

MINUTES OF THE ZONING BOARD OF APPEALS
October 8, 2007

The regular meeting of the Zoning Board of Appeals was called to order by Chairman Mark Moore at 7:05 p.m. at the Village Hall.

Members present: Chairman Mark Moore, Howard Jaffe, William Cotey, Kurt Hezner, Walter Oakley, and Andy Robinson.

Members absent: Terry Howard.

A quorum was established.

Village Staff present: David Smith, Senior Planner and Pat Sheeran, Project Engineer.

Board Member Oakley moved, seconded by Board Member Hezner, to approve the September 10, 2007, Zoning Board of Appeals meeting minutes.

Motion carried 6 - 0.

OLD BUSINESS:

ZBA 07-19 Christopher and Lisa Kennedy, Applicants
630 Kenwood Avenue

Request is for a variation to reduce the minimum required corner side yard setback from 30 feet to approximately 24.75 feet in order to construct a house addition in an R-6, Single Family Residential District.

The applicants requested that this item be continued to the November 12, 2007, Zoning Board of Appeals meeting.

Board Member Hezner moved, seconded by Board Member Oakley, to continue this item to the November 12, 2007, Zoning Board of Appeals meeting.

ZBA 07-33 Kevin and Cindy Constable, Applicants
127 Kenloch Avenue

Request is for a variation to a variation to reduce the minimum required front yard setback from 28 feet to approximately 17 feet in order to construct a front covered porch to a single family home in an R-6, Single Family Residential District.

Minutes of the October 8, 2007, Zoning Board of Appeals Meeting
Page 2 of 7

Mr. David Smith, Senior Planner, stated that the petitioner was before the Zoning Board of Appeals at their September 10, 2007 meeting requesting a variation to reduce the minimum required front yard setback in order to construct a front covered porch to a single family home in an R-6, Single Family Residential District located at 127 Kenloch Avenue.

Mr. Smith stated that during the course of the September 10, 2007 Zoning Board of Appeals meeting, the Board members expressed concern about the front porch depth and asked the petitioners if they would be willing to reduce the depth thereby reducing the encroachment into the front yard as well. Mr. Smith stated that the petitioner asked to be continued to the October 8, 2007 Zoning Board of Appeals meeting in order to have an opportunity to revise the plans.

Mr. Smith stated that the petitioner has revised their plans with a front porch shown to be reduced in depth thereby reducing the encroachment into the front yard by three (3') feet less than the original plan.

Board Member Robinson asked the petitioner if the revised front porch plan will work for the petitioner. Mr. Constable responded in the affirmative.

Board Member Hezner advised the petitioner to determine for certain that there will not be a violation of the maximum permitted lot coverage.

Mr. Constable stated that they will ask their architect to re-calculate the proposed lot coverage.

Chairman Moore asked the petitioner if they would like for the Zoning Board of Appeals to render their recommendation tonight. Mr. Constable responded in the affirmative.

In the matter of ZBA 07-33, Board Member Hezner moved, seconded by Board Member Oakley, to recommend the Village Board of Trustees approve a variation to reduce the minimum required front yard setback from 28 feet to approximately 17 feet in order to construct a front covered porch in an R-6, Single Family Residential District, in accordance with the plans submitted.

Motion carried 6 - 0.

NEW BUSINESS:

ZBA 07-36 James and Susan Baker, Applicants
300 East Winchester Road

Request is for a Zoning Appeal to the Zoning Board of Appeals of an Administrative Decision by the Village of Libertyville for property located in an R-5, Single Family Residential District.

Minutes of the October 8, 2007, Zoning Board of Appeals Meeting
Page 3 of 7

Mr. David Pardys, Village Attorney, introduced the petitioners' request for a Zoning Appeal of an Administrative Decision to the Zoning Board of Appeals. Mr. Pardys stated that the petitioner has filed an Appeal to the Zoning Board of Appeals of an Administrative Decision by the Village of Libertyville for property located in an R-5, Single Family Residential District located at 300 East Winchester Road.

Mr. James Babowice, attorney representing the petitioner, stated the for the purposes of the appeal before the Zoning Board of Appeals tonight, the Zoning Board of Appeals is a decision body, not a recommending body. Mr. Babowice stated that the Bakers moved to Libertyville in 1987. He stated that the items in which the Village is seeking to have Mr. Baker remove from his property existed when the Bakers moved into the house. He stated that the Bakers did not add structures to the back of their yard. Mr. Babowice stated that his client, Mr. Baker, is seeking a decision from the Zoning Board of Appeals that is equitable and fair. Mr. Babowice stated that the Bakers' neighbor, Mr. Newman has submitted a synopsis of events that include the heavy rains that occurred in March of 2007, the collection of water on the Bakers' property as a result of the March rains, and the eventual impact of said collected water had on Mr. Newman's property which is next door at 310 East Winchester Road. Mr. Babowice stated that the synopsis provided by Mr. Newman indicates that there have been no such water events on his property for a period of 16 years prior to the March 2007 rains. Mr. Babowice stated that there is a provision in Zoning Code relative to easements and that the Village Engineer has the authority to grant certain waivers as to the restrictions required for what can or cannot be allowed in easements. Mr. Babowice stated that the Bakers' other neighbor located at 240 East Winchester Road, the Furmans, have stated in an affidavit that the Newmans have installed new landscaping within the easement of their rear yard.

Mr. Babowice stated that the authorized procedure for seeking this kind of appeal of the Village Administrator is to appear before the Board of Building Appeals. He stated that a Board of Building Appeals does not exist, therefore they have been required to present their appeal to the Zoning Board of Appeals.

Mr. Pardys stated that the appeal by the Bakers before the Zoning Board of Appeals is a proper procedure.

Mr. Babowice presented photos of Mr. Newman's and Mr. Furman's rear yards that shows various kinds of landscaping within the easement/swale.

Mr. Babowice stated that the planters located in Mr. Baker's rear yard are a landscape issue. He stated that the grade slopes downward from west to east. He stated that Mr. Furman's affidavit states that the root cause of Mr. Newman's flooding was caused by Mr. Baker's fence. He stated that the fence was permitted. He stated that there was a sanitary sewer easement that was vacated on Mr. Baker's property in 1982.

Minutes of the October 8, 2007, Zoning Board of Appeals Meeting
Page 4 of 7

Mr. Babowice stated that Mr. Newman's gazebo is located within the sanitary sewer easement.

Mr. Baker stated that he purchased his home in October 1987. He stated that all of the hard surface materials in his back yard already existed at the time he purchased his home.

Mr. Babowice stated that the subject enforcement action is unfair. He stated that the Bakers' are victims of an unusual weather occurrence. He stated that Mr. Baker retained a landscaper.

Mr. Babowice presented photos of the neighbors' photos and introduced a supplemental narrative to Mr. Baker's petition.

Chairman Moore stated that he will allow the Zoning Board of Appeals to hear the new narrative material tonight.

Mr. Babowice stated that the Village has allowed the benches and similar items in residential yards in the past.

Chairman Moore asked what the setback requirements are for the wooden benches. Mr. Pardys stated that the Zoning Code would require setbacks for any permanent accessory structures. He stated that any hard surface, at grade level, improvements may not require the same setbacks as accessory structures, but would be regulated for their lot coverage impact.

Mr. Babowice stated that Mr. Baker has attempted to work out the encroachment issues with the Village's Engineering Division.

Mr. Pat Sheeran, Village Project Engineer, stated that he has been providing advice to Mr. Baker when requested. He stated that the gazebo in Mr. Newman's property has been permitted by the Village. He stated that the Bakers mentioned that they would replace the fence.

Board Member Oakley asked why a solution has not been reached. Mr. Sheeran stated that the petitioner is confronted with two issues and they include the Engineering Division's regulations for the drainage easement and Community Development Department regulations for Zoning Code requirements for lot coverage and setbacks.

Board Member Robinson stated that there must be other areas in the Village with swale and drainage issues. He asked how the Village deals with areas. Mr. Sheeran stated that the Village is in a position to be more reactive. He stated that the Village does not currently have policies to be more proactive for private properties.

Mr. Joe Newman, 310 East Winchester Road, stated that there has been a six-month delay in this appeal process. He stated that there should be a public hearing with a notice given. He stated that the lot coverage should also have been mentioned as part of the appeal. He stated that his property

Minutes of the October 8, 2007, Zoning Board of Appeals Meeting
Page 5 of 7

was damaged by drainage from his neighbor's property. He stated that the neighbors have not done anything to change the problem. He stated that the lot coverage is excessive and that it is not just a fence issue. He stated that there is no way to get in to maintain and clean out the bench structure. He stated that the sanitary easement is a mute issue.

Chairman Moore asked where the water was entering Mr. Newman's property. Mr. Newman stated that the water came from the northwest and turned south where it eventually surged under the fence onto his property. He stated that a waterway follows a 2% to 3% slope from Winchester Road to Parliament. He stated that from Milwaukee Avenue to the Des Plaines River is about ½ mile and drops 40 to 60 feet. He stated that his property is 100% code compliant.

Mrs. Newman stated that as homeowners, they have a responsibility to maintain their homes.

Mr. Babowice asked when Mr. Newman installed his landscaping. Mr. Newman stated that the landscaping work done in his yard was done in 2006 by Freddie Landscaping Company.

Mr. Pardys stated that there are three violations in which the Bakers must respond to and they include excessive lot coverage, structures encroaching into the minimum required setbacks, and structures within the drainage swale/easement.

Board Member Jaffe asked if the Zoning Board of Appeals will only deal with the drainage easement tonight.

Board Member Oakley asked what Mr. Baker will do to solve future flood problems. Mr. Sheeran stated that the fence replacement on Mr. Baker's property may help some of the drainage flow patterns to remain within the easement as it was designed to do.

Board Member Cotey asked if Building Commissioner Fischer could attend these meetings.

Board Member Hezner asked why Mr. Newman's gazebo was permitted to encroach two feet into the easement. Mr. Sheeran stated that the location of Mr. Newman's gazebo will not conflict with the sanitary sewer utility line.

Board Member Hezner stated that Mr. Baker's fence was not built properly and that it should all come out.

Board Member Jaffe asked Mr. Newman if he had insurance for the damage done to his basement from the flooding. Mr. Newman stated that there was insurance coverage.

Board Member Jaffe asked if Mr. Baker could apply for the remaining bulk variations. Mr. Pardys stated that a motion to continue the appeal will hold any punitive action at bay.

Minutes of the October 8, 2007, Zoning Board of Appeals Meeting
Page 6 of 7

Mr. Newman stated that the Illinois Drainage Code cannot be changed.

Chairman Moore stated that Mr. Newman may have a civil issue with his neighbor regarding the enforcement of the Illinois Drainage Code. He stated that there may be more practical applications to resolving the problem.

Mr. Sheeran stated that the Engineering Division would not permit any new structures to be constructed within the drainage easement in the same manner as they were initially constructed on Mr. Baker's property.

Mr. Babowice requested a ten minute recess to consult with his client Mr. Baker.

Mr. Babowice stated that his client has agreed to remove all the items from within the drainage easement swale and then to apply for lot coverage and setback variations for the remain improvements on his property.

Board Member Hezner moved, seconded by Board Member Cotey to modify the decision of the Village Administrator in connection with the Notice of Violation issued on September 11, 2007 as modified on September 28, 2007 as follows: Structures, other than the aggregate decking located within the drainage easement, must be removed on or before November 12, 2007. All other terms and conditions of the letter and modification will remain in effect.

Mr. David Smith, Senior Planner, stated that for clarification, the aggregate decking that the Zoning Board of Appeals' motion for approval to encroach into the utility and drainage easement should be that previously approved as part of the pool deck. Mr. Smith stated that the previously approved aggregate pool deck may or may not be encroaching into the ten (10') foot wide drainage easement.

Mr. Pardys stated Mr. Smith is suggesting that the allowed pool deck aggregate should only be that part of the pool that was originally permitted. Mr. Pardys stated that Mr. Babowice is suggesting that the Zoning Board of Appeals permitted aggregate is the existing aggregate, whether it came as part of the permitted pool permit or not. Mr. Pardys stated that the motion may be amended to include the clarification of the permitted aggregate to be associated with the pool.

Board Member Jaffe asked if the November 12, 2007 deadline to remove the structures out of the easement is agreeable with the petitioner. Mr. Baker responded in the affirmative.

Board Member Hezner moved, seconded by Board Member Cotey to modify the decision of the Village Administrator in connection with the Notice of Violation issued on September 11, 2007 as modified on September 28, 2007 as follows: Structures, other than the aggregate decking for the pool located within the drainage easement must be removed on or before November 12, 2007. All other terms and conditions of the letter and modification will remain in effect.

Minutes of the October 8, 2007, Zoning Board of Appeals Meeting
Page 7 of 7

Motion carried 6 - 0.

Chairman Moore stated that per the terms of the letter, the petitioner is to file an application for variations and diligently pursue the variations.

Mr. Babowice stated that the application for variations have been filed as part of the application for the Appeal.

Mr. Pardys stated that the variations still have to be publicly noticed the same as any other variation request.

Chairman Moore stated that the intent of the Notice of Violation is for the petitioner to appear before the Zoning Board of Appeals on November 12, 2007 to request the variations.

Mr. Pardys stated that the petitioner should contact the Planning Division in order to determine which variations should be requested.

COMMUNICATIONS AND DISCUSSION:

Board Member Jaffe made a motion, seconded by Board Member Hezner, to adjourn the Zoning Board of Appeals meeting.

Motion carried 6 - 0.

Meeting adjourned at 10:30 p.m.