

MINUTES
ZONING BOARD OF APPEALS MEETING
February 1, 2022

Call to Order and Roll Call

Zoning Board of Appeals Chairperson Gregory Constantino announced that the evening's meeting would be conducted remotely, in accordance with a disaster declaration associated with Covid-19, and called the meeting to order at 7:02 p.m. Mr. Constantino, who explained the advisory nature of the ZBA, its function, and the procedure for making determinations about matters brought before it.

Roll was called. Present: Chairperson Constantino and Zoning Board of Appeals Members Matthew Jones, Katie Crudele, Michelle Covington, Chip Miller, Reed Panther and Thomas Whalls. Absent: Maggie Wachter.

Chairperson Constantino went over public hearing protocol, announced that the meeting will be recorded, and introduced the following individuals affiliated with the Village: Planning Manager Kelly Purvis, Planner Atrian Fard, Associate Planner Taylor Gendel, Recording Secretary Barb Dutton and Board of Trustees Liaison Anne Gould.

Motion to Allow Remote Participation

A motion to allow remote participation in the meeting by the ZBA was made by Katie Crudele and seconded by Matthew Jones passed unanimously upon roll call vote.

Approval of Meeting Minutes

Following a motion by Matthew Jones, seconded by Reed Panther, to approve the draft minutes of the December 14, 2021, the motion carried by roll call vote, with all of the Members voting, "Yes," except for Member Covington, who did not render a vote due to technical difficulties.

Public Hearing for 62 N. Main Street

A motion made by Mr. Whalls to open the Public Hearing concerning consideration of a zoning variation for 62 N. Main Street was seconded by Ms. Crudele and carried unanimously by roll call vote.

Staff Presentation

After being sworn in, Associate Planner Taylor Gendel, 535 Duane, stated that the Petitioners, the owners of 62 N. Main St., are requesting approval of a variation from the Glen Ellyn Zoning Code to allow a lot coverage ratio (LCR) of 23.95 percent to build a one-story addition on a single-family residence. The subject property, she explained, is an interior lot located in the R2 Residential Zoning District on the west side of Main Street between Joyce Ct. and Dorset Ct. The zoning and land use immediately around the property is park and single-family residential. The owners currently have an LCR of 18.43 percent, related Ms. Gendel, saying the current home was built in 1979 with an attached garage. Ms. Gendel stated that the homeowners wish to add a 4,95SF first-floor addition to expand the rear family room and convert it to office space, they say is needed for the wife's remote work. To construct the addition as proposed, continued Ms. Gendel, the petitioners would need to be granted a variation from the Zoning Code to allow an LCR that exceeds maximum allowed of 20 percent. She related LCR bonuses accorded by the Village, including a porch bonus for which the Petitioners qualify. Ms. Gendel said the Petitioner states

that when they made the purchase of the property in 1995, the maximum LCR permitted was 25 percent, and they had the intention to pursue a rear addition when they had the financial means to do so. With the addition, Associate Planner Gendel added, they plan to live in the home another 30 years.

ZBA Questions

So, to accommodate a rear garage, ZBA Member Jones asked the minimum driveway width permitted in the R2 District. Planning Manager Purvis replied that it is 9 feet, and sworn in, went on to calculate the impervious surface setback for a driveway on the subject property as 2.25 feet. Mr. Jones asked if a driveway could be put in the utility easement on the south side of the property. Ms. Purvis replied, “No,” explaining that no permanent improvements are to be constructed in the 10-ft. public utility and drainage easement (adding that doing so would require utility company permission). ZBA Member Miller asked for confirmation of the average residential lot size in Glen Ellyn. Ms. Purvis responded that while she didn’t know the average, R2 lots are required to be a minimum of 8,600SF.

Petitioner’s Presentation

John and Kathleen Naliwajko, 62 N. Main St., Glen Ellyn, were sworn in. Ms. Naliwajko stated that the Petitioners have been in Glen Ellyn since 1994, and from the beginning had thought they might add at least a porch to the house. In light of the permanent change in her work location status, and an expanding family, she maintained that the addition is necessary – asserting that the Petitioner’s would likely have to sell the house if they are unable to realize the expansion envisioned. She said they wouldn’t want to sell, stressing that they happily make use of Village amenities. Mr. Naliwajko said the living room is taken up by an office (adding that the Petitioners are also expanding the kitchen). ZBA Member Miller asked if there is a bedroom or basement space for an office for Ms. Naliwajko. She replied there is, but explained that additional kitchen space is needed (and is something they can now afford), as the existing space presents a hardship in hosting family dinners. Ms. Naliwajko stated that the LCR requirement used to be under 20 percent.

Sworn in, the Petitioners’ architect, Rick Rearick, 155 N. Park Blvd., Glen Ellyn, reiterated that the utilities easement restricts the ability to feasibly build a detached garage on the property, and said the change in the Zoning Code in the years they owned the house is a hardship, as well as is to the work-from-home arrangement which begs for office space away from other areas of the house. He called the addition as planned a practical solution that requires less lot coverage than a detached garage, and less impervious area.

Recognizing that the easement (south) restricts the only practical area on the property for a driveway to get to the rear portion of the property, Chairperson Constantino asked if the amount of space needed is the least amount practically as it relates to the amount of the variance requested. Mr. Rearick stated that he believes it is the smallest amount practical that still works. The Chairperson asked the Petitioners if there had been any contact with the neighbors – and any feedback received. The Petitioners responded negatively, though Ms. Naliwajko’s said her sister who lives next door is supportive of the project. Mr. Rearick noted that the addition could have been bigger prior to 2000.

ZBA Member Panther reviewed the findings of fact. ZBA Member Covington asked for a motion to accept the findings; seconded by ZBA Member Jones, the motion passed unanimously by roll call vote.

Deliberation

ZBA Member Covington said she was inclined to approve, given the Code change mentioned. ZBA Member Crudele cited this Zoning change, as well as the easement restriction, as reasons she intends to vote in favor. Due to the easement situation, Member Jones said he was “okay with it.” Member Miller said he couldn’t go with the office space or the Code change as reasons to approve the request, but can go along with the easement hardship. Mr. Panther said he sees the Code change as presenting a challenge, though expressed concerns about setting a precedent; however, along with the easement challenges, is in favor. Mr. Whalls indicated that the side yard setback issues are “tough.” Observing no setback encroachments, storm-water drainage issues or neighbor vision impairment with the plan, said he is “in” on this one. Chairperson Constantino opined that in past lot coverage change has not been considered a hardship (though he thought this might change given all the teardowns replaced by oversized houses), and doesn’t think that work-from-home trends necessarily represent a general hardship, but given the easement restrictions in the case at hand, said he will recommend approval of the variance.

Member Whalls, seconded by Member Covington, moved to close the public hearing; the motion passed unanimously by roll call vote.

ZBA Member Miller moved for the following:

Having considered the application of John and Kathleen Naliwajko, owners of the property located at 62 N. Main Street, Glen Ellyn, for a zoning variation from Section 10-4-8(E)(1) to allow a lot coverage ratio of 23.95 percent where a maximum 20 percent lot coverage ratio for two story single-family dwellings is allowed in the R2 Residential District, 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 February 1, 2022, 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): Due to easements the owners cannot use the garage bonus because there’s no space for a driveway. Seconded by ZBA Member Jones, the motion passed unanimously by roll call vote.

Public Hearing for 737 Forest

A motion made by Member Miller, seconded by Member Covington, to open the Public Hearing concerning consideration of a zoning variation for 737 Forest passed unanimously by roll call vote.

Staff Presentation

Sworn in, Associate Planner Taylor Gendel, 535 Duane, Glen Ellyn stated that Petitioner Ray Whalen Builders Inc., owner of the property at 737 Forest Avenue, requests approval of a variation from the Glen Ellyn Zoning Code to allow an LCR of 26 percent for the property, an interior lot located in the R2 Residential Zoning District, on the east side of Forest between Oak Street and Maple Street. The zoning and land use immediately surrounding the subject property is R2 single-family residential, she said, explaining that the Petitioner proposes constructing a new single-family home at 737 Forest. The proposed residence would have a 26-percent LCR. This variation request to exceed the maximum LCR is due to the fact that there are large Oak trees on the property that the builder would like to preserve, she stated. The placement of the trees, she continued, prohibits him from building a new detached garage in the rear yard. The extra lot coverage requested, she explained, is to construct a home with an attached garage which will allow the trees in the back yard to be saved. Petitioner Whalen has indicated that he can construct a code-compliant home with a detached garage, said Ms. Gendel, but the large Oak trees would

have to be removed. She stated that the Village's tree consultant has reviewed the plans and agreed that construction of a new attached garage would damage the two Oak trees.

What he is proposing instead, she said, is to construct the same square footage on the lot as would be permitted if he were getting the detached garage bonus of 500SF. Therefore, the lot coverage ratio would be 26 percent where 20 percent is allowed, however, the actual square footage coverage of the lot would be the same in either case. The Petitioner is willing to attach the garage to the home to save the Oak trees (forgoing the detached garage bonus) but would like to be able to build the same square footage in the home. He does anticipate the home having a front porch and he would benefit from the lot coverage bonus of up to 240SF for that improvement. The Petitioner has indicated that the proposed home would meet all other requirements of the Zoning Code.

If the variation is granted, said Associate Planner Gendel, the Oak trees saved would be numbers 14 and 16 on a Lot Development Plan she displayed. According to the Petitioner's tree consultant, they are in reasonable condition and stand great likelihood of survival, providing the appropriate steps are taken to reduce the impact of the construction. Trees 14 and 16 would undergo significant damage from construction if the existing garage is to be torn down and replaced, she continued, saying that according to the consultant, if the garage is to be replaced the trees may still be salvaged, but doing so would require more in-depth pre- and post-construction treatment to enhance their likelihood of survival. The Village's tree consultant, she related, agrees that these two trees would do best if the existing detached garage was demolished without being rebuilt. Ms. Gendel related that the Village's consultant also stated that trees 14 and 16 are approximately 2 ft. from the current structure and it is likely they have adjusted to the current garage; roots likely have grown around it and would be minimally disturbed by the garage's removal. A new structure would likely cause more ground disturbance and the need for root pruning, especially if the size of the detached garage were to change. Ms. Gendel related that the Village's consultant mentioned that Oaks can live upwards of 200 years, and that she also recommends not removing trees 4 or 8 and disagrees with the Petitioner's submitted tree evaluation, specifically with regard to these trees, which the consultant deemed also significant and in fair condition. Ms. Gendel reported that Mr. Whalen provided an updated demolition plan and notes that tree No. 4 would likely require removal to accommodate water and sewer line placement.

ZBA Member Jones asked for confirmation that existing garage (built in 2015) is not a blight to be removed. Ms. Gendel didn't believe so. Mr. Jones asked if it could be kept. Ms. Gendel thought so.

Petitioner's Presentation

Ray Whalen, 177 Sunset Ave., Glen Ellyn, was sworn in. He stated that after the subject property was under contract, he learned that to construct a new, code-compliant home he would have to remove a significant number of trees, which he contends are an important aspect of the character of this particular neighborhood. Encouraged to seek a variation by combining the LCR bonuses, he continued, he wishes to build a 2,100SF residence while saving Oak trees on the property. He argued that a front-load attached garage would require less impervious surface, benefitting a neighborhood that already has water problems. This plan would also allow more open space in the rear yard, he added. He stated that he met with a tree consultant, whose report with which the Village's consultant concurs. Urged to seek Village Board input, Mr. Whalen related that he was instructed by Village President Senak to respect the process, and that the Petitioner sought input from the Historic Preservation Commission and has been invited to attend the Feb. 15th meeting of the Environmental Commission to discuss tree protection.

For clarification, the Petitioner stated that he only owns the property at 737 Forest, which he acquired it after the owners of 735 Forest and who contacted him about building a house on that lot. Mr. Whalen maintained that the variance he's seeking will allow him to have a greater side-yard setback between the two houses. He concluded by saying that he wants to build a house that meets today's standards, and refuting an accusation of greed (i.e., overbuilding on the property), said that carrying the property while going through the process to save trees comes at a cost to him (as does designing a custom plan).

Confirming that the Petitioner paid a premium for the lot, Member Jones asked the Petitioner if he felt he overpaid for it, saying he expects prized properties in town to command high prices in the future. Mr. Whalen stated that between the subject property and the one adjacent to it, it is the highest cost paid per square-foot in Village history, and that he's seen greater price increases in Elmhurst and Downers Grove. Mr. Jones asked if Mr. Whalen if this is in part due to LCR coverage and whether a higher LCR would allow more building being done in Glen Ellyn. Mr. Whalen said an appraiser he used feels Glen Ellyn's values declined. The Petitioner said he thinks homes are quite large already, especially on smaller lots. Responding to a further question from Mr. Jones, Mr. Whalen stated that Public Works requires 10 feet of separation between Tree #4 and water and sewer lines, explaining that this is horizontally, as the Village doesn't permit shelving outside of unique circumstances.

ZBA Member Miller asked what's wrong with the six-year-old garage that it can't be resided. Mr. Whalen replied that, in addition to being a poorly placed ugly structure, it is only about 19 feet wide inside, and the overhead door is only 7 ft. tall, so doesn't accommodate an SUV. (He also indicated that the neighbors to the rear want it gone.) Mr. Miller asked the plans for sewer and water, to which Mr. Whalen responded that the Village has upgraded the sewer and water, so going into the parkway to the B box (where there's a cleanout) is currently Code compliant. Given the buildable area, he said he'll be required to come across the sidewalk and separate sewer and water as far as he can as quick as he can to meet the State's 10-ft. requirement, only going from the B-box to the new home. In response to a question from Member Miller about setting precedent among developers, Mr. Whalen said the proposed project is distinguished by the objective of saving trees, which for him amounts to a long-term perspective.

ZBA Member Whalls asked if the electricity would be coming in from the back or the front yard. Mr. Whalen said he'd not gotten that far, but that it would not be traversing over the garage, but rather it will be underground. Mr. Whalls asked how close the trenches would be to either of the big trees. Mr. Whalen said the lines will be on the southeast corner and doesn't think he'll impact the trees.

Chairperson Constantino, referring to the Petitioner's request for direction at the December Zoning Board of Appeals meeting, recalled Mr. Whalen granted the variation using the bonus square footage being agreeable to placing a condition on the property prohibiting a larger structure being built in the future, and wondered if Mr. Whalen is still willing to accept such a condition. Mr. Whalen replied, "Absolutely," adding that he is amenable to not building over the porch, saying he's not looking to build "a monstrosity."

Disturbed by the proposed 26 percent LCR, Mr. Jones asked the Petitioner if he'd be willing to take off the screen porch to bring down the percentage. Mr. Whalen replied, "Probably not," maintaining that the porch is a selling feature. Mr. Jones expressed that he's more comfortable with an LCR of 25 percent. Mr. Whalls wondered what the square footage would be if the LCR was capped at 25 percent. Planning Manager Purvis calculated the difference as 80SF. Chair Constantino asked if the LCR would also be 26 percent with a detached garage (and qualifying for the bonus); Mr. Whalen replied affirmatively.

Ms. Gendel read into the record the following letters received:

Stacey Zagortz, 745 Forest Ave.: *I would like to express my concerns of flooding/run-off with the proposed variance of 30% increased lot coverage. As the house at the bottom of a hill, our home has flooded multiple times from run-off caused by melting snow and rain. We have at significant financial burden, remedied these problems. We oppose this measure. We would like the zoning committee to fully understand the drainage run-off implications and we want to understand what recourse we have with the Village should the measure be approved and should we start to once again experience drainage issues.*

Steven and Beth Dimmitt, 737 Forest Avenue: *My name is Steven Dimmitt and my wife Beth and I recently purchased the home/lot at 735 Forest Avenue in Glen Ellyn.*

We have lived twice previously in Glen Ellyn and made the mistake to move out to Elmhurst. We are now working to move back to what we feel is the most beautiful suburb in Chicagoland.

One of the main reasons we are moving back is the beauty of the town which includes all of the trees in the neighborhoods especially around the lake. We understand that Forest Avenue actually derived its name from the myriad of trees on that street.

We understand that Ray Whalen Builders is requesting a zoning variance on 737 Forest Avenue that would require going beyond the allotted LCR for the purpose of saving trees on that lot.

Beth and I are in full support of this. Our lot next door is a great location in part due to the trees in our yard, the trees on 737, the trees to the south of us and the trees behind (to the east of us).

We have built homes before and to have a builder want to save trees is an anomaly in our experience. Builders usually want to cut down trees to make the process easier.

We chose Ray Whalen Builders to build on our lot as well and one of the reasons was his willingness to work around the trees on our lot. It would have been easier to build a one story home using the 35% LCR but it would have taken out some wonderful trees in the backyard of 735 Forest. Ray is working with us to find a way to save them. We have already invested >\$7K in protecting and maintaining the trees on that lot.

In closing, we hope that Ray Whalen's request is approved as we need to keep all the trees we can in Glen Ellyn...not only for the beauty of the town but what it does for our environment and health.

Deb and Greg Klamrzynski, 735 N. Park Blvd.: *Good morning. I'm writing this email in support of the variance sought by the owners of 737 Forest Avenue. We (Greg and Deb Klamrzynski; 735 N. Park Blvd.) are unable to attend tonight's meeting; however, we are in support the variance requested.*

The variance requested would preserve several beautiful and well established oak trees. Our neighborhood is characterized by the stunning trees that line the streets and populate our neighbor's property. While I understand that sometimes it is necessary to remove trees to accommodate a new construction, I believe that when there is a solution that would allow homeowners to preserve well established trees, we should do what we can within reason to preserve them. Removing the trees to accommodate a detached garage would destroy so much beauty and history of the land in this neighborhood. Additionally, granting this variance wouldn't increase the lot coverage ratio. The exception requested is not unreasonable to retain the character and beauty the trees bring to the Lake Ellyn neighborhood.

Thank you for your consideration of this variance.

Jeffrey J. Basso, 726 N. Park Blvd. was sworn in. After some discussion to clarify the garage bonus allowance offered by the Village, Mr. Basso voiced an objection to the project, saying that an LCR of 26 percent “seems excessive,” saying he doesn’t want to see a house that is too big for the lot (though would like to see the existing garage removed). Mr. Constantino stressed that the issue at hand is the square-footage of the footprint on the property, a clarification for which Mr. Basso expressed thanks.

ZBA Member Panther reviewed the findings of fact. ZBA Member Whalls asked for a motion to accept the findings; seconded by ZBA Member Covington, the motion carried unanimously by roll call vote.

Deliberations

ZBA Member Covington said that while saving trees is important and she finds reducing impervious surface an attractive argument, she thinks an LCR of 26 percent is “awfully high,” and doesn’t understand why another type of home (of a different size) can’t be built on the lot. ZBA Member Crudele said she can get “on board” with keeping the trees and accommodating the water issues by potentially increasing impervious surface, however, thinks the 26 percent is high. In the interest of maintaining the “essential character of the neighborhood, she said is leaning toward recommending approval. While he appreciates the effort to save trees, ZBA Member Jones indicated that it would be easier to reach a determination if he could see a complete plan, to gain an understanding of the bulk it presents for the building, but added that at 26 percent LCR, he’s a “No.” Board Member Miller said that while he believes the Petitioner is trying to save trees, he draws the line at 25 percent. With the trees being assessed to be only of “fair” quality, he said he’s concerned about setting a precedent, so would vote, “No” on approving the Petitioner’s request. Undecided, Commissioner Panther also expressed concern about the 26-percent LCR, and Commissioner Whalls said that despite some plan aspects of which he is in favor, 25 percent is his maximum. Chairperson Constantino said he struggled with the 25 percent limit vs. 26 percent request but would be in favor of recommending granting the requested variation, citing Preservation Commission support, neighbor opinion, and the prospect of losing mature trees.

Associate Planner Gendel reported that the Village’s Consulting Engineer had no concerns about storm water (and said that if the developer is decreasing the amount of impervious surface, he won’t be required to provide a dry well, but given the topography will have to direct runoff toward Forest). Regarding Mr. Miller terming trees in “fair” condition, she said, according to the Arborist trees assessed to be in “excellent” condition are only found in an arboretum, so “fair” is a normal grading of a healthy tree in a residential area. Mr. Whalen interjected that increasing the area between the two new homes will help in water management.

Commissioner Covington asked if there’s a reason another type of home can’t be constructed on the lot. Mr. Whalen explained that the plan starts with the garage dimension, which limits the width of the home that can be built, and added that the lot is on an angle and so is also a constraint. After the Chairperson polled the members as to their stance, Ms. Crudele moved to close the public hearing; seconded my Member Covington, the motion passed unanimously by roll call vote.

ZBA Member Whalls moved for the following:

Having considered the application of Ray Whalen, owner of the property located at 737 Forest Ave. Glen Ellyn, for a zoning variation from Section 10-4-8(E)(1) to allow a lot coverage ratio of 26 percent where a maximum 20 percent lot coverage ratio for two story single-family dwellings is allowed in the R2

Residential District, 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 February 1, 2022, as well as the findings included in the deliberations of the Zoning Board of Appeals and recommends APPROVAL based upon the following hardships or unique circumstances:

1. Improvement of drainage in the rear yard;
2. The preservation of mature Oak trees on the property;
3. And that if using the exemption on the 500 ft. for the garage whether it's attached or detached the LCR is pretty much the same.

Seconded by ZBA Member Crudele, the motion carried by roll call vote, with Members Whalls, Crudele, Panther and Constantino voting, "Yes;" and Members Jones, Covington and Miller voting, "No."

Public Hearing for 298 Oak Street

A motion made by ZBA Member Crudele, seconded by Member Whalls passed unanimously by roll call vote.

Staff Presentation

After being sworn in, Planner Atrian Fard, 535 Duane Street, reviewed the case for a construction-necessitated zoning variation request: The subject property, 298 Oak Street is an interior lot on the north side of Oak Street and between North Kenilworth Avenue and Western Avenue. The Petitioner is requesting a public hearing for to allow a lot coverage ratio (LCR) of approximately 21.8 percent on the subject property in lieu of the maximum permitted lot coverage ratio of 20 percent. The subject property and all surrounding properties are zoned R2 – Single Family Residential District and are all improved with single-family homes. Planner Fard related that on October 21, 2019, a building permit application was filed for the subject property to install a new patio in the rear yard. Several days later, stated Planner Fard, Staff sent a rejection letter stating that the permit application was for a rear patio; the drawings also included a roofed pavilion with a fireplace that would cover a part of the proposed patio. Additionally, she continued, Staff at the time noted that the house was at the maximum allowable LCR of 20 percent, and the addition of the pavilion would exceed the lot coverage limitation. Consequently, stated Ms. Fard, the architect for the project, Mr. Anthony Montalto, filed their second submittal in response to the review comments where they agreed to remove the enclosed pavilion from the application and replace it with an open pergola equipped with the originally proposed fireplace. Per the Zoning Code, she explained, a pergola would be exempt from the LCR calculations because it is constructed with an open material on top so is not considered a roof structure.

So, the plans for the pergola were approved, continued Ms. Fard, who said that on June 6, 2020, the permit was issued. After the final building inspection passed on September 25, 2020, the permit was closed out. In August 2021, she related, the Village received calls from a neighbor regarding work done on the subject property without a building permit being obtained. The Village performed a building inspection and found that the permitted pergola had been replaced with the previously denied roofed pavilion. The Village notified the Petitioner of the violation and requested construction details for the built pavilion, which currently exists. After reviewing the new drawings, Staff informed the homeowners of the need to either remove the nonconforming roofed structure to comply with the maximum allowable

LCR of 20 percent or file for a Construction-Necessitated Zoning Variation (CNZV). On October 28, 2021, the homeowners filed for a CNZV request.

The Village Zoning Code, explained Planner Fard, regulates a freestanding pavilion as a gazebo, which is not to exceed 250 sq. ft. in area. According to the most recent plat of survey, she stated, the roofed pavilion measures 249.6 sq. ft. Although compliant in size, the new pavilion increased the lot coverage ratio to 21.8 percent that would make the property approximately 249.15 sq. ft. over the permitted lot coverage of 2,766.45 sq. ft.

According to the Petitioner, reported Planner Fard, the family faced a lot of challenges due to the Pandemic, which led to the closure of schools during the fall and winter of 2020. So, in November 2020, continued Ms. Fard, the homeowner replaced the pergola with a roofed pavilion without informing the Village. The Petitioner also claims that maintaining the pavilion as built would provide an outdoor area for social events during cold seasons and a safe place for children to learn and play. A zoning variation for LCR will need to be granted for the pavilion to remain as built, said Ms. Fard. If the request is denied, she added, the Petitioner will have to spend approximately \$5,500 to remove the nonconforming covered structure plus another \$18,700 to construct a new pergola in its place.

Planner Fard cited a previous matter before the ZBA: The homeowner of 298 Oak, Mr. Kevin Wallace, president of Addlawn Landscaping Inc., has been recently involved in another CNZV request as the contractor for the single-family residence at 523 Fairway Court. The Fairway case was initially filed by Michael Fisher, owner of the property, for a pergola that had been constructed in the required rear yard setback without the granting of a variation. While Mr. Fisher claimed that he was unaware that the pergola needed a variation, Mr. Wallace, the contractor of the project, took full blame for the pergola being constructed without first receiving a variation. Mr. Wallace also had confessed that he was aware of the requirement and "dropped the ball." While the ZBA recommended denying the request, the Village Board approved it in July 2021. Despite the fact that Staff had fully informed the homeowners of 298 Oak of the Code provisions during the permitting phase prior to the construction, said Planner Fard, it appears that the petitioner deliberately chose to ignore the standards after the passage of final building inspection. If the neighbors didn't notify the Village of the changes that occurred after the permit was closed out, she noted, the Village would never have become aware of the nonconformity. Ms. Fard outlined ZBA possible action on the case at hand.

Petitioner's Presentation

Maureen Wallace, 298 Oak St., and Anthony Montalto, 304 Oak St. of Glen Ellyn, were sworn in. Ms. Wallace stated that she has four children who were schooled from home during the Covid-19 pandemic, and that with her working from home, the family needed a quiet place to work. She said the situation was taking a mental toll on her diabetic teenage son. She continued, saying that with the parks, schools and restaurants closed, there was no place for teenagers to hang out, and with socializing now being done outdoors, the space that is the subject of the hearing provided a place for youngsters to gather safely and supervised. She contended that she did what was right for her family at the time, and that removing the subject structure would be a hardship – both financially and for her children's wellbeing. Further, Ms. Wallace placed blame for the aforementioned Fairway Court mishap on an employee of her husband's company, saying her husband was unaware of it until it became an issue with the Village, and that he accepts responsibility in the matter. She further stated she was glad when the pavilion plan was initially

denied, but when the idea resurfaced once Covid-19 hit, she decided in the interest of time to move ahead without a variation.

ZBA Member Whalls, who later told Ms. Wallace that she did not go about her pursuit the right way, asked her why she did not get a revised permit. Ms. Wallace replied that she was fine with the pergola, but after schools shut down, she felt something needed to be done as her children were suffering. Chairperson Constantino asked Ms. Wallace why, in coming to this decision, she did not attempt to obtain a new permit or initiate the variation process. Expressing a “timing issue,” Ms. Wallace responded that the Village offices were closed at the time, she perceived the permit process to be slow, and the plan to move ahead with the project as they did represent an “immediate need,” citing health concerns. She indicated she would have done so under different circumstances. Mr. Montalto, neighbor and architect, attested to the quality of construction and the character of the pavilion. Mr. Miller asked who built the roof. Ms. Wallace said it was a contractor she found. Mr. Constantino asked what hardship relative to the property she could identify. Ms. Wallace said she did what she did to bring her son out of a “funk.”

Planner Fard referred to a table she created listing 24 letters received in support of the pavilion and the variation requested and read into the record the following letters received. (The first of these was not listed in the table, and the second one, while listed, was specifically requested by Member Jones to be read aloud.)

Jim & Patti Campanella, 323 Elm Street, Glen Ellyn: To whom it may concern -

I am writing this letter regarding the property located at 298 Oak Street which is occupied by the Wallace Family. It was brought to my attention that the Village of Glen Ellyn is considering having the Wallace's remove an outdoor structure in their backyard. While our property is not adjacent to the property in question, I am familiar with the home and the new outdoor living space.

The Wallace Family prides themselves on carefully maintaining their property. I walk my dog by their home everyday and admire how much care & effort they put into it.

The structure is only 1.2% over the lot to roof ratio [LCR]. That small ratio seems insignificant in my opinion. It would be a shame if the Wallace family had to remove the structure. I know family & friends enjoy using the space, and it was beautifully constructed to aesthetically enhance their outdoor living space.

I hope the Village does the right thing and allows the Wallace Family to keep their beautiful outdoor space intact.

Laura Levin, Attending Physician, Division of Endocrinology, Ann & Robert H. Lurie Children's Hospital of Chicago:

To Whom It May Concern-

Ryan has Type I diabetes, which is an autoimmune condition. Since he has an autoimmune condition, he is considered immune compromised. During Covid, many teens have experienced some struggle with mental health. Particularly, we have seen this in our patients with diabetes. Ryan was beginning to show signs of this. The social isolation really affected many teens, and has led to an increase in depression and anxiety. As providers, we recommend that our patients socialize in distanced outdoor space for their own health and wellbeing. Being outside is considered safer for everyone during Covid, but especially for the immune compromised.

ZBA Member Panther presented the findings of fact, which Member Miller then moved to approve. Seconded by Member Covington, the motion carried unanimously by roll call vote.

Deliberation

ZBA Member Covington said we all had to deal with similar struggles, but we still have to follow rules as part of a community. Ms. Crudele said she understands the struggles expressed by the Petitioner but wishes the process could have been started for the variance. Saying the Petitioner displayed a complete disregard for the rules and regulations of the Village, Ms. Crudele said she is voting, “No.” to the variation, calling this a case of asking for forgiveness rather than permission.

ZBA Member Miller pointed out testimony indicating that the Petitioner’s husband knew of the short cut and was against building the pavilion. Mr. Miller also suggested that one could still go outside with a pergola in place. Mr. Miller didn’t see why at the time of the inspection in 2020, the Petitioner didn’t ask if the Village could speed up the process. Given that no attempt was made, Mr. Miller said he can’t vote, “Yes” to the variance, but rather is compelled to offer “a hard ‘No.’” Board Member Reed concurred, believing that the Petitioner deliberately tried to circumvent the process. With the Village rejecting the original structure, and the inspection of a different structure, he doesn’t have a lot of sympathy for the Petitioner, so his decision on the appeal is “No.”

Reiterating his bewilderment as to why the Petitioner hadn’t gone for another permit, ZBA Member Whalls. He said there are “millions of kids in this situation,” and asked why the Petitioner didn’t protest the issue with the State. Referring to Petitioner testimony about Village delays as “hearsay,” Mr. Whalls said his verdict is a “solid ‘No.’” Chairperson Constantino said that he is against recommending granting the variation, as action was taken with no attempt to request a variation and didn’t hear expressed a hardship or unique circumstance outside of Covid. He indicated that the Petitioners knew of the Department’s requirements and its position, hence brought the problem upon themselves, and that he would not recommend to the Board the granting of this variation.

Though ZBA Member Jones deemed that the Petitioner’s actions technically wrong by Village standards but said that his personal opinion is the mother did was right as a parent. While the determination should be a “No” and the Board is making the correct choice, he said he is sympathetic to Ms. Wallace’s situation, so will give her a “Yes” vote.

Planner Fard pointed out that because the requested variation only exceeds the LCR by 1.8 percent, and a variation request up to 2 percent is permitted to be handled administratively, the Petitioner could have appealed to Village Staff, which would not only have been quicker, but the Petitioner had a better chance to get approval. Chairperson Constantino surmised that because the work has already been done, it is too late for this course of action. Ms. Fard confirmed that this is correct. Mrs. Wallace said she was never notified of this option.

ZBA Member Whalls moved to close the Public Hearing on 298 Oak. Seconded by Crudele, the motion carried unanimously by roll call vote.

ZBA Member Miller moved for the following:

Having considered the application of Maureen Wallace, owner of the property located at 298 Oak Street, Glen Ellyn, for a construction necessitated zoning variation to allow a lot coverage ratio of approximately 21.8 percent on the subject property for which the maximum permitted lot coverage ratio is 20 percent, as

depicted on the plans presented or revised at the public hearing, the Zoning Board of Appeals hereby recommends DENIAL of the requested zoning variation from Section 10-4-8(E)(1) of the Glen Ellyn Zoning Code based upon the following findings of fact:

1. That the plight of the homeowner was not due to unique circumstances or a particular hardship; the entire village was suffering from Covid. Many families have a large number of children, and many families have immune-compromised children.
2. That this particular difficulty or hardship has been created by the persons presently having interest in the property, because the pavilion was already rejected and work on the pavilion was started right after they finished the final inspection. They never tried to get a variance; this is not the first this family was involved in a very similar situation in Glen Ellyn.

Seconded by Member Panther, the motion passed 6-1 by roll call vote as follows: Members Miller, Panther, Whalls and Crudele, and Chairperson Constantino voted, "Yes;" Member Covington abstained, and Member Jones voted, "No."

Chairpersons Report

Given the late hour, Chairperson Constantino thanked everyone for their time, effort and patience.

Staff Report

Planning Manager Purvis reported that Planner Fard is working on a presentation to deliver to the ZBA about handling construction-necessitated variations. Member Whalls asked how many times the Village Board has overturned the ZBA on construction necessitated variations, to which Ms. Purvis said the Board has approved every one. Mr. Whalls asked the status of updating building and zoning codes, including LCR and roof-height requirements, and asked about meeting with builders and architects. Ms. Purvis said Development Director Staci Springer is putting together a response to feedback about Building Division practices gleaned from a recent Building Board of Appeals (BBA)-hosted builders' forum. She related, too, that the building Codes update process is underway, but that nothing is currently being researched relative to LCR changes to the Zoning Code. Ms. Fard said it is probable that another construction-necessitated variation case will be on the March 8th ZBA agenda.

Trustee's Report

Trustee Liaison Anne Gould related that the Architectural Review/Appeal Commission is moving toward reconstitution, with seven members to be chosen to serve. Also, she reported that the Harding-Glen Townhome development was approved, and that the Village is moving forward with the hotel property, for which a charrette session is planned.

Ray Whalen declared Planning Department restructuring beneficial and said that Building Division staff additions have improved efficiency.

Adjournment

Chairperson Constantino adjourned the meeting at 10:39 p.m., following a unanimous roll call vote on a motion made by ZBA Member Covington, and seconded by ZBA Member Jones.

Respectfully submitted,

Barbara Dutton-Thomas
Recording Secretary