhang. Member Miller asked about the second floor situation, to which Ms. Purvis said the lot coverage is fine.

Board member Whalls said he construed the second floor to be an attic, to which Ms. Purvis replied that plumbing is in place (but that it could be removed). Member Jones asked if this project has been red flagged. Mr. Witt replied, "No," but said that without approval this evening, the project couldn't move forward, and suggested attaching a condition of approval that the overhang be corrected, which if not met could be addressed through enforcement action, and suggested the Building Department evaluate the project before the Village Board meeting. Mr. Miller asked if the ZBA could put in a condition requiring all non-compliant issues are brought into Code before the project is allowed to proceed. Board Member Jones said he would rather just look at the variances and the overhang before adding restrictions. Mr. Witt stated that it would be unusual for this Board to make a requirement for building-related issues for approval, but added that while these are separate issues from zoning, and that the Village has ways to address them.

Petitioner's Presentation

Sworn in, Steven Khoury, 6N736 Medinah Road, Medinah, Illinois, explained that he is speaking on behalf of the Petitioners (with whom he is friends) because of a language barrier, and acknowledged that the homeowner made “missteps.” Mr. Khoury asked whether it had been specified that a foundation location survey was required as a permit condition. Wondering if the front yard setback requirement is established/communicated prior to permitting, he maintained that even though the setback isn’t in line with the adjacent neighbor’s setback, the plan was in compliance with a 30-ft. setback. The 6.6-ft. side yard setback, he said, has also been “provided for.” Mr. Khoury identified a hardship in miscommunication between the homeowner and the surveyor and contractor. He attributed the concrete contractor’s “denial” to fear of litigation, but stated that the Petitioner could produce a cancelled check to the contractor. He said that money has been a problem for the Petitioner, who is not a building contractor, hence, the inability to complete the work begun. Wondering if this account was just Mr. Khoury’s “read” on the situation, Chairperson Constantino asked for Mr. Khoury’s confirmation that he hadn’t participated in preparation of the plans, or the construction, or assisted with anything, or been inside the building. Mr. Khoury indicated he had not. The Chairperson said it seems that maybe the inference is that the Village contributed to the majority of the problem. Mr. Khoury replied that he is not insinuating that, but contended “there is an equal responsibility here,” and suggesting that problems could have been avoided if the Village had made sure the foundation location survey was in place at the time the foundation was done. And, while the Petitioner bears culpability, Mr. Khoury said the homeowner could attend to a shed roof violation, and that he is asking for leniency and consideration. Expressing favor for an approach that prohibits work and inspections occurring without a foundation survey being submitted and approved, Mr. Khoury said if this was not the case it suggests miscommunication at the Village.

Citing inconsistencies in the story and pointing out that the Petitioner had signed up as a contractor, Chairperson Constantino expressed the charge made by the Village Board relative to clearing up the issue surrounding the responsibility of the concrete work by getting information that has been elusive, and to have a better understanding so that the ZBA can make a better recommendation to the Village Board. Mr. Khoury argued that survey standards vary, and stated that the homeowner will hire someone to alleviate the concrete problem. He said he didn’t understand how inspections kept being done, and that perhaps the Village shouldn’t issue building permits to residents unless they have relevant experience or provide all of the information, and floated the idea of temporary licenses. Mr. Jones asked Mr. Khoury if he was making a recommendation for how to prevent this in the future. Mr. Khoury responded affirmatively, and said the homeowner “took on more than he should have.”

Board Member Jones related that the County allows 10 percent over-the-counter variances with the approval of neighbors, and wondered if Mr. Khoury knew if other municipalities don’t require fixing an error if it is within tolerance. Mr. Khoury replied not having that issue in his experience, but suggested that tolerances could be off if the surveyor’s GPS instruments aren’t calibrated on a regular basis. He blamed the Village for the “line of sight” mishap, in that the surveyor or engineer who prepared the site plan could have just been following the recorded plat.

Board Member Covington asked how the homeowner was allowed to be the contractor when other contractors need to be registered. Mr. Witt explained that the Village doesn’t have a contractor registration process in place since repealing one about two years ago. Prior to that, he stated, homeowners were allowed to be their own contractor and do their own work. He said the Village doesn’t test them or seek qualifications, though did cite restrictions related to plumbing trades. “It’s a reasonable thing that people

can work on their homes,” he declared. Mr. Khoury said they should be allowed to work on their own properties, as it is his understanding that inspectors can flag a problem.

Board Member Miller asked if there was a cancelled check for the concrete work. Mr. Khoury said the Petitioner will look for it, but wondered how doing so would help correct the issue. Mr. Miller said he spots inconsistencies in the narrative, so to provide proof, asked the Petitioner to bring the cancelled cash check to the Village Board. Mr. Khoury asked what doing so would solve. Chairperson Constantino interjected that the action is to aid an effort to establish contractor reliability and competence. Mr. Miller, who said the question is one of integrity, said a check would give credence to the story.

Mr. Witt stated that a foundation survey was named on lists of inspections, so it’s not like it wasn’t there. The drawings, he added, were not prepared by the homeowner, but reflect a design professional’s work. Designers have a responsibility to verify compliance. He said projects need to be constructed in accordance with Village codes and requirements, regardless of any mistakes by Staff. Planner Fard stated that she asked for proof of payment, and also said that she perceives a “lot of inconsistencies” in the story, as well as asked the Board to consider why plans that were approved were ignored.

Following a review of the new dimensions by the Board, Member Panther delivered a rundown of the findings of fact. Board Member Jones asked for a motion to accept the findings of fact; seconded by Board Member Whalls, the motion passed upon voice vote.

Board Deliberations

Board Member Jones said he wished to focus on the zoning variances, which he called “micro-inches” rather than building issues in the ZBA meeting. He said he was okay with granting the variances, and said that, “The Building Department will have to take care of the rest of the house.” Board Member Whalls said he finds no storm-water issues, noted one disapproving neighbor and two approving, and said the overhang on the door has to be ameliorated. And while it was voiced that the front-yard setback issue should have been caught, it is still “infinitesimal.” Replying to his query as to whether the .84-in. variation could have been approved administratively, Planning Manager Purvis said that Staff can’t approve construction-necessitated variations, but would probably would have let the .84-ft. encroachment go had it been identified sooner. She pointed out a correction relative to an old plat of survey that confirms the distance of the neighboring house to the south to the front property line is only 30.19 feet, which is closer than what had been originally considered. So, the variation request is only for 4 inches, not one foot.

Remarking that “this is messy on both sides,” Mr. Whalls voiced approval of the variations requested. Board Member Covington observed that the actual encroachment is miniscule, and said it doesn’t bother her. Although she perceived issues with the process, she expressed that she is focused on the two variances “in play tonight,” and is fine with these. Citing a similar experience with process, Board Member Panther said that since the variation is miniscule so he is comfortable approving it. Member Miller indicated he could see ignorance, but not hardship. Faulting the homeowner, he rejected the requests. Also using the term, “miniscule,” Ms. Crudele said she was in favor of the variances. Chairperson Constantino said he was highly conflicted. He explained that he doesn’t agree 100 percent with Mr. Khoury’s characterization of responsibility, but given the “unique circumstance” that exists to a certain extent – and which he isn’t convinced is the fault of the owner – he said the Board needs to concentrate on the zoning request before it. Because the variations involve only hundredths of a foot, he said for strictly zoning purposes he would be in favor of granting the variations, but expressed the hope that the matter would not become piecemeal in nature.

Mr. Whalls, seconded by Mr. Miller, moved for the following:

Having considered the application of Mr. Gatalo, owner of the property located at 333 Indian Drive, Glen Ellyn, for the following construction necessitated zoning variations: from Section 10-4-8(D)(1)(a) to allow an existing addition to be approximately 29.85' from the west, front lot line where a front yard setback of 30' is required, from Section 10-4-8(D)(1)(b) to allow an existing addition to be approximately 4" closer to the street than the closest principal structure immediately to the south where a principal structure (or addition thereto) is required be no closer to the street than the closest principal structure on either adjacent lot on the same block and same side of the street, and from Section 10-4-8(D)(3) to allow an existing addition to be approximately 6.53' from the south interior side lot line where an interior side yard setback of approximately 6'6" is required, all in the R2 Residential District as depicted on the plans presented or revised at the public hearing, 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 November 9, 2021, as well as the findings included in the deliberations of the Zoning Board of Appeals and recommends APPROVAL of the requested zoning variations from the Glen Ellyn Zoning Code due to the following hardships or unique circumstances:

1. Unique survey issues not corrected;
2. Micro inch values and little variation requests;

The motion carried by voice vote as follows: Six (6) yes votes; Board Members Whalls, Jones, Crudele, Covington and Panther and Chairperson Constantino all voted yes; One (1) no vote, by Member Miller.

Planning Manager Purvis said that a note could be made to convey that the ZBA is making a recommendation to bring the check in to the Village Board.

A motion to close the Public Hearing was made by Member Whalls, seconded by Member Crudele, the motion passed unanimously by voice vote.

Staff Report

Planning Manager Purvis reported that one item is slated for the first meeting in December ZBA. Board Member Miller asked about joining meetings remotely when on the road for business. Ms. Purvis, who explained that members can participate in a meeting remotely due to family emergencies or Board member illness or being out of town for work, but that remote participation can be accomplished only via phone, not Zoom.

Trustee's Report

Trustee Liaison Anne Gould reported that the Board has met three times to consider the budget, and will be having an upcoming workshop on it. She also said that the Village has hired a consultant to perform a feasibility analysis for the Roosevelt Road hotel property, the concept for development of the U.S. Bank site has changed from five to four floors of units; and Apex 400 has been approved up to 64 feet.

Adjournment

Chairman Constantino adjourned the meeting at 9:16 p.m., following a voice vote on a motion made by Board Member Whalls, and seconded by Board Member Jones.

Respectfully submitted,

Barbara Dutton-Thomas

Recording Secretary