

MINUTES
Glen Ellyn Zoning Board of Appeals Meeting
Tuesday, December 12, 2023 at 7:00 p.m.
Glen Ellyn Civic Center
Galligan Board Room
535 Duane Street

A. Call to Order and Roll Call

Chairperson Gregory Constantino explained the advisory nature of the Zoning Board of Appeals (ZBA) and its process for deliberation and recommendation.

Chairperson Constantino called the meeting to order at 7:06 PM, and roll was called.

Present: Chairperson Gregory Constantino and Board Members Katie Crudele, Christiane McKnight, Reed Panther, and Craig Pavlich.

Absent: Board Members Matthew Jones and Thomas Whalls.

Chairperson Constantino described the Public Hearing protocols and announced that the meeting was being recorded.

Chairperson Constantino noted additional Village representatives in attendance: Anne Gould, Trustee; Gregory Mathews, Village Attorney; Emily Rodman, Assistant Village Manager/Community Development Director; Audrey Savikas, Recording Secretary; and Scott Viger, Planning Consultant.

B. Public Comment (non-agenda items)

There were no public comments for non-agenda items.

C. Approval of Minutes

Member McKnight made a motion to approve the draft minutes of the November 14, 2023 meeting. Member Crudele seconded the motion, and the motion passed by voice vote.

D. New Business

1.) Public Hearing — 641 Lake Road

Member Crudele moved to open the Public Hearing. Member McKnight seconded the motion, and the motion passed by voice vote.

Staff Introduction

Scott Viger, Planning Consultant for the Village of Glen Ellyn, introduced the request: Consideration of Construction Necessitated Zoning Variations to allow construction/completion of a deck that encroaches into the required side yard, exceeds the maximum allowable height and exceeds the allowable height above grade.

Mr. Viger presented information as detailed in the Staff Report dated December 5, 2023, included in the agenda packet. Mr. Viger's presentation included: the location of the existing home, including an aerial photograph; the zoning and surrounding zoning (R2); site topography; a historical plat of survey, indicating the location of the home's prior patio; and a 2023 plat of survey, indicating the location of the proposed deck. Mr. Viger noted that the current plat of survey indicates the proposed deck extends to the property line, and a subsurface concrete base extends east of the property line, into the abutting property. Mr. Viger discussed the history of the request, noting that construction was initiated without required permitting and a stop work order was issued in May 2023. He shared that the homeowners subsequently applied for a permit in May, which was denied in June for Zoning violations. Mr. Viger shared that the Village issued a second notice in July to submit revised permit plans or apply for necessary Zoning Variations; an Application for Variation was submitted on August 1, 2023. Mr. Viger's presentation also included: the plans submitted by the applicants; images of the deck from the Petitioners' property; and images of the deck from a neighboring property. He noted that construction on the deck is only partially complete. Mr. Viger shared the specific Variation requests, including:

1. Section 10-5-5(B)4: Table # 8 – to allow a deck to encroach into the required side yard. Reducing the setback from 13.35 'to 0'.
2. Section 10-5-5(B)4#12.b.3 to allow a fence up to nine feet (9') in height in lieu of the maximum six foot (6') fence height for all other areas of the lot located no closer to the street than the principal structure on the lot;
3. A variation from Section 10-5-5(B)4#12c4 to allow the bottom of a fence to be located more than 4" above ground level.

Mr. Viger responded to Board Member questions. He confirmed that the Petitioners' prior patio was considered legal nonconforming, meaning that it could be maintained and repaired, but not expanded or changed. He confirmed that there were other areas on the subject property where a deck could be constructed that would not require Variations. He responded to a question about the lack of street frontage for the property with respect to the side yard, noting there are a number of other lots with similar features.

Petitioner Testimony

Sworn in, Petitioners May Monica Ferrer and Ben Schroeder addressed Board Members.

Ms. Ferrer shared the Petitioners' history finding the home and its appeal, including proximity to the train station, friendly neighbors, sense of community, and ability to accommodate her nephew who plans to move in. She acknowledged that it was a mistake to begin construction without a permit, noting that they felt they were improving the existing patio structure and replacing an existing privacy structure. She provided a formal presentation, describing the specific Zoning Variation requests and her positions regarding unique circumstances and hardships. Regarding side yard setback requirements, Ms. Ferrer noted that the lot type is unique, surrounded by properties and not adjacent to a public street, and that the home's position is unique. She also noted that the property's topography would make it difficult to build the deck elsewhere on the property. Regarding fence height, Ms. Ferrer noted that given the sloping topography, a fence that complied with Zoning Code would have a height as low as 3' along some areas of the deck, rendering it useless. Lastly, regarding the location of the bottom of the fence being more than 4" above ground level, Ms. Ferrer noted that the deck was only partially built and that if it were to be completed, deck skirting would be added. Ms. Ferrer responded to other considerations, including noting the following: the deck would improve privacy and safety from the neighboring driveway; the deck is 27 feet from the neighboring home; the project's unique characteristics would not create a precedent; the encroachment of the concrete base onto the abutting property will be remedied; there will be minimal impact on the neighboring tree; the proposed deck is in the same location as the pre-existing legal nonconforming patio, though the footprint is not exact.

Mr. Schroeder also addressed Board Members. He described the history of the project, extending two years, intended to replace an existing unusable patio. He emphasized that the photos that were presented reflected the incomplete construction of the deck and that it would be aesthetically pleasing, including landscaping, when complete. He described his communications with neighbors regarding the project and submitted a petition signed by 11 community members in support of the project.

Ms. Ferrer and Mr. Schroeder responded to Board Member questions. In response to a question about being prepared to remove portion(s) of the deck that violate Zoning Code, Ms. Ferrer responded that they respect the process. She responded to questions about alternative locations on the property that would accommodate a deck, noting that the proposed deck accommodated the sloped topography of the property and was convenient to the dining room. Mr. Schroeder noted that when he received estimates from contractors, they did not raise the issue of permitting. Ms. Ferrer and Mr. Schroeder acknowledged Village requirements regarding replacing a pre-existing legal nonconforming structure. They discussed contractor plans to remedy the concrete subsurface encroachment.

Public Testimony

Mr. Viger informed Board Members that he received one voicemail message from the public in favor of the project.

Sworn in, Attorney Vincent Tessitore, of 1730 Park Street, Suite 117, Naperville, addressed Board Members, noting that he represents the homeowners at 645 Lake Road, the easterly neighbor of the subject property. Mr. Tessitore provided a formal presentation, including a description of the location and orientation of the properties and photos of several views of the partially constructed deck from his clients' home. He noted that his clients have lived in their home for more than 40 years and do not wish to be at odds with their neighbors but that they are opposed to the Variations requested for reasons including unsightliness and negative effects on home marketability. Mr. Tessitore referenced written statements from four Glen Ellyn residents who have viewed the structure and state that it is unsightly; he also referenced an affidavit from a real estate broker that the proposed deck would likely deter buyers. Mr. Tessitore noted that the proposed deck is a permanent tool of recreation being built on his clients' lot line, which they pass daily when using their driveway. He disputed the Petitioners' descriptions of unique circumstance and hardship, including noting: the Petitioners' home features are not unique, as several homes in the neighborhood share similar features; and the proposed deck could be built elsewhere on the property, meaning the Petitioners' choice is based on convenience and desire, not hardship. Mr. Tessitore noted that Zoning Code does not allow decks in side yards, nor front yards; yet the proposed deck is in the side yard of the applicant and the front yard of his clients. He emphasized the significance of the Variations requested, noting that allowing these Variances would be unusual and set a harmful precedent.

Mr. Tessitore responded to Board Member questions. In response to a question about potential compromise, he noted that his clients have discussed modifications that could improve the situation, but that the purpose of the hearing was not to discuss alternatives. He reiterated that his clients were concerned about unsightliness and marketability.

Ms. Ferrer and Mr. Schroeder presented additional comments to Board Members in response to Mr. Tessitore's testimony, including disputing the unsightliness of the project, given that it is only partially-constructed; they also described the appearance of the prior patio and fencing.

Board Member Deliberation

Member Panter summarized the Findings of Fact from the hearing, including:

The property in question is 641 Lake Road. The Petitioners are Ben Schroeder and May Monica Ferrer. They are seeking three construction necessitated variances from Glen Ellyn Zoning Code as follows:

1. Section 10-5-5(B)4: Table # 8 – to allow a deck to encroach into the required side yard. Reducing the setback from 13.35 'to 0'.
2. Section 10-5-5(B)4#12.b.3 to allow a fence up to nine feet (9') in height in lieu of the maximum six foot (6') fence height for all other areas of the lot located no closer to the street than the principal structure on the lot;
3. A variation from Section 10-5-5(B)4#12c4 to allow the bottom of a fence to be located more than 4" above ground level.

The property is in the R2 Zoning District; it is an interior lot without street frontage on Lake Road. The Zoning Board first heard from Scott Viger, who noted that decks are not permitted in side yards. He also noted that in May 2023 the Village issued a stop work order; the Petitioners subsequently applied for a building permit; the permit was denied, and staff indicated Variations would be required to receive a permit; ultimately Variations were requested in August. Mr. Viger noted the sloped topography; the fence height ranging from 7 feet to 9 feet; and the subsurface concrete extending to the abutting property. He noted that the prior patio was legal nonconforming; however the proposed deck does not match the existing footprint of the prior patio. The Board then heard from the property owners, who indicated they moved to property three years ago. They noted that there are unique characteristics to their property that they feel support the Variations requested, including: the lot shape, the lack of street frontage, and the positioning of the home on the property. Homeowners also noted that topography limited other locations for a deck on the lot. They noted that the prior patio was in disrepair and sloped toward the home. They noted that the deck in its current configuration is not complete. They noted that skirting would be installed; it would be stained; and landscaping would be added. Homeowners noted their intent to replace an existing patio; they also noted support from neighbors. Next, the Board heard from an attorney representing property owners at 645 Lake Road. It was noted they lived at property for 40 years. They are opposed to improvements due to aesthetics and negative impacts on resale values. It was noted they have concerns about a recreational structure extending to the property line.

Member McKnight made a motion to adopt the Findings of Fact. Member Crudele seconded the motion. The motion passed unanimously on a roll call vote, with five Members present voting "Yes": Chairperson Constantino and Board Members Crudele, McKnight, Panther, and Pavlich.

Board Members deliberated. They shared their positions regarding the request. Areas of support included: There are some unique circumstances to the lot, including lack of street frontage, the shape of the lot, and the location of the home on the lot. Areas of concern included: Lack of permitting; the proposal does not appear to be a minimum Variation to remedy the situation; lack of practical difficulties or hardships, as there are alternative locations for the deck; lack of unique circumstances, as there are similarly situated properties in the area; granting the Variations

would negatively impact the adjacent property; vehement opposition from the adjacent neighbor; affidavit from real estate agent; zero lot line would not allow for landscaping improvements; and increasing the nonconforming use of prior patio.

Member McKnight made a motion to close the Public Hearing for 641 Lake Road. Member Panther seconded the motion. The motion passed unanimously on a roll call vote, with five Members present voting “Yes”: Chairperson Constantino and Board Members Crudele, McKnight, Panther, and Pavlich.

Board Recommendation

Chairperson Constantino moved for the following:

Having considered the application, Ben Schroeder and May Monica Ferrer owners of the property at 641 Lake Road, Glen Ellyn, for zoning variations from

- 1. A variation from Section 10-5-5(B)4#8 to allow a deck in the required side yard.**
- 2. A variation from Section 10-5-5(B)4#12a(3) to allow a fence with exposed structural elements not facing the property on which the fence is located.**
- 3. A variation from Section 10-5-5(B)4#12.b.3 to allow a seven foot nine inch (7 '9") tall fence in lieu of the maximum six foot (6') fence for all other areas of the lot located closer to the street than the principal structure on the lot;**

in the R2 Residential District, the Zoning Board of Appeals hereby adopts the findings of fact in the petitioners 'application packet and presented by the petitioners at the Zoning Board of Appeals public hearing conducted on November 14, 2023 as well as the findings included in the deliberations of the Zoning Board of Appeals and recommends DENIAL of the requested Zoning Variation from Section 10-5-5(B)4#8, Section 10-5-5(B)4#12a(3) and Section 10-5-5(B)4#12.b. of the Glen Ellyn Zoning Code based upon the following findings of fact:

- That the variations, if granted, will alter the essential character of the locality because: Granting the Variations would create a new, nonconforming use; decks are not allowed in the side yard.**
- That the practical difficulty or particular hardship has been created by persons presently having an interest in the property because: Petitioners began construction without a permit; they could have located the deck to another area.**
- That the variations may diminish or impair property values within the neighborhood.**

- **That the variations are not the minimum variations that will make possible the reasonable use of the land, building or structure, and homeowners are not precluded from otherwise reasonably using a significant portion of the property.**

Member McKnight seconded the motion. The motion passed unanimously on a roll call vote, with five Members present voting “Yes”: Chairperson Constantino and Board Members Crudele, McKnight, Panther, and Pavlich.

H. Staff Report

Mr. Viger and Ms. Rodman discussed potential upcoming agenda items.

E. Chairperson’s Report

Chairperson Constantino announced that this was Member Reed’s last meeting on the Board and thanked him for his service.

F. Trustee Liaison’s Report

None.

G. Other Business

None.

I. Adjournment

Member McKnight made a motion to adjourn the meeting; Member Pavlich seconded the motion, and the motion passed by voice vote at 9:02 PM.

Respectfully submitted,

Audrey Savikas
Recording Secretary