

MINUTES
ZONING BOARD OF APPEALS MEETING
May 10, 2022

Call to Order and Roll Call

The meeting was called to order at 7:03 p.m., by Chairperson Greg Constantino, who explained the advisory nature and function of the Zoning Board of Appeals (ZBA). Roll was called. Present: Chairperson Constantino and Board Members, Katie Crudele, Chip Miller, Reed Panther and Thomas Whalls. Absent: Michelle Covington and Matthew Jones. The Chairperson described the process for making recommendations on matters before the Board, including protocols for public input, and announced that the meeting would be recorded. He introduced Village Planner Atrian Fard, Recording Secretary Barbara Dutton, and Board of Trustees Liaison Anne Gould.

Approval of Meeting Minutes

Following a motion by Board Member Miller, seconded by Member Whalls, to approve the draft minutes of the April 12, 2022 meeting, the motion passed by voice vote.

Public Hearing for 436 Longfellow Avenue

A motion by Board Member Crudele to open the Public Hearing concerning a construction necessitated zoning variation for 436 Longfellow Avenue, seconded by Member Whalls, passed by voice vote.

Staff Presentation

Sworn in, Planner Fard, 535 Duane, stated that the Petitioners, Grant and Alissa Nitzsche, owners of the property at 436 Longfellow, are requesting construction-necessitated zoning variations to cover approximately 55 percent of the required rear yard, where only up to 50 percent of impervious surface is allowed; as well as to allow an existing patio to be approximately 3.47 ft. from the south interior side lot line where a side-yard setback of 8.75' is required. The subject property and surrounding, she said, are designated R2 and all improved with single-family homes. The subject property is an interior lot located on the west side of Longfellow between Duane and Hillside, stated Planner Fard, and is a typical rectangular shape lot that conforms to the lot standards in the R2 district. She went on to present a timeline of activity leading up to the evening's Public Hearing:

- March 2019: The owners filed permit applications to demolish the existing single-family home with and construct a new two-story residence with a detached garage, an in-ground pool, a spa, and a patio on the property.
- April 2019: The Village's Plan Examiner sent a rejection letter pertaining to the Zoning and Building Code requirements. According to their review, the proposed patio encroached into the required side yard setback of 8.75, where patios are not permitted obstructions within the required side yards. Additionally, it was noted that the area of impervious surface coverage in the required rear yard exceeded the maximum allowable impervious surface coverage of 50 percent.
- May 2019: The Petitioners filed their second submittal in response to the review comments where they amended the proposal to fully comply with the Zoning requirements. The building plans were approved by the Village's Plan Examiner in May 2019.

- June 2019: The Village's stormwater engineer reviewed the proposal and made a note that the proposed impervious surfaces in the required rear yard seemed to be slightly less than the allowable 50 percent, while the pool and patio drawings did not reflect the dimensions of the improvements and their setback from the property lines. With further modifications made to the plans, the Village's stormwater engineer approved the grading plan in July 2019, and subsequently the building permit for construction was issued.
- After work was completed the Petitioners provided the Village with a final grading survey that reflected the new building and accessory structures on the site.
- December 2020: The Village performed grading inspection and recognized that the pool deck/patio was expanded beyond what was permitted and exceeded the impervious surface coverage limitations in the required rear yard.
- December 3, 2020: The Village's stormwater engineer informed the Petitioners of the need to either correct the work to comply with this Code or file a construction-necessitated variation. When staff requested Petitioners' decision on this matter, the Petitioners' builder, Pete Ladesic, indicated that the project was under review by the Petitioners' engineer and landscape contractor, and they likely would not need any zoning variations. He also added that they will inform the Village if any zoning variations were to be sought.
- From December 2020 to January 2022, the Petitioners requested multiple permit extensions and were not responsive to the notices issued by the Village requesting Petitioners address the outstanding violations, as outlined in the Village Engineer's letter dated December 3, 2020.
- January 2022: Staff sent the third and final notice to the Petitioners requesting immediate action to either remove the nonconforming impervious surface or file for a "construction-necessitated."
- February 2022: The Petitioners announced that they would like to pursue a zoning variation to legalize the existing impervious surfaces.
- April 2022: Upon further review of the Plat of Survey, Staff found out the patio is also encroaching into the required side yard of 8.75 for 5.28 ft., where the approval was for 9.8-foot of setback from the south lot line. This led to the second zoning variation request.

Displaying the final grading plan, Ms. Fard noted that the lot's sloped elevation, requiring retaining walls. She related that in the application packet the Petitioners claimed that the significant grade change at the rear of the property and the need to install retaining walls have challenged the homeowners to provide sufficient patio area around the pool. The Petitioners, continued Ms. Fard, indicated that they anticipated grading challenges prior to the construction and therefore chose to utilize permeable paver brick for the patio and a portion of the driveway to ease the site drainage. The Petitioners, she continued, also claimed that they were unaware of the excessive impervious surfaces until after the final as-built drawings were reviewed by the Village and their engineer. A review of the DuPage County 2017 contour lines, said Ms. Fard, found that the lot's elevation before recent constructions sloped down from the west to east, with the most significant grade change occurring at the center of the lot towards the front while the rear of the lot appeared to be relatively flat. So, she explained, the change in the grade at the rear of the property – considered the main challenge by the Petitioners – is the result of the design of the new home and patio chosen by the homeowners and their design professionals. The Village's Stormwater Engineer has indicated that all the outstanding issues noted in the last review letter she provided will be further reviewed and evaluated for conformance as part of the permitting phase, related Ms. Fard, who added that aside from these two zoning variations, the Engineer doesn't foresee major issues.

Planner Fard reviewed costs to rectify the issues (\$3,415 to remove the impervious surface; and \$1,295 to remove the patio/pool), and reviewed ZBA options for action regarding the case.

Board Questions

In response to requests from Member Miller to confirm the change in elevation from the southwest to northeast lot corners and the presence of a swale, Ms. Fard explained that the drop at the rear of the yard resulted from regrading and necessitated the retaining walls, and said the yard does contain a swale, which the Village Engineer will look at. Member Panther asked if the permeable pavers get “backed out” of the calculation, to which Ms. Fard replied they were not, as Code includes these in it. Chairperson Constantino followed up by asking whether how what is in between the pavers or how they are spaced matters. Ms. Fard explained that no pavers at all are exempt from the calculation. He asked and if the in-ground pool is considered toward having a permeable surface, to which Ms. Fard said it’s considered impervious. The Chair asked if the “as built” were the same as originally rejected in the first permit request. Planner Fard stated she couldn’t find copies of these, as they were not approved. Mr. Constantino asked for confirmation that the approved were compliant, to which Ms. Fard replied affirmatively.

Petitioner’s Presentation

Sworn in, Pete Ladesic, 615 Scott, Glen Ellyn, stated that in 30 years of building in town he’s never sought a construction-necessitated variation. In defending his client’s position, he attributed communication difficulty during Covid with all the parties, saying he thinks the project engineer had staffing issues at the time, and said the team was struggling to fit a lot of components on the site. Mr. Ladesic remarked that the Village unfortunately does not differentiate between permeable pavers and asphalt or concrete (but is hopeful a credit for pavers will be adopted in the future by the Village Board), explaining that stone lies under the pavers, adding permeability beneath and contributing to a “wonderfully draining site.” Mr. Ladesic added that the retaining walls were necessary because of how the homeowners chose to situate the house on the lot, requiring considerable excavation to accommodate the patio, but said that water continues to flow from west to east, and more is captured now. He related that aesthetic changes, including building a curved wall, had been made, and maintained that he only recently learned of the encroachment from the bump-out into the side yard. He said the construction team is going off of field measurements for what was installed, and the Village is going off CAD drawings, and that while he believes the former to be more accurate, he can’t argue with what Staff has presented. As far as whether the requested variation pursuant to impervious surface would impact any neighbors, Mr. Ladesic noted a neighbor had brought up a concern, but said the site has better drainage now. He lamented that the storage capacity of the pool is not recognized, saying some communities do give credit for one, and said he thinks the project helps property values in the neighborhood and that it contributes more to the tax base. Mr. Ladesic said that the surface requested is the minimum to keep a reasonable use of the patio and walkways around the pool so the Petitioners can have two sitting areas, and argued that putting decorative gravel in to replace the 4,240SF of pavers wouldn’t affect the drainage either way.

Member Whalls asked why there was a continuous neglect of the permits, and not being responsive to the Village. Saying he didn’t get sent a copy of the review document, Mr. Ladesic again cited poor communication with the engineer, and staffing issues, causing things to move at a “snail’s space.” Member Whalls asked, too, whether the pavers are considered pervious or impervious. Saying they are a popular product and similar to what the Village used in a parking area along Duane, Mr. Ladesic described them as being ¼-in. spaced and augmented with chips, so “that everything can drain.”

In seeking clarification on measurements, Member Miller noted that the Village used the Petitioner's measurements appearing on a form stamped by Mr. Steinbrecher. Mr. Ladesic said that in the interest of finding resolution in an adversarial situation, the team used numbers calculated from the landscaper's measurements, which differed from the engineer's detailed numbers, though globally the areas in violation are no different than a parking spot (or less), and that altering the layout for compliance would involve either removing the eating area or the sitting area, both functional spaces. Member Miller asked Mr. Ladesic if he felt he wouldn't be here if the Village had used the Petitioner's measurements, to which Mr. Ladesic replied, "No," indicating that the Petitioner would be at 40SF rather than 140SF. Mr. Miller asked if it getting a new land survey and something stamped might have helped, to which Mr. Ladesic said not having gotten anywhere with Mr. Steinbrecher after pushing the issue, the Petitioner had to come in for a variation or remove the pavers. Chairperson Constantino asked Mr. Ladesic if the discussions between Mr. Steinbrecher and the Village are the primary reason it took almost a year and a half to apply for the variations. Mr. Ladesic replied that was much of it, as a professional survey had to be performed, reiterated that staffing issues contributed to the delay.

Concerning the impervious surface, Chairperson Constantino said he is having a little problem getting past his belief that the as-builts seem closer to the original request that was not agreed upon by the Village (as opposed to the permitted). Mr. Ladesic replied that, while the landscaper was mindful of the numbers he was not aware that the bump-out area was encroaching and not approved. Mr. Constantino asked the basis of the recommendation for the variation for the 5-ft. encroachment into the required side yard. Mr. Ladesic stated that the primary reason is it wasn't pointed out in the architectural plans.

Richard MacRoy of Landscape Creations, 1N730 Swift Road, Lombard, was sworn in. Mr. MacRoy recalled that during the process a question or two in regard to the elevation of the walls arose, and he asked Mr. Ladesic what he thought about the grade elevation. Mr. MacRoy noted the changed wall design and a drop, as well as said he was surprised to discover the swale, and reached out to the engineer for clarification. Never getting a call back, Mr. MacRoy stated that, to be compliant with the engineer's design, he followed the swale through the back yard and stair-stepped the wall. Relative to dimension discrepancies, he said his CAD application is as accurate as anybody else's. Chairperson Constantino asked the landscaper if he'd had contact with anyone at the Village, to which Mr. MacRoy replied, "No," saying he was only working off a Plat of Survey which he "assumed we were good to build from," and was unaware of any lot coverage limitations, other than the impervious area of the driveway, a subject of discussion during construction relative to concrete pad size, but stressed that he was under the impression the work was in full compliance with the coverages.

Mr. Miller sought confirmation of his understanding that there was miscommunication between the builder and landscaper and the engineer/surveyor, he asked how this is a unique circumstance. Saying there was communication between the two engineers to which he was not privy, Mr. Ladesic said while this was not unique, a hardship was site-driven: The lot drove the retaining walls, which added to the impervious square footage, and brought about the permeable pavers, which he said isn't considered a benefit by the Village. Saying he doesn't see this as a hardship, Member Miller thought maybe a compromise could have been found. Mr. Ladesic suggested that, while the problem is remediable, replacing pavers wouldn't solve anything. He reiterated the staffing issues. Suggested that Code doesn't account for the way technology has evolved, Member Crudele guessed that the Petitioners invested more money than necessary to improve their property.

Sworn in, Grant Nitzsche, 436 Longfellow Ave., related that as soon as he received information, which he believed needed addressing, he sent it to Rich and Pete, but wouldn't hear back from the engineer. Nitzsche asserted that the additional investment in pavers is good for his home and the land around it, and were installed with best intention. (He stated that concrete is present only around the garage.), Mr. Constantino asked if he'd had contact/issues with neighbors, to which Mr. Nitzsche replied, "No."

Public Comment

Planner Fard said two letters were included in the packet, and additional one subsequently was received from Mr. Ian Dawson, 869 Hillside Ave., who elected to speak at the meeting in lieu of having the letter read. Sworn in, he said his primary concern is setting precedents. He stated that he reviewed the topography, and while the back lot had been "fairly flat" with most of the change in elevation continuing east to Longfellow, but the lot was significantly regraded to accommodate the house and pool. He wondered what would happen if this seemingly "sum of the parts" is repeated across the Village, which is already stressed with water. Further, he maintained that the requested side-yard setback variance is sizeable and requested Code concerning pavers be upheld. Planner Fard reported that the Village Engineer said that, while there is no arguing the additional surface can cause more runoff, 869 Hillside receives run-off from another area.

Board Member Panther delivered proposed findings of fact. Board Member Miller made a motion to accept these findings; seconded by Member Crudele, the motion passed unanimously by voice vote.

Deliberations

Although the Petitioner could have used crushed stone instead of pavers, Board Member Whalls indicated that he sees both sides of the situation and is "up in the air" on a conclusion. Member Miller said he doesn't see a unique circumstance or particular hardship, and sees an issue with the Surveyor, a person who has interest in the property, and noted miscommunication within the team. He indicated that an alternative to the variance is not "a life or death" situation, suggesting shale can be considered. Expressed worry about setting precedent, he suggested coming up with a new definition of modern permeable to achieve a "generally accepted" meaning. He said his decision is "No," based on the factors he listed. Member Crudele said she has to vote, "Yes," because those specifications are not outlined by the Village, and technology has evolved since the Code was written. She noted that the Petitioners made a choice, and a commitment to improve the area, and that if the pavers were removed, it's not going to change anything, and thought stones or gravel could present safety issues for children. As far as precedent, she said you could say that about every construction-necessitated case. Calling the circumstances, "tough," Member Panther suggested that the Code presents limitations, as written. He said he is struggling with a decision, as he doesn't see remediation of the variances improving drainage.

Chairperson Constantino wondered if the deliberations might be held over to the next ZBA meeting, while in the meantime Staff could perform research to support further consideration. Planner Fard said that, while research could be entertained, current staffing shortages make completing it unrealistic in that timeframe. Mr. Constantino said that he is "kind of on the rail" on a determination, in that while he sees the difference between Village and owner's engineer calculations, the materials used and getting final approvals, he's not sure if this is sufficient to recommend a variation. Noting permits "weren't totally ignored" and calling comments by Member Crudele "cogent," he said he'd like to see the case revisited. Articulating a need to fix the "arbitrary" definition of "permeable" in the Code, Member Miller moved to close the deliberations. Seconded by Member Whalls, the motion passed by voice vote.

Member Crudele, seconded by Member Miller, moved to close the public hearing; the motion passed unanimously by voice vote.

Board Member Crudele moved for the following:

Having considered the application of Grant and Alissa Nitzsche, owners of the property at 436 Longfellow Avenue, Glen Ellyn, for the following construction necessitated zoning variations: from Section 10-5-5(B)(4) #18.c.1 to allow existing impervious surfaces to cover approximately 1,917 square feet, or 55 percent of the required rear yard, where only up to 50 percent, or approximately 1,750 square feet, of the required rear yard is permitted to be covered by impervious surfaces; and from Section 10-5-5(B)(4) #37 to allow an existing patio to be approximately 3.47' from the south interior side lot line where an interior side yard setback of 8.75' 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 May 10, 2022, 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 unique circumstances:

- The Village Code does not address building materials that have evolved over time, and the homeowners made a conscious decision and financial commitment to utilize a surface that is permeable material;
- It is an impractical solution to utilize gravel or other permeable materials that are loose and could cause other issues with the children who reside at the residence; and
- This was all a result of miscommunications, measurement discrepancies, and varying CAD drawings.

Seconded by Board Member Panther, the motion passed by roll call vote with Board Members Crudele, Panther and Whalls, and Chairperson Constantino voting YES, and Member Miller voting NO.

Trustee's Report

Anne Gould said the Architectural Appearance Committee has been established and includes three architects and a landscape architect. She said that listening sessions were held concerning the hotel site, with the recent one featuring a presentation on affordable housing. She said the last of these sessions is to be held June 2nd. Trustee Gould said a Village Board workshop on the Draft Comprehensive Plan is scheduled, and that the Alliance is planning a wine-tasting event for June 16th, and a "First Thursday" event featuring music for the summer months.

Staff Report

Planner Fard related that the next ZBA meeting is to present a zoning variance request to allow an AC unit to be located in a side-yard setback.

Adjournment

Chairperson Constantino adjourned the meeting at 9:00 p.m., following a voice vote on a motion by Member Crudele and seconded by Member Whalls.

Respectfully submitted,

Barbara Dutton-Thomas
Recording Secretary