

ZONING BOARD OF APPEALS
MINUTES
SEPTEMBER 10, 2013

The meeting was called to order by Acting Chairperson Edward Kolar at 7:32 p.m. Board Members James Bourke, Gregory Constantino, Larry LaVanway, Meg Maloney, John Micheli and Chip Miller were present. Chairman Rick Garrity was excused. Also present were Trustee Liaison Tim Elliott, Building and Zoning Official Joe Kvapil and Recording Secretary Barbara Utterback.

Acting Chairman Kolar described the proceedings of the Zoning Board of Appeals.

ZBA Member Micheli moved, seconded by ZBA Member Constantino, to approve the minutes of the April 23, 2013 Zoning Board of Appeals meeting. The motion carried unanimously by voice vote.

One public hearing was on the agenda for the property at 901 Winslow Circle. A second public hearing scheduled for this meeting regarding 475 Hillside Avenue was postponed as the public hearing notice needed to be revised and republished in the newspaper.

PUBLIC HEARING – 901 WINSLOW CIRCLE

A REQUEST FOR APPROVAL OF A VARIATION FROM GLEN ELLYN ZONING CODE SECTION 10-4-8(D)5 TO ALLOW A LOT FRONTING ON TWO NON-INTERSECTING STREETS WITH TWO FRONT YARDS (THROUGH LOT) TO HAVE THE FRONT YARD ON ST. CHARLES ROAD DESIGNATED AS A REAR YARD IN WHICH A SWIMMING POOL IS A PERMITTED ACCESSORY STRUCTURE.

(Anthony and Teresa DeMayo, owners)

Staff Report

Building and Zoning Official Joe Kvapil stated that Anthony and Teresa DeMayo, owners of the property at 901 Winslow Circle, are requesting approval of a variation from the Glen Ellyn Zoning Code, Section 10-4-8(D)5, to allow a lot fronting on two non-intersecting streets with two front yards (through lot) to have the front yard on St. Charles Road designated as a rear yard in which a swimming pool and other accessory structures would be permitted uses. Mr. Kvapil displayed a map of the subject area and stated that the property is located in the R2 Residential Zoning District. He added that the subject property is defined as a corner through lot between the intersection of Winslow Circle and Newton Avenue and the intersection of Newton Avenue and St. Charles Road. He stated that the property has two front yards on Winslow Circle and St. Charles Road. Mr. Kvapil stated that there are very few lots in the Village that have two front yards which makes this situation very unique. Mr. Kvapil stated that the zoning and land use surrounding the property is single-family residential. He also stated that St. Charles Road is a DuPage County collector street with higher speed limits and traffic

volume than Newton Avenue or Winslow Circle. Mr. Kvapil stated that no zoning variations have been granted for the subject property and that permits have been issued in the past for a fence, a new home and a deck. Mr. Kvapil stated that the subject development which consists of approximately 40 homes is called Danby Woods and was annexed into the Village in 1988.

Mr. Kvapil displayed a plat of survey and stated that the owners propose to construct an above ground swimming pool in the front yard facing St. Charles Road. He stated that the Zoning Code does not allow accessory structures in front yards and because this lot is a through lot, they have a front yard on St. Charles Road and a front yard on Winslow Circle. He stated that the owners are requesting a variation to change the designation of the yard that faces St. Charles Road from a front yard to a rear yard. He added that a rear yard allows a swimming pool as an accessory structure as well as other types of accessory structures such as sport courts, sheds, decks, air conditioners, etc. He stated that a 6-foot high fence can be constructed on a rear yard lot line, however, the maximum height of a fence in a front yard is 4 feet and it must be 50% open. Mr. Kvapil stated that there currently is a 6-foot high solid wood fence along St. Charles Road which is a legal, existing, nonconforming condition. He added that a permit was granted for the fence one year before the house was built and that the fence can be maintained but not reconstructed if removed unless a variation is granted. Mr. Kvapil added that a 6-foot high fence could be constructed in the rear yard of the subject property. Mr. Kvapil also stated that a recreational vehicle could be parked in the open rear yard in lieu of behind the front building line.

Mr. Kvapil stated that the subject property is not located within any designated flood hazard area but is within a locally identified depressional area. He displayed a depressional area map which he stated goes beyond FEMA maps that show designated floodplains. He stated these maps indicate where low spots are located in the Village that would retain water during heavy rain events but are not problematic. Mr. Kvapil added that one other requirement of a depressional area is that some mitigation must be done when a building permit is required for any project that exceeds 300 square feet. He also stated that requirements for the proposed swimming pool would be evaluated when the permit is submitted to the Building Department. Mr. Kvapil stated that the site diagram indicates that the proposed swimming pool is 11 feet from the side yard setback and 18 feet from the St. Charles Road setback. He added that the area of the subject swimming pool also meets the maximum area requirements for accessory structures in a rear yard which, in this case, is 1,000 square feet.

Petitioners' Presentation

Anthony DeMayo, owner of the property at 901 Winslow Circle, stated that he and his wife are the original owners of the subject home which was the 4th or 5th home built in Danby Woods. Mr. DeMayo stated that the fence was installed before they bought the land. He stated that they would like to build a pool for their six grandchildren who love to be in water and stated that they would like an aboveground pool so that they can easily remove the pool in the future. Mr. DeMayo stated they have always considered the front

yard on St. Charles Road as their back yard, their front yard faces Winslow Circle and their garage faces Newton Avenue. He stated that there is a berm that is highly vegetated located to the west in their yard and the property is highly vegetated to the east. Mr. DeMayo added that his neighbor to the east has no problem with a pool being added next door. Mr. DeMayo stated they have never had water in their yard during the 22 years they have lived there. He added that there is a wooded area across the street that floods but that the water moves underground.

Responses to Questions from the ZBA

Mr. Kvapil responded to ZBA Member Constantino that the swimming pool would trigger the stormwater requirement because the disturbed area is 336 square feet which exceeds the maximum requirement of 300 square feet. Mr. Kvapil responded to ZBA Member LaVanway that swimming pools are not considered to impervious surfaces instead of retention areas. He added that a swimming pool obstructs the flow of water around it and doesn't allow water to penetrate into the ground. Mr. Kvapil responded to ZBA Member Maloney that flooding would not cause damage to the pool as water at the site would drain away from the house and toward the street. ZBA Member Bourke asked if the Village is responsible for allowing the 6-foot high fencing at the site, and Mr. Kvapil responded that the Building and Zoning Official in 1991 approved the fence. Mr. Kvapil found a building permit application that indicated that the fence at the subject site was issued to the developer, Ottison & Rasmussen Construction. Mr. Kvapil responded to ZBA Member Miller that the property owners maintain the fence. Mr. Kvapil responded to ZBA Member Maloney that he did not know if the petitioner could remove his portion of the fence due to association conditions. Mr. Kvapil responded to ZBA Member Micheli that, as an alternative, the ZBA may feel that the front yard should be retained on St. Charles Road, however, a variation could be granted to allow a swimming pool in a front yard. He added that no other accessory structures would be allowed in the front yard, however. Mr. Kvapil responded to ZBA Member Kolar that other nearby homes treat their property closest to St. Charles Road as their rear yard.

ZBA Member Constantino asked the petitioner if they have any intention of storing a boat or trailer in the rear yard and would they have any problem with the Village restricting those vehicles in the rear yard. Mr. DeMayo responded that they have no intention of storing anything in the back yard and that the Danby Woods covenants state that those types of vehicles are not allowed in the back yard. Mr. DeMayo responded to ZBA Member Miller that the covenant requires each homeowner to maintain his part of the fence. ZBA Member Micheli asked Mr. DeMayo if he has a desire to have a portion of his property designated as a rear yard or would being allowed to have a pool in that portion of his property be sufficient. Mr. DeMayo responded that they have always considered the subject area as their rear yard but just having a pool there would be sufficient without any change in designation.

Persons in Favor of or in Opposition to the Petition

No persons spoke in favor or against the requested variation.

A motion was made to close the public hearing and carried unanimously by voice vote.

Comments from the ZBA

ZBA Member Constantino felt the petitioner's situation is unique as there are only six (6) homes in Glen Ellyn with the two front yard and no rear yard configurations on a lot. He recommended approval of the requested zoning variation with the condition that campers, boats and/or trailers are restricted in the new rear yard. ZBA Member LaVanway also recommended approval of the zoning variation because of the unique two-frontage arrangement. He also recommended a restriction regarding recreational vehicles in the yard. ZBA Member Maloney stated that she likes the fence and felt that a vehicle in the yard such as a boat would be acceptable as long as there are certain restrictions as to where the item is located. She added that the subject area should be kept as a rear yard. ZBA Member Bourke felt the subject area should be switched to a rear yard and commented that the yard is well sheltered by fencing and vegetation. He stated he is reluctant to put conditions on the property that change the definition of a rear yard. He stated that if the subject area is granted as a rear yard, the petitioners can do whatever they want subject to the subdivision covenants. ZBA Member Miller stated he always thought the houses at the subject site had back yards because of the fence, berm and landscaping located there. ZBA Member Micheli stated that changing more lots as per the petitioner's request would change the character of the area. He felt that only granting permission for the pool is all that is necessary to do and that doing anything more will open a can of worms which could create 6-foot fences on both sides of the road. He added that although he is in favor of the pool, he is not in favor of the subject request which is to have the front yard on St. Charles Road designated as a rear yard. Acting Chairperson Kolar stated he was supportive of the subject request.

ZBA Member Micheli moved, seconded by ZBA Member Bourke, to close the public hearing. The motion carried unanimously by voice vote.

Motion 1

ZBA Member Micheli moved to grant a permit for the pool as requested.

The Motion failed for a lack of a second.

Motion 2

ZBA Member Bourke moved, seconded by ZBA Member Constantino, to recommend approval of a variation from the Glen Ellyn Zoning Code, Section 10-4-8(D)5, to allow a lot fronting on two non-intersecting streets with two front yards (through lot) to have the front yard on St. Charles Road designated as a rear yard in which a swimming pool is a

permitted accessory structure. The recommendation for approval was based on the fact that the lot configuration and pre-existing fence were unique circumstances and that there is no access to St. Charles Road from the subject lot.

The motion carried with five (5) "yes" votes and one (1) "no" votes as follows: ZBA Members Bourke, Constantino, LaVanway, Miller and Acting Chairperson Kolar voted yes; ZBA Member Micheli voted no.

Trustee Report

No Trustee Report was presented.

Staff Report

Mr. Kvapil stated that two variations will be heard at the next two ZBA meetings. He also stated that a 7:00 p.m. start time for the ZBA meetings will begin on October 8, 2013 if agreed to by the ZBA members.

There being no further business before the Zoning Board of Appeals, the meeting was adjourned at 8:35 p.m.

Submitted by:
Barbara Utterback
Recording Secretary

Reviewed by:
Joe Kvapil
Building & Zoning Official