

MINUTES OF THE ZONING BOARD OF APPEALS
February 8, 2021

The regular meeting of the Zoning Board of Appeals was conducted virtually due to public health concerns and called to order by Chairman Matthew Krummick at 7:00 p.m.

Members present: Chairman Matthew Krummick, Amy Flores, Mark Moore, Walter Oakley, Richard Pyter, Kurt Schultz, and Eric Steffe.

Members absent: None.

A quorum was established.

Village Staff present: John Spoden, Director of Community Development; David Smith, Senior Planner; and Jeff Cooper, Village Engineer.

OLD BUSINESS: None.

NEW BUSINESS:

ZBA 21-01 Saegene Jung and Melissa Goldberg, Applicants
742 E. Lincoln Avenue

Request is for a variation to increase the maximum permitted lot coverage from 45% to approximately 48% in order to approve the construction of a detached garage for property located in an R-6, Single Family Residential District.

ZBA 21-03 Saegene Jung and Melissa Goldberg, Applicants
742 E. Lincoln Avenue

Request is for a variation to reduce the side yard setback from five (5) feet to approximately 3.77 feet in order to approve the construction of a detached garage for property located in an R-6, Single Family Residential District

Mr. David Smith, Senior Planner, introduced the variation requests.

Mr. John Spoden, Director of Community Development, stated that the DRC Staff report contains a series of dates that explain a series of events that led up to the variation requests. He stated that the prior property owner, J. Kristopher, had applied for a building permit for the detached garage in September of 2020. He stated that the Village issued a review letter at the end of September of 2020 which indicated that they were over the allowed lot coverage. He stated that the applicant submitted revised plans that complied with the lot coverage in October. He stated that the Village then issued a building permit based upon an approved plan that showed that the proposed detached garage met the five (5) foot setback and complied with the maximum permitted lot coverage.

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Mr. Spoden stated that the DRC Staff report had a mistake that incorrectly indicated that the framing of the detached garage had already begun at the point of a November 10, 2020 inspection. He stated that the framing of the garage had not yet begun being framed. He stated that the slab had been poured, but the framing had not yet started at that point. He stated that the Village inspectors informed the applicant at that point that a spot-in survey would be required prior to the framing construction of the garage. He stated that upon the next inspection of November 19, the framing of the garage was done, but the spot-in survey had not yet been submitted to the Village. He stated that when the Village did subsequently receive the spot-in survey it was noted that the setback from the interior side property line was approximately 3.77 feet.

Mr. Adam Goldberg, architectural consultant for the applicant, stated that the applicants are seeking variations to reduce the side yard setback for a detached garage and to increase the maximum allowed lot coverage. He stated that at the time that the applicants were in the process of purchasing the subject property in November of 2020, the prior owners applied for the permit to replace an existing one car garage with a two car garage. He stated that the contract of the sale of the property was subject to the construction of the two car garage. He stated that the prior owners, Mr. and Mrs. Kristopher, were told by their broker that the existing one car garage would be a detriment to the sale of their home.

Mr. Goldberg stated that the applicants are first time homeowners. He stated that the applicants were informed prior to the purchase of the residence that a garage contractor had been secured to replace the existing one car garage. He stated that they had not known that prior to the purchase that a building permit for the garage had not been issued yet nor did they know that there were zoning issues to contend with. He stated that they were not informed that there was an issue in securing the building permit until about two weeks prior to the initial closing date in October. He stated that the Kristopher's were told that the only way that they could get a building permit was for them to submit an approved plan. He stated that the Kristopher's were told that they would have to remove enough existing impervious surface in order to bring the total lot coverage into Code compliance.

Mr. Goldberg stated that despite the zoning issues with the garage and lot coverage they decided to purchase the home and closed on November 25, 2020. He stated that it was only after the applicants submitted the application for their lot coverage variation that they were informed that they would need to also apply for a setback variation for the detached garage as well.

Mr. Goldberg stated that the applicants are seeking a lot coverage variation to increase the maximum permitted lot coverage from 45% to approximately 47.72% which is an increase of about 198 square feet. He stated that he did conduct a slope study the indicates that there is adequate drainage and grading such that the adjacent properties are not negatively affected by storm water drainage. He stated that the location of the house on the property will not allow the applicant to reduce the requested amount of lot coverage. He stated that the garage fits in well with the aesthetic nature of the surrounding neighborhood.

Mr. Goldberg stated that the second variation request is for the side yard setback. He stated that Code compliant plans were submitted for permit but after issuance of the building permit and

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framing of the garage was complete the actual setback was more than one foot closer to the side property line through no fault of the applicant. He stated that during the course of construction the contractors were changed due to implications from COVID-19 and during the transition in contractors the spot-in survey was not submitted at the required time period. He stated that the final survey was submitted to the ZBA with the variation application. He stated that the new garage's location is actually set back further away from the side property line than where the old one car garage location was situated.

Mr. Goldberg stated that the applicants spoke directly with the neighbors to the east and they report that they have no objections to the variations being requested. He stated that none of the 40 recipients of the public notice letters sent by certified mail conveyed any objections to the variation requests. He stated that if the garage was compliant with the five (5) foot setback requirement it would be rendered unusable. He stated that the prior homeowner installed a radon detector vent on the east side of the house that forces vehicles to maneuver further to the east in order to access the garage.

Mr. Goldberg stated that the applicant has addressed all of the Standards for the Variations. He stated that the need for the variations were created out of necessity to serve basic functions of the property. He stated that the value of the sale of the property would have been greatly reduced with a one car garage. He stated that without the granting of the variations the construction of the garage would have been impossible. He stated that the side yard encroachment poses no risk to the neighboring property.

Board Member Oakley asked about a variation that the homeowner applied for in 2013. Ms. Jodi Kristopher, 707 Stonegate Road, stated that she and her husband Rob Kristopher were the prior owners of 742 E. Lincoln Avenue. Ms. Kristopher stated that they did apply for a front yard setback variation for the 742 E. Lincoln Avenue property in order to do a front porch addition.

Board Member Oakley asked if consideration was given to the possibility of constructing a two car garage and the lot coverage issue when they did the addition in 2013. Ms. Kristopher stated that they were not prepared financially to give consideration to the two car garage in 2013.

Board Member Flores stated that the Village is often confronted with lot coverage variation requests for the smaller residential lots. She stated that she did not think that it should be the Zoning Board of Appeals' responsibility to solve the setback issue just because the garage was built in the wrong location.

Mr. Goldberg stated in order for the garage to be usable and safe the setback variation is necessary.

Board Member Flores stated that consideration should have been given to the future possibility of the two car garage back in 2013 when they planned for the front yard variation request. She asked if there is vehicular access to the alley way behind the residence. Mr. Goldberg stated that access is not possible to the alley.

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Board Member Schultz asked to confirm that there was an initial plan that was Code compliant and for which a building permit was issued. Mr. Spoden stated that there was a Code compliant plan submitted for which a building permit was issued.

Board Member Schultz asked why the impervious surfaces weren't removed in accordance with the approved plan. Mr. Saegene Jung, applicant, stated they opted for the variation for the lot coverage because it seemed that by removing any more of the driveway width would make it too difficult to maneuver a vehicle into the garage.

Board Member Schultz stated that the new two car garage is a modest size at 22 feet by 22 feet. He stated that the contractor constructed the garage in the wrong location and asked if they also increased the amount of concrete. Mr. Goldberg stated that the amount of concrete was reduced partly because the new garage is further away from the rear property line than the old garage was.

Mr. Jung stated that part of the patio was removed and not replaced.

Board Member Schultz asked if the applicant is willing to further reduce the lot coverage. Mr. Goldberg stated that they cannot narrow the driveway any more as it would make the driveway useless.

Board Member Schultz stated that consideration could be given reducing the 11 foot wide drive down to nine (9) feet wide.

Mr. Goldberg stated that he would be concerned about creating an awkward or prohibitive access into the garage by reducing the driveway any further. He stated that he would be concerned about removing driveway surface away from the east side of the house and exposing the house foundation to water drainage.

Mr. Jung stated that the driveway path around the radon unit on the east side of the house is already very narrow.

Board Member Schultz stated that many residences in the Village have nine (9) foot wide driveways and are absent of safety concerns.

Ms. Melissa Goldberg stated that they addressed the Standard for Variation regarding the unique physical condition of the property being the radon vent encroaching into the path of the driveway.

Board Member Schultz stated that by removing a strip of the driveway surface away from the east side of the house can provide a buffer from the chimney and the radon vent.

Ms. Jodi Kristopher stated that the new homeowners should consider a ribbon driveway to reduce the lot coverage. She stated that when they did the addition in 2013 they felt that the house size itself is modest.

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Board Member Schultz stated that he agrees that the 2013 modifications were respectful, but stated that the current homeowner should try to do what they can to come closer to compliance regarding the lot coverage.

Mr. Goldberg stated that to remove any more impervious surface would create a hardship and be too onerous for the applicant.

Ms. Kristopher stated that removing more concrete will have a detrimental impact upon the aesthetics of the property.

Board Member Schultz stated that there are options available to reduce the lot coverage. He stated that the garage is in a better location than where the old one car garage had been located.

Board Member Pyter stated that part of the draw to Libertyville are the schools and the downtown. He stated that another draw to Libertyville are the rules that help to keep properties attractive and valuable. He stated that the need to request the variation for the lot coverage is self-created by the predecessors in title. He asked how the applicants' architect determined that the property can accommodate storm water management.

Mr. Goldberg stated that he completed a slope study after the new garage was constructed. He stated that the new garage has a gabled roof that drains both east and west and not have any impact upon the neighboring property. He stated that along the east side of the garage is a gully with hedges planted that can act as a storm water mitigating factor.

Board Member Pyter asked if the contractor is responsible for incorrectly located new garage. Mr. Goldberg answered yes it was the responsibility of the contractor.

Board Member Pyter asked for clarification of the site plan drawing including the cross-hatched elements. Mr. Goldberg stated that the yellow dashed area on the plan represents the hard surface that was removed from the property.

Board Member Pyter asked why wasn't the approved plan for the permit constructed. Mr. Goldberg stated that the approved plan was drafted by Village Staff, but he believes that it is a plan that is not reasonable or safe for the homeowner.

Ms. Jodi Kristopher stated that they were the ones who applied for the permit for the new garage. She stated that it was their intent to have a garage constructed that made aesthetic sense for this property. She stated that their initial intent was to do a ribbon driveway in order to address the lot coverage issue, but did not know at that time that ribbon driveways are not permitted in the Village. She stated that they never intended to take advantage of the situation and that there is nothing egregious about the new garage.

Board Member Moore stated it is his opinion that this is a self-created hardship. He stated that there are reasonable solutions to address the situation that are not being considered but should be considered. He stated that he is empathetic with the mistake that was made with the garage placement.

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Board Member Steffe stated that he has sympathy with the homeowners who inherited the nonconforming side yard setback and lot coverage issues. He stated that he is concerned that a permit was issued for a Code compliant plan, but the approved plan is not being adhered to. He stated that he is concerned about a precedent being created by granting variations after the infraction has occurred.

Chairman Krummick asked for clarification as to what the yellow dashed line on the site plan represents. He stated that it appears to be where the front of the old one car garage was located. Mr. Goldberg responded that Chairman Krummick is correct.

Chairman Krummick stated that the outline of the yellow dashed line appears to outline the old apron that connected to both the old garage overhead door, the old garage service door and it connected to the patio that was removed. Mr. Goldberg responded that Chairman Krummick is correct.

Chairman Krummick stated that Mr. Goldberg made reference to the slope of the driveway and its drainage patterns. He asked about the profession of Mr. Goldberg. Mr. Goldberg stated that he is an architect, not a civil engineer. Mr. Goldberg stated that he completed his slope study with basic levels and digital measuring tools.

Mr. Jeff Cooper, Village Engineer, stated that the new detached garage and the garage apron improvements would not trigger on-site stormwater detention whether it needed variations or not. He stated that a plan by a civil engineer would not be required. He stated that there are still some unanswered plan review comments from the Engineering Division that will need to be verified with inspections of the completed improvements such as drainage swales and drainage patterns are met through the approved plan for the site.

Chairman Krummick stated that the tone of the public hearing became a little contentious and that it is important to remind everyone that we are all neighbors in the Village. He stated that the Zoning Board of Appeals is charged with working within certain parameters. He stated that it appears that the contractor made a significant error. He stated that the hardship is entirely self-created.

Chairman Krummick asked for clarification about the radon system and the timing of its installation. Mr. Goldberg stated that the radon system was there prior to the sale of the home from the Kristopher's to Saegene Jung and Melissa Goldberg.

Ms. Kristopher stated that he installation of the radon system was a requirement due to the result of a home inspection prior to the sale of the home.

Chairman Krummick stated that it was the radon system that created the bottleneck along the driveway which supports the opinion that the difficulty meeting the Code requirement was self-created. He stated that the applicant has the option of hearing a recommendation by the Zoning Board of Appeals to the Village Board or the applicant can request a continuance to come back next month after making revisions to the plan that would address any of the concerns that were voice the by the Zoning Board of Appeals Board Members this evening.

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Board Member Schultz asked what the outcome would be for the applicants if the variation for the side yard setback for the detached garage were to be denied. Mr. Spoden stated that if the setback variation for the garage were to be denied, the Village would then request that the garage be moved to comply with the setback requirement.

Mr. Goldberg stated that it was his understanding that if the setback variation were to be denied that their responsibility would be to install one-hour fire rating material into the garage. Mr. Spoden stated that the Building Code will require the one-hour fire rating and that it is the Zoning Code that requires the five (5) foot setback.

Board Member Schultz asked if the homeowner refused to move the garage are they then perpetually fined. Mr. Spoden stated that he has not been in a situation like that before and that he would have to consult with the Village Attorney for guidance.

Mr. Goldberg asked the Zoning Board of Appeals if they requesting a particular lot coverage percentage as a target to be reduce to. Board Member Schultz stated that he cannot offer lot coverage percentage, but stated that he is concerned about a precedent being set. He stated that there have been previous cases where residents have removed their entire patio in order to comply with the lot coverage regulation. He asked Staff if the applicant can request a variation to allow a ribbon driveway in order to reduce the lot coverage.

Mr. Goldberg asked if permeable pavers can be utilized in order to reduce the lot coverage. Mr. Smith stated that anything that is not organic must be counted as lot coverage including permeable brick pavers.

Mr. Goldberg asked for clarification if the open space within the brick pavers is still counted as lot coverage. Mr. Smith stated that Village Staff would have to review brick pavers with open gaps to the ground in order to determine their viability as permeable. Mr. Smith stated that there is a risk that these types of brick pavers could get filled in over time thereby reducing their permeability.

Mr. Spoden stated that strip driveways are not listed in the Zoning Code as a Village Board authorized variation.

Chairman Krummick asked the applicant if they want their variation requests continued or if they want the Zoning Board of Appeals to render their recommendation tonight. Mr. Jung stated that they would like the opportunity to review their options.

Mr. Spoden stated that a ribbon driveway is no longer an option under the Zoning Code.

Chairman Krummick stated that stormwater management is a very important issue in the Libertyville community due to flooding and the expense involved in mitigating flooding in the Village.

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Mr. Jung asked if the two variations can be dealt with separately as he does not know how to resolve the setback issue if it is not approved. Chairman Krummick stated that Mr. Jung may have to go back to the contractor to deal with the garage location.

Mr. Spoden stated that they are two separate variations and the Village Board will vote on each separately.

Mr. Jung stated that he would like for the Zoning Board of Appeals to offer some additional guidance as to how they should proceed.

Chairman Krummick stated that the Zoning Board of Appeals could consider doing a straw poll vote.

Board Member Moore stated that the DRC Staff report recommendation is to deny both variation requests and that it is Staff's position that the garage should be moved to comply with the setback regulation.

Mr. Spoden stated that from a Staff perspective the variation is self-created.

Chairman Krummick stated that he concurs with the DRC Staff report to recommend denial for both variations.

Board Member Oakley stated that he does not have a problem with the side yard setback, but he would like for the applicant to further reduce the lot coverage where possible.

Board Member Schultz stated that he does not have a problem with the side yard setback.

Board Member Flores stated that she does not have a problem with the side yard setback, but she would like for the applicant to further reduce the lot coverage where possible.

Board Member Moore stated that he does not have a problem with the side yard setback, but he does not support the lot coverage variation.

Board Member Pyter stated that he does not have a problem with the side yard setback.

Board Member Steffe stated that the contractor made the mistake and that he concurs with the DRC Staff report to recommend denial for both variations.

Ms. Brooke Lenneman, Village Attorney, stated that the Zoning Board of Appeals should take action on both items in the same evening so that they will move to the Village Board together on the same track. She stated that if the applicant wants to continue the lot coverage variation in order to have the opportunity to revise their plans then both variations should be continued together.

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Board Member Flores asked the contractor from Danley Garage how they would resolve this issue. Ms. Lacey Mazelle, representative from Danley Garage stated that they would add the fire wall to the detached garage.

Mr. Jung stated that they would like to have their variation requests continued to the next Zoning Board of Appeals meeting date.

In the matters of ZBA 21-01 and ZBA 21-03, Board Member Schultz moved, seconded by Board Member Steffe, to continue these items to the March 8, 2021, Zoning Board of Appeals meeting.

Motion carried 7 - 0.

Ayes: Krummick, Flores, Moore, Oakley, Pyter, Schultz, Steffe
Nays: None
Absent: None

ZBA 21-04 Lawrence and Christine Genge, Applicants
811 S. Fifth Avenue

Request is for variations to: 1) reduce the minimum required corner side yard setback from 30 feet to approximately 16 feet for a landing; 2) reduce the minimum required corner side yard setback from 30 feet to approximately 22 feet for a raised planter; and 3) reduce the minimum required corner side yard setback from 30 feet to approximately 7 feet for a retaining wall that is part of the reconstruction of outdoor landings, stairway and retaining wall for property located in an R-5, Single Family Residential District.

Due to improper notification by the applicants, this item will be re-noticed for the March 8, 2021, Zoning Board of Appeals meeting.

STAFF COMMUNICATIONS AND DISCUSSION: None.

Board Member Pyter moved, seconded by Board Member Steffe to adjourn the meeting.

Motion carried 7 - 0.

Meeting adjourned at 8:20 p.m.