

**MINUTES OF THE ZONING BOARD OF APPEALS**  
**April 11, 2022**

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, Richard Pyter, Thomas Rankin, Eric Steffe, and Gregory Wheeler.

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.

Others present: Hart Passman, Village Attorney.

Board Member Rankin moved, seconded by Board Member Steffe, to approve the February 14, 2022, Zoning Board of Appeals minutes.

Motion carried 7 - 0.

Board Member Rankin moved, seconded by Board Member Steffe, to approve the February 28, 2022, Zoning Board of Appeals minutes.

Motion carried 7 - 0.

**OLD BUSINESS:** None.

**NEW BUSINESS:**

**ZBA 22-05 William K. Willard Living Trust, Applicant**  
**252 East Ellis Avenue (Lot 28)**

**Request is for a variation from Zoning Code Section 26-17-5.3 in order to reduce the amount of frontage that a lot of record or zoning lot has on an improved public street located in an R-6 Single Family Residential District.**

Mr. Jeff Braiman, attorney representing the petitioner, stated that they are seeking approval for a variation from Zoning Code in order to reduce the amount of frontage that a lot of record has on an improved public street. He stated that the subject lot is Lot 28 on East Ellis Avenue and is part of the Garrison's Subdivision which was created several decades ago. He stated that the Zoning Code requires that an improved street be across the entire lot for access before a building permit can be issued for the lot's development. He stated that the subject Lot 28 currently has about 80% of its frontage on an improved street. He stated that their request is an appropriate variation request. He stated that the property owner wants to market the subject lot, but is unable

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to as long as it is not buildable. He stated that Village Staff have asked for civil engineering plans and a tree survey but this is difficult to do at this time as they do not know what will be built on the subject lot in the future. He stated that a tree survey and the engineering plans are not relevant to the variation they are seeking at this time. He stated that they meet the Standards for Variation and stated that the approval of this variation will not have a negative impact on anyone else.

Mr. Stave Culver, 236 East Ellis Avenue, stated this area has serious flooding problems and nothing has been done to eliminate the storm water problems. He stated that if Lot 28 were to be developed the flooding problems will get worse.

Ms. Susan Kelly, 945 Sandstone Drive, stated that they were assured that Lot 28 would never get developed. She stated that Lot 28 is at the bottom of a hill that drops 35 feet starting from Milwaukee Avenue. She stated that there is a storm water overland flow problem and this area is substantially affected. She stated that her home on Sandstone Drive is at a lower elevation than Lot 28. She stated that she does not know where the water will go if Lot 28 is developed. She stated that there is an underground water flow issue as well caused by an existing aquifer. She stated that Illinois drainage laws offer very little protection. She stated that they would not have purchased their home on Sandstone if the Willards had developed Lot 28 prior to 1995.

Mr. Bob Gehrke, 241 East Ellis Avenue, stated that he has been a Libertyville resident for over 29 years. He stated that the storm water issues are significant and that he objects to the application for the variation.

Mr. Warren Shafer, 315 Minear Drive, read a letter from Barbara Shafer to the Zoning Board of Appeals. He stated that the application for the variation violates every standard in the Zoning Code. He stated that a precedent decision was made in 2016 regarding this property and should not be developed. Mr. Shafer read all of the Standards for Variation and stated that this proposal does not meet any of them.

Ms. Ellen Coury, 933 Sandstone Drive, stated that if this were to be approved then it should be classified as a Taking. She stated that Edith Stocker Willard bought Lots 26 through 30 in the 1940's and should have developed those lots at that time. She requested that this variation should be denied.

Mr. Tony Cacich, 309 Minear Drive, stated that he is concerned about the area's flooding problems will be exasperated.

Mr. James Ramaker, 942 Sandstone Drive, stated that he has lost two retaining walls over time and his basement has flooded. He stated that he does not support the variation request.

Mr. David Giza, 811 Sandstone Drive, stated that he was a former Village Board Trustee. He stated that he agrees with Village Staff that there is a need for engineering plans and a tree survey. He stated that he agrees with the Barbara Shafer letter read by Warren Shafer.

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Mr. Braiman stated that they are sensitive to the area's flooding issues, but they are not proposing to build on Lot 28 at this time. They are seeking the variation in order to make it buildable in the future and to enable the property owner the ability to market the lot.

Board Member Rankin asked for clarification regarding an existing manhole near the property. Mr. Jeff Cooper, Village Engineer, stated that the manhole in question leads to the sanitary sewer.

Board Member Oakley stated that the applicant needs to include the engineering plans before he can vote on it.

Board Member Flores stated that the applicant should have the engineering done.

Board Member Wheeler asked why Staff is requesting that engineering and a tree survey be completed. Mr. John Spoden, Director of Community Development, stated that they are requesting engineering and the tree survey to better understand the extent of any impact on neighboring properties.

Board Member Wheeler asked for clarification regarding the area's flooding issues. Mr. Cooper stated that the Village's Master Storm Water Management Plan has identified the subject area of East Ellis as a priority area relative to flooding and storm water management.

Board Member Pyter asked if the Master Storm Water Management Plan implementation strategy will mitigate the flooding in the area. Mr. Cooper stated that it will help to reduce the flooding impact in the area.

Board Member Pyter stated that the applicant should submit an engineering plan which should help to improve the marketability.

Vice Chairman Moore stated that without knowing what the engineering study and tree survey will show he is not supportive of the variation request. He stated that this item should be continued in order to provide the petitioner the opportunity to submit the additional information for review.

Mr. Braiman stated that they will request the continuance.

*In the matter of ZBA 22-05, Board Member Steffe moved, seconded by Board Member Wheeler, to continue this item to the May 23, 2022, Zoning Board of Appeals meeting.*

*Motion carried 7 - 0.*

*Ayes: Moore, Flores, Oakley, Pyter, Rankin, Steffe, Wheeler*

*Nays: None*

*Absent: None*

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**ZBA 22-06 Arthur Higgins, Applicant**  
**309 W. Maple Avenue**

**Request is for a variation to reduce the minimum required side yard setback from 5 feet to approximately 4.27 feet in order to approve the location of a ground mounted mechanical unit for property located in an R-7 Single Family Attached Residential District.**

Ms. Haley Spinell, agent representing the applicant, stated that they are requesting a variation to reduce the minimum required side yard setback in order to approve the location of a ground mounted mechanical unit, a generator, for property located at 309 W. Maple Avenue.

Ms. Spinell stated that they submitted construction documents for permit that showed the generator meeting the setback requirement; however, when it was time for the actual installation of the generator it was discovered that a minimum separation of 18 inches between the unit and the home was required and not anticipated at the time of plan submission. This additional 18 inch separation caused the placement of the unit to encroach into the side yard setback requirement.

Board Member Pyter asked if there is a fence installed to screen the unit from the next door neighbor. Ms. Spinell responded that yes there is fence.

Vice Chairman Moore asked the petitioner if she is ready to proceed to a recommendation by the Zoning Board of Appeals. Ms. Spinell responded that yes she is ready for the Zoning Board of Appeals to cast their vote for her variation request.

*In the matter of ZBA 22-06, Board Member Steffe moved, seconded by Board Member Pyter, to recommend the Village Board of Trustees approve a variation to reduce the minimum required side yard setback from 5 feet to approximately 4.27 feet in order to approve the location of a ground mounted mechanical unit for property located in an R-7 Single Family Attached Residential District, in accordance with the plans submitted.*

*Motion carried 7 - 0.*

*Ayes: Moore, Flores, Oakley, Pyter, Rankin, Steffe, Wheeler*  
*Nays: None*  
*Absent: None*

**ZBA 22-07 Jill Cappelle, Applicant**  
**935 W. Winchester Road**

**Request is for a variation to increase the maximum permitted lot coverage from 35% to approximately 39.7% in order to construct a swimming pool, associated pool deck and patio and to relocate a hot tub for property located in an R-3 Single Family Residential District.**

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**ZBA 22-08 Jill Cappelle, Applicant**  
**935 W. Winchester Road**

**Request is for a variation to reduce the minimum required side yard setback from 10 feet to approximately 6 feet in order to install a hot tub for property located in an R-3 Single Family Residential District.**

Ms. Jill Cappelle, applicant, introduced her variation requests to the Zoning Board of Appeals. She stated that she is seeking approval for a lot coverage variation and a setback variation in order to construct a swimming pool, associated pool deck and patio and to relocate a hot tub for property located in an R-3 Single Family Residential District at 935 W. Winchester Road. She stated that there are certain improvements on her property that were completed prior to her buying the residence that were done without permits. She stated that as part of the project for the new pool, patio and hot tub relocation that she will correct or remove the non-permitted items. She stated that the non-permitted items include a gazebo, concrete patio and concrete walkway behind her home. She stated that she will obtain the proper permits for the hot tub as well.

Ms. Cappelle stated that per property is an undersized lot in the R-3 District and would fit more appropriately as an R-4 property. She stated that if her lot is zoned R-4 then it would meet the lot coverage restriction with her proposed improvements. She stated that if her property met the R-3 minimum lot size and width requirements then it would meet both the lot coverage and setback requirements with her proposed improvements.

She stated that the project includes the removal of an existing gazebo, and the removal of a concrete patio and walk behind the residence. She stated that the concrete patio will be replaced with a brick paver patio that will adjoin the north and east edges of the proposed pool and the west edge of the relocated hot tub. Ms. Cappelle stated that the amount of lot coverage is only a net increase of 330 square feet of coverage.

She stated that if the hot tub was viewed in the Zoning Code as any other accessory structure it would then be allowed to have a five (5) foot setback from the side property line provided that the structure was located on the rear 50% of the lot. She stated that she is asking for a six (6) foot setback from the side property line, but a variation is required as hot tubs are viewed in the same manner as swimming pools which require a ten (10) foot setback.

Board Member Flores asked if the petitioner is willing to reduce any of the lot coverage. Ms. Cappelle stated that she believes that she is held to an unfair standard as her lot is substantially undersized for being in the R-3 District.

Mr. John Spoden, Director of Community Development, stated that the subject site is an undersized lot for the R-3 District, but the lot coverage requirement still applies to this property. He stated that there are entire areas with multiple undersized lots that must comply with the lot coverage requirements.

Ms. Cappelle stated that she believes that she is subject to an unfair standard and noted that the 10 foot setback requirement is not specifically listed for hot tubs in the Zoning Code.

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Board Member Steffe stated that understands the position of the petitioner, but still believes that the lot coverage should be brought down to comply with the maximum allowed 35%.

Ms. Cappelle stated that if her variation requests were approved then a certain amount of storm water mitigation which she is willing to do.

Board Member Wheeler asked if there were any other options for the petitioner that would enable her to stay within the Code requirements. Ms. Cappelle stated that she would be within the Code limitations if her lot was zoned R-4 or if her lot area and width complied with the R-3 minimum requirements.

Board Member Pyter stated that he believes that the petitioner does not have a hardship that would justify the requested variations. He stated that he believes that the petitioner has an opportunity to comply with the Code. Ms. Cappelle stated that her hardship is that her lot size does not meet the minimum standards for an R-3 lot.

Vice Chairman Moore stated that adding to the lot coverage is a self-created hardship. Ms. Cappelle stated that the undersized lot speaks for itself.

Vice Chairman Moore asked the petitioner how she would like for the Zoning Board of Appeals to proceed. Ms. Cappelle stated that she would like for the Zoning Board of Appeals to render their recommendation tonight.

*In the matter of ZBA 22-07, Board Member Oakley moved, seconded by Board Member Steffe, to recommend the Village Board of Trustees approve a variation to increase the maximum permitted lot coverage from 35% to approximately 39.7% in order to construct a swimming pool, associated pool deck and patio and to relocate a hot tub for property located in an R-3 Single Family Residential District, in accordance with the plans submitted.*

*Motion failed 1 - 6.*

*Ayes: Oakley  
Nays: Moore, Flores, Pyter, Rankin, Steffe, Wheeler None  
Absent: None*

*In the matter of ZBA 22-08, Board Member Pyter moved, seconded by Board Member Steffe, to recommend the Village Board of Trustees approve a variation to reduce the minimum required side yard setback from 10 feet to approximately 6 feet in order to install a hot tub for property located in an R-3 Single Family Residential District, in accordance with the plans submitted.*

*Motion failed 1 - 6.*

*Ayes: Oakley  
Nays: Moore, Flores, Pyter, Rankin, Steffe, Wheeler None  
Absent: None*

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**STAFF COMMUNICATIONS AND DISCUSSION:**     None.

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

Motion carried 7 - 0.

Meeting adjourned at 8:52 p.m.