

ZONING BOARD OF APPEALS  
MINUTES  
NOVEMBER 8, 2011

The meeting was called to order by Chairman Rick Garrity at 7:32 p.m. Board Members Gregory Constantino, Gary Fasules, Barbara Fried, Ed Kolar and Dale Siligmueller were present. Board Member Mary Ozog was excused. Also present were Trustee Liaison Peter Cooper, Building and Zoning Official Joe Kvapil and Recording Secretary Barbara Utterback.

Chairman Garrity described the proceedings of the Zoning Board of Appeals.

Board Member Fried moved, seconded by Board Member Kolar, to approve the minutes of the September 27, 2011 ZBA minutes. The motion carried unanimously by voice vote.

One public hearing agenda was on the agenda for the property at 1000 Oxford Road.

PUBLIC HEARING – 1000 OXFORD ROAD

A REQUEST FOR APPROVAL OF A CONSTRUCTION-NECESSITATED VARIATION FROM THE GLEN ELLYN ZONING CODE, SECTION 10-5-5(B)4, ITEM 36, TO ALLOW A PATIO, PREVIOUSLY CONSTRUCTED, WITH A SETBACK OF 8 FEET TO THE SIDE YARD LOT LINE IN LIEU OF THE MINIMUM REQUIRED SETBACK OF 13 FEET 4 INCHES TO THE SIDE YARD LOT LINE.

*(Diane Urban, Heather Dalskov and Jesper Dalskov, owners)*

Staff Report

Building and Zoning Official Joe Kvapil stated that Diane Urban, Heather Dalskov and Jesper Dalskov, owners of the property at 1000 Oxford Road, are requesting approval of one variation from Section 10-5-5(B)4 of the Glen Ellyn Zoning Code to allow a previously constructed patio with a setback of 8 feet to the side yard lot line in lieu of the minimum required setback of 13 feet 4 inches to the side yard lot line. Mr. Kvapil displayed a map of the subject property which is in the R2 Zoning District and is defined as a corner lot on the northwest corner of the intersection of Abbotsford Court and Oxford Road. The zoning and land use surrounding the property is single-family residential. Mr. Kvapil stated that the subject lot is unusually shaped. He added that the requirement for a patio setback from the side yard lot line is 10 percent of the lot width and that 10 percent of the 133-foot lot width of the subject property is 13.3 feet or 13 feet 4 inches. Mr. Kvapil stated that a zoning variation was granted for the subject property in 2005 to allow a second floor addition and a two-story addition to the existing home that exceeds the maximum permitted altered area and does not meet the minimum front and rear yard setback requirements. Several building permits have been issued for the subject property including the original construction of the home in 1954.

Mr. Kvapil stated that the owners received a building permit to construct a patio in the summer of 2011. He displayed a plat of survey of the property that did not show a dimension between the edge of the patio and the side yard lot line. He explained that when plans for simple projects are reviewed, staff will often write requirements on the submitted documents and subsequently issue a permit. He stated that, in this case, the applicants received a copy of the approved plan with the required setback between the patio and the side yard lot line marked by staff to be 13 feet 4 inches, however, the patio was constructed with a setback of 8 feet. Mr. Kvapil stated that when the petitioners were given the option of correcting the patio or applying for a variation, they chose to apply for a construction-necessitated variation.

#### Petitioners' Presentation

Jesper Dalskov, the homeowner at 1000 Oxford Road, Glen Ellyn, Illinois, and Scott Podjasek, landscape contractor, Downers Grove, Illinois, spoke on behalf of the subject project. Mr. Podjasek stated that he did not start work on the subject property until permits were received. He explained that the drawing submitted for the project was exactly to scale and that the measurement from the lot line over was 8 feet. He added that it is common practice in towns in this area that a permit will be denied if there is a deviation between what is submitted and what is acceptable. Mr. Podjasek also stated that the area where the subject patio is constructed has always been a ponding area and he explained the flow of water in the area. He added that the water issues in the area are a reason for a variance on the subject property because there is no way to re-grade the property to get water beyond the side yard because there is no pitch there. Mr. Podjasek added that another hardship is the unusual shape of the subject lot.

Jesper Dalskov stated that the fence will not stop water because the bottom of the fence is a couple of inches above the actual grade and mulch will not stop water. Mr. Dalskov stated that a patio is not allowed in a side yard but is allowed anywhere in a rear yard. He added that the pie-shaped lot with no rear yard is a hardship and that the intent of the code is that patios should be located in rear yards. He added that drainage problems from other properties are additional issues. Mr. Dalskov added that the soil in his yard has a lot of clay in it and takes a long time for water to percolate in that area. Mr. Dalskov stated that his neighbors are very supportive of the subject project.

Heather Dalskov, 1000 Oxford Road, Glen Ellyn, Illinois stated that she had contacted the Village about the fence permit and was told it was approved but she had never been informed about the patio issue.

Diane Urban, 1000 Oxford Road, Glen Ellyn, Illinois stated that their neighbors have stated that they support the patio which they believe has improved the appearance of the neighborhood. Ms. Urban stated that the subject area was never kept up until they moved in approximately one year ago.

Responses to Questions from the ZBA

Mr. Kvapil responded to Board Member Constantino that the incorrect patio setback was discovered during a new fence inspection at the subject property. Mr. Kvapil also responded to Board Member Constantino that the incorrect patio setback would have been discovered at the time of the final inspection of the patio. Mr. Kvapil responded to Board Member Constantino that the architectural design of the wall, the patio and the fire pit would be significantly impacted if the patio and the wall around the fire pit were required to be moved. He also responded to Board Member Constantino that a landscape contractor provided the submitted plans and that neither the homeowners nor their contractor asked any questions regarding the building permit approval materials received from Village staff. Mr. Kvapil responded to Board Member Constantino that no contacts nor complaints have been received by staff regarding the subject variation. Mr. Podjasek responded to Board Member Fasules that he did not ask the Village what their side yard setback is but that a typical side yard setback in Glen Ellyn is 8 feet. Board Member Constantino asked if the patio could have been moved over 5 feet to comply with the side yard and Mr. Podjasek replied no because of water issues at that location. Mr. Podjasek also replied to Board Member Constantino that he believes that the subject solution is the most effective solution because of the water problems. Mr. Podjasek responded to Board Member Fasules that the fence does not inhibit the flow of the water. Mr. Podjasek responded to Board Member Kolar that the fence does not impede the flow of water from the property to the west. Mr. Kolar stated that the final inspection of the patio has not yet occurred, and the stormwater drainage around the patio will be reviewed.

Board Member Constantino asked Mr. Dalskov if he reviewed the permit and materials returned to him or Mr. Podjasek before the work began, and Mr. Dalskov responded no. Mr. Dalskov responded to Board Member Siligmueller that the owner of 966 Abbotsford does not feel adversely impacted by the subject project. At Board Member Fasules' request, Mr. Kvapil indicated the rear lot line of the subject project. Mr. Dalskov responded to Board Member Kolar that he is an architect.

Persons in Favor of or in Opposition to the Petition

No one spoke in favor of or in opposition to the petition.

Comments from the ZBA

Three Board Members were in favor of the variation request, and three Board Members were opposed to the variation request although some Board Members were somewhat conflicted. Board Members Siligmueller, Fasules and Chairman Garrity voted yes and Board Members Constantino, Fried and Kolar voted no. Board Member Siligmueller was supportive because the patio is built in the rear yard of the house as would normally be defined and flooding problems would lessen as well as an overall improvement to the neighborhood would occur. Board Member Fasules stated that the subject project was a compounding of errors and that there is a hardship in favor of the variance. Chairman

Garrity who was also in favor of the variance felt there was no harm in leaving the patio as is and stated that there was nothing that approved the permit other than a marking on the drawing. He added that building first and asking for approval later has not been traditionally accepted by the Village. Board Member Constantino was very conflicted and somewhat reluctant to approve the variation. He wondered if the Village should have notified the applicant that changes were made on the plans. He added that the variation is in excess of 30% and that the patio could have been located within the setbacks and not required a variation. Board Member Fried was not in favor of after-the-fact approval and stated that she had a problem with the project because the setbacks were marked on the drawings and they were not followed. Board Member Kolar also was not in favor of the request of the construction necessitated variation and felt that the landscaper had wrongly assumed that Glen Ellyn is the same as other communities regarding setbacks. Mr. Kolar wondered why the property owner, who is an architect, did not review the subject plans. Mr. Kolar did not feel it was necessary to have the patio located at its current location.

#### Motion

Board Member Siligmuller moved, seconded by Board Member Fasules, to recommend approval of a constructed necessitated variation from the Glen Ellyn Zoning Code, Section 10-5-5(B)4, Item 36, to allow a patio previously constructed with a setback of 8 feet to the side yard lot line in lieu of the minimum required setback of 13 feet 4 inches to the side yard lot line at 1000 Oxford Road. The recommendation for approval was made because of a hardship regarding the unusual pie shape of the lot that makes the normal 10 percent setback a practical difficulty and hardship. Another hardship related to confusion regarding the Village making notes on approved plans returned to the petitioner. Also, the excessive water flow in the area and water drainage problems in the neighborhood caused the lot to be previously unusable.

The motion did not carry with three (3) yes votes and (3) no votes as follows: Board Members Siligmuller, Fasules and Chairman Garrity voted yes; Board Members Constantino, Fried and Kolar voted no.

#### Trustee Report

Trustee Cooper provided a brief report on the College of DuPage situation. He also stated that the Village budget process has begun and that a TIF district is currently under consideration. Trustee Cooper also stated that a strategic planning session was recently held.

#### Chairman Report

Mr. Kvapil stated that the next regularly scheduled ZBA meeting will be cancelled but that two variations will be on the December 13, 2011 agenda.

There being no further business before the Zoning Board of Appeals, the meeting was adjourned at 8:55 p.m.

Submitted by:

Barbara Utterback  
Recording Secretary

Reviewed by:

Joe Kvapil  
Building & Zoning Official