

MINUTES OF THE ZONING BOARD OF APPEALS
January 12, 2015

The regular meeting of the Zoning Board of Appeals was called to order by Vice Chairman Mark Moore at 7:00 p.m. at the Village Hall.

Members present: Vice Chairman Mark Moore, Amy Flores, Walter Oakley, Kurt Schultz, and David Semmelman.

Members absent: Chairman William Cotey and Dan Donahue.

Village Staff present: John Spoden, Director of Community Development; David Smith, Senior Planner; and Fred Chung, Senior Project Engineer.

Board Member Oakley moved, seconded by Board Member Schultz, to approve the December 8, 2014, Zoning Board of Appeals meeting minutes.

Motion carried 5 - 0.

OLD BUSINESS:

ZBA 14-21 Scott and Gayla Clawson, Applicants
930-934 Sherborne Court

Request is for a variation to reduce the minimum required rear yard setback from 50 feet to approximately 20.4 feet in order to construct an addition to a single family residence in an R-3, Single Family Residential District.

This item was continued at the December 8, 2014, Zoning Board of Appeals meeting to the February 9, 2015, Zoning Board of Appeals meeting.

NEW BUSINESS:

ZBA 15-01 Ronald Brount, Applicant
203 Newberry Avenue

Request is for variations to: 1) reduce the minimum required corner side yard setback from 46 feet to approximately 23.3 feet as measured from the edge of the first front step (riser); 2) reduce the minimum required front yard setback from 46 feet to approximately 27.3 feet; and 3) reduce the minimum required rear yard setback from 41 feet to approximately 22.3 feet in order to construct a three (3) dwelling unit single family attached residential structure in an R-7, Single Family Attached Residential District.

ZBA 15-02 Ronald Brount, Applicant
203 Newberry Avenue

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Request is for a variation to increase the maximum permitted height for a principal structure from 37 feet to approximately 40.3 feet in order to construct a three (3) dwelling unit single family attached residential structure in an R-7, Single Family Attached Residential District.

ZBA 15-03 Ronald Brount, Applicant
203 Newberry Avenue

Request is for a variation to change the principal structure entrance orientation from the front property line to the corner side property line in order to construct a three (3) dwelling unit single family attached residential structure in an R-7, Single Family Attached Residential District.

Mr. David Smith, Senior Planner, introduced the variation requests. He stated that the petitioner, Ronald Brount, is seeking approval for variations to reduce the minimum required corner side yard, front yard, and rear yard setbacks; a variation to increase the maximum permitted height for a principal structure; and a variation to change the principal structure entrance orientation of the principal structure from the front property line to the corner side property line in order to construct a three (3) dwelling unit single family attached residential structure in an R-7, Single Family Attached Residential District located at 203 Newberry Avenue.

Mr. Smith stated that the subject lot is currently improved with a two story duplex residential structure and detached garage and the petitioner is seeking to have both demolished. Mr. Smith stated that the property to the south is an existing three story brick townhome project with five (5) units, the School Street 'brownstones' constructed by the Hummel Group.

Mr. Smith stated that the petitioner is proposing to construct three townhome units in a single 2-½ story structure with attached garages facing to the east and the front doors of all three units facing to the west fronting School Street.

Mr. Ron Brount, petitioner, stated he is the purchaser of the property located at 203 Newberry Avenue. He indicated that he has had several meetings with Village Staff prior to submitting the variation application. He stated that the proposed plan is the least invasive in comparison to alternative plans discussed. He stated that units are 3,000 square feet in floor area each. He stated that the proposed setback from Newberry Avenue has less of an encroachment than the existing house.

Mr. Don Koch, 624 North First Street, stated that he lives about a ½ block to the east of the subject site. He stated that he is concerned about the increase in lot coverage and the directional flow of the storm water drainage due to the anticipated building up of grade to support the new structure's foundation. He stated that he is concerned about the erosion control of the top soil. He stated that due to the narrow width of the proposed driveway that parking will become a problem. He stated that he is concerned about how snow removal will take place. He stated that he is concerned about how and where garbage containers will be placed outside on pick-up day.

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Mr. Brount stated that his proposal will have an 18 foot setback from the Newberry right-of-way with a 4% slope or grade change. He stated that there will be enough room for off-street parking.

Ms. Jennifer Bako, 209 Newberry Avenue, stated that she is concerned about the storm water management.

Mr. Brount stated that his project will tie into the Village's storm water management system.

Mr. Brian Slowick, 623 North First Street, stated he lives next to the existing four unit townhome development located at the southwest corner of North First Street and Newberry Avenue. He stated that the neighboring development does not function well regarding snow removal and parking. He stated that he has a concern regarding flooding and storm water management for the proposed project. He stated that he is concerned about the proposed architecture and how it may not fit into the neighborhood's character.

Mr. Fred Chung, Village Engineer, stated that the applicant is required to obtain a permit in accordance to the Water Shed Development Ordinance (WDO). He stated that the applicant will be required to manage the storm water on-site. Mr. Chung stated that there are various alternative methods to manage storm water that fall under the 'Best Management Practices' including underground detention and bio-swales.

Mr. Brount stated that he is familiar with the WDO and will abide by its regulations.

Mr. Jeff McClurg, 613 North First Street, stated that he is concerned about the lack of available parking.

Mr. Brount stated that he is adding only one more unit than what is there today. He stated that the proposed heights of the units will still be below the adjacent School Street townhomes.

Mr. Slowick stated that attention to architectural detail is important.

Mr. Koch stated that he is concerned that landscaping approved by the Appearance Review Commission was not required.

Board Member Oakley stated that he is concerned about the height and potential for flooding.

Mr. Chung stated that there have been unusual heavy rain events within the last couple of years. He stated that the School Street project has its own detention facility.

Board Member Oakley asked where the applicant is in the WDO review and approval process. Mr. Chung stated that they are still waiting for the Engineering Report from the applicant.

Board Member Flores stated that she is concerned that the proposed project is very close to the Bako's property.

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Board Member Semmelman stated that any recommendation for approval should be conditioned to comply with the WDO.

Board Member Schultz asked what type of screening and landscaping is proposed and if the driveway will be curbed or not. Mr. Brout stated that there is an existing retaining wall and fence along the south property line on the School Street property and there is an existing fence on the adjacent property to the east. He stated that they are not proposing to curb the proposed driveway.

Board Member Schultz asked how snow removal will be managed. Mr. Brout stated that snow can be pushed into the yard areas.

Board Member Schultz asked how the elevation levels of the finished first floors compare between the proposal and the adjacent School Street townhomes. Mr. Brout stated that he was not certain how the School Street townhome finished first floor levels compare.

Chairman Moore asked for clarification as to how the refuse will be managed. Mr. Brout stated that the residents will keep their refuse containers inside their garage until trash pick-up day.

Mr. John Spoden, Director of Community Development, stated that there is a screening requirement for outdoor refuse containers.

Vice Chairman Moore asked if public sidewalks will be provided. Mr. Chung stated that the Code does require sidewalks.

Vice Chairman Moore asked the petitioner what he would like the Zoning Board of Appeals do tonight. Mr. Brout stated that he would like the Zoning Board of Appeals to render a positive recommendation to the Village Board.

In the matter of ZBA 15-01.1), Board Member Schultz moved, seconded by Board Member Semmelman, to recommend the Village Board of Trustees approve a variation to reduce the minimum required corner side yard setback from 46 feet to approximately 23.3 feet as measured from the edge of the first front step (riser) in order to construct a three (3) dwelling unit single family attached residential structure in an R-7, Single Family Attached Residential District.

Motion carried 5 - 0.

Ayes: Moore, Flores, Oakley, Schultz, Semmelman
Nays: None
Absent: Cotey, Donahue

In the matter of ZBA 15-01.2), Board Member Oakley moved, seconded by Board Member Schultz, to recommend the Village Board of Trustees approve a variation to reduce the minimum required front yard setback from 46 feet to approximately 27.3 feet in order to construct a three (3) dwelling unit single family attached residential structure in an R-7, Single Family Attached Residential District.

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Motion carried 5 - 0.

Ayes: Moore, Flores, Oakley, Schultz, Semmelman
Nays: None
Absent: Cotey, Donahue

In the matter of ZBA 15-01.3), Board Member Schultz moved, seconded by Board Member Semmelman, to recommend the Village Board of Trustees approve a variation to reduce the minimum required rear yard setback from 41 feet to approximately 22.3 feet in order to construct a three (3) dwelling unit single family attached residential structure in an R-7, Single Family Attached Residential District.

Motion carried 5 - 0.

Ayes: Moore, Flores, Oakley, Schultz, Semmelman
Nays: None
Absent: Cotey, Donahue

In the matter of ZBA 15-02, Board Member Oakley moved, seconded by Board Member Schultz, to recommend the Village Board of Trustees approve a variation to increase the maximum permitted height for a principal structure from 37 feet to approximately 40.3 feet in order to construct a three (3) dwelling unit single family attached residential structure in an R-7, Single Family Attached Residential District.

Motion carried 5 - 0.

Ayes: Moore, Flores, Oakley, Schultz, Semmelman
Nays: None
Absent: Cotey, Donahue

In the matter of ZBA 15-03, Board Member Schultz moved, seconded by Board Member Semmelman, to recommend the Village Board of Trustees approve a variation to change the principal structure entrance orientation from the front property line to the corner side property line in order to construct a three (3) dwelling unit single family attached residential structure in an R-7, Single Family Attached Residential District.

Motion carried 5 - 0.

Ayes: Moore, Flores, Oakley, Schultz, Semmelman
Nays: None
Absent: Cotey, Donahue

ZBA 15-05 Scott and Gayla Clawson, Applicants
930-934 Sherborne Court

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Request is for an Appeal of Village Staff's Zoning Code interpretation pursuant to Sections 15-2.3 and 16-7.6.

Mr. David Pardys, Village Attorney, introduced the Appeal of Village Staff's Zoning Code interpretation. He stated that this is an appeal of the Village Administrator's interpretation of the Zoning Code. He stated that the Zoning Code provides that the Village Administrator can make certain interpretations of the Zoning Code regulations as found in Section 16 of the Zoning Code. He stated that regarding this case, the Clawson's have requested that the Village provide an interpretation of the Zoning Code as it relates to yards. He stated that they are the owners of Lots 9 and 10 in the Sherborne Court subdivision. He stated that Lot 10 is the northernmost lot and Lot 9 is the southernmost lot. He stated that they constructed a house on Lot 10. He stated that the petitioner is asking that the lot lines, being front, side, rear, and corner side property lines, be described as they initially were as separate lots, even after consolidating the two lots into one Zoning Lot, as they are seeking approval for a house addition that would extend the existing house located in Lot 10 into Lot 9.

Mr. Pardys stated that the front lot line of Lot 9 faces the western edge of the lot. He stated that the front lot line on Lot 10 was also originally configured to lie on the western edge. He stated that the rear property lines for both Lots 9 and 10 lie along the eastern edge. He stated that the interior side property line lies on the southern edge of Lot 10 and the northern edge of Lot 9, separating the two lots, which abut each other. He stated that the corner side property line is the southern edge for Lot 9.

Mr. Pardys stated that the interpretation provided by the Village states that once the two lots are combined for a single principal structure and its accessory uses, then the two lots become one Zoning Lot. He stated that the single Zoning Lot would encompass both Lots 9 and 10. He stated that this would then make what was once the corner lot line for Lot 9 the new front lot line for the Zoning Lot. He stated that would also make what was once the front lot lines for both Lots 9 and 10 would then become the corner side lot line for the Zoning Lot. He stated that what was once the side lot line on the far north edge of Lot 10 would then become the rear lot line for the Zoning Lot. He stated that what was once the rear lot lines for lots 9 and 10 would then become the interior side lot line for the Zoning Lot.

Mr. Pardys stated that the Clawson's are asking that the Village go back to the original interpretation of how the property lines are classified when they were separate lots.

Mr. David Smith, Senior Planner, further described each of Lot 9 and 10's property lines and yards as they were originally platted in the Sherborne Subdivision. He stated that the front property line abuts the right-of-way and that the rear property line is the line furthest from and most parallel to the front property line. He stated that for corner lots, the shorter of the two lines that abuts a right-of-way is the front property line and the remaining longer line abutting the other right-of-way is the corner property line. He stated that once the homeowner applied for a permit to construct a house addition that straddles over the side property line that separates Lots 9 and 10, then the two lots become a single zoning lot. He stated that what was once considered front property lines for lots 9 and 10 now become the corner side property line for the zoning lot, then the furthest south property line then becomes the front property line making the furthest

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north property line the rear property line. He stated that the existing house then become a non-conforming structure due to its encroachment into the rear yard.

Mr. Pardys stated that tonight's request is an appeal to the Staff interpretation of the Zoning Code in terms of how the property lines will be labeled.

Mr. James Babowice, agent for the petitioner, stated that the Staff interpretation takes the front entrance of the Clawson's home that faces Sherborne Court flips it from facing the front yard to the corner side yard. He stated that it would make the side of their home, with the house addition, the front of their home. He stated that by looking at the Sherborne subdivision and in particular the block that the subject lots are located, there are only the two lots that the Clawson's own and an outlot that cannot be built upon, making it a very small block.

Mr. Richard Pavletic, RE Decker, stated that at the time the subdivision was platted the front yards faced the west side of the two lots with 40 foot setbacks and the rear yards faced the east side with 50 foot setbacks. He stated that the north side was platted as a side yard with a 20 foot setback. He stated that these yards were approved by the Village of Libertyville and recorded as such.

Mr. Smith stated that once the two lots are combined into one Zoning Lot in order to accommodate the house addition, the lot line and yard classification changes. He stated that the rear yards of the two lots would then become an interior side yard for the one Zoning Lot.

Mr. Pavletic stated that Mr. Smith is incorrect and that the originally platted building lines should dictate the property lines and yards.

Mr. Spoden stated that if the lots were to stay in their current condition they the originally platted building lines and yards would dictate but because the lots will not stay in their current condition by being combined into one Zoning Lot then the yards and building lines would change. He stated that this is what Staff is basing their interpretation on.

Mr. Babowice stated if the Clawsons were to sell off the vacant lot for a house to be built upon it, the front yard would face to the west and the rear yard would face to the east as it was originally intended to do. He stated that the only difference is that the Clawson's are seeking approval to build a house addition that would straddle on the vacant lot. He stated that the Staff interpretation causes a flip flop of the lot. He stated that the Staff interpretation would cause the interior side yard to be located on the east side of the subject property. He stated that this is where the Clawsons are proposing to construct their swimming pool. He stated that the Home Owner's Association Covenants restrict swimming pools from the side yard. He stated that there was a subdivision covenant amendment that would restrict the Clawsons from locating their pool in the proposed location.

Mr. Babowice stated that one of the issues relative to the Staff interpretation of the Zoning Code correlates to the definitions of lot lines which reference the appendix.

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Mr. Babowice stated that the appendix is wrong and misleading but it supports their position. He stated that he understands that Staff will correct the appendix but changing it after the fact should not be used to compel compliance with the Staff interpretation.

Mr. Scott Clawson stated that he moved into their home a couple of years ago. He stated that he is president and c.e.o. of Culligan. He stated that part of the reason that he and his family moved to Libertyville was because they have put their plant and warehouse in Libertyville and that they employ over 70 people. He stated that their plans for the house have always been their intent. He stated that he never thought that this would be an issue. He stated that he has approval from the Home Owner Association to build the addition. He stated that he hopes that he can get it resolved tonight. He stated that he serves as the treasurer of the H.O.A. He stated that he has put a lot of money into the lot.

Mr. Clawson stated that he did not look at the documentation but had hired a good builder to do that. He stated that the builder said that there would be no problems. He stated that he wouldn't read through 50 pages of code but that he did look at the diagram. He stated that he has over \$450,000 into the lot and a bunch of money in the house. He stated that most people would not have realized that the yards have been flip-flopped. He stated that there wouldn't have been any issues if they weren't going to construct a pool.

Mr. Clawson stated that if he had to go through the Variation process and if it were to be denied then he would be left with either selling the vacant lot or building another house on the vacant lot.

Mr. Babowice stated that even if a third party purchased the vacant lot they would still be able to construct a pool in the same location, in the rear yard. He stated that Zoning Codes are supposed be clear in both their text and illustrations. He stated that there is nothing in the Code that says the yards should change with the two lots are combined even if it is a Zoning Lot of Record. He stated that this lot is on a cul de sac. He stated that if a separate house were to be constructed on the vacant lot, the front yard would face to the west. He stated that if there is any doubt about the interpretation of the Zoning Code then it should favor the homeowner. He stated that the appendix illustration should support what the original intent of what the lots were platted for. He stated that the front yard should face the west and the rear yard should face to the east and the corner side yard should face to the south.

Board Member Schultz stated that he was not that concerned about a precedent being set because the appendix will be amended to be accurate. He stated that it doesn't seem like there will be too many opportunities for this to happen again in the future. He stated that it doesn't seem like it will harm anyone. He asked if there is anyplace else in the Zoning Code where the illustration has to be re-classified in the text.

Mr. David Pardys, Village Attorney, describe how the Zoning Code defines a Zoning Lot. He stated that if the Clawson's would have come in for the initial permit application showing the house encroaching across both lots, then Staff would have told them at that time that the two lots would have been classified as a single zoning lot and then the yards would have been reclassified at that time. He stated that the home owner applied for a permit for the north lot only for the

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single family house that they were permitted to build. He stated that treating it as a Zoning Lot not is something that the homeowner has elected to do. He stated that the yards would then be treated as one zoning lot.

Board Member Schultz asked if this is a unique situation or has it happened before.

Mr. Spoden stated that the Village's Zoning Code is a unique code in that other communities require a one lot subdivision but Libertyville allows multiple lots to be combined to create a Zoning Lot under single ownership. He stated that he has seen similar circumstances happen more so in commercial districts than in residential districts.

Mr. Pardys stated that the Staff interpretation is based upon the text of the Zoning Code and that it supersedes the interpretation of the appendix illustrations, it is the text that will control. He stated that the illustrations are intended to depict what the text provides. He stated that in this case there are some discrepancies between the illustrations and the text.

Mr. Babowice stated because the illustration is wrong it is their position that the drawing depicts how the property owner wants to build their home. He stated that the Village cannot make a change to the drawing after the fact. He stated that the petitioner should be allowed to do the house addition as it is in response to what the appendix illustration would allow. He stated that if there is any doubt then it should favor the home owner.

Mr. Clawson stated that their proposed house addition will not affect the Village in a negative fashion. He stated that he employs people in this community. He stated that his neighbors and the H.O.A. architectural review board have approved the house addition.

Board Member Moore asked if they applied for a building permit for the whole house including the addition at the same time.

Mr. Clawson stated that they bought the vacant lot after they already started construction of the house on the northern lot. He stated that he did talk to the neighbor to the east and they did indicate that they would like for them to install the pool in its proposed location.

Chairman Moore asked the Zoning Board of Appeals to either affirm the Staff interpretation or reverse the Staff interpretation.

In the matter of ZBA 15-05, Board Member Semmelman, seconded by Board Member Schultz, to Affirm the Staff interpretation of the Zoning Code

Motion failed to pass with a two (2) votes to Affirm and three (3) votes to Reverse the Staff interpretation of the Zoning Code.

Board Members Oakley, Flores, and Schultz voted to reverse the Staff interpretation.

Board Members Semmelman and Moore voted to affirm the Staff interpretation.

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COMMUNICATIONS AND DISCUSSION: None.

Board Member Oakley moved, seconded by Board Member Schultz, to adjourn the Zoning Board of Appeals meeting.

Motion carried 5 - 0.

Meeting adjourned at 9:25 p.m.