

ZONING BOARD OF APPEALS
MINUTES
JUNE 10, 2014

The meeting was called to order by Chairperson Rick Garrity at 7:03 p.m. ZBA Members James Bourke, Greg Constantino, Edward Kolar, Larry LaVanway and John Micheli were present. ZBA Member Chip Miller was excused. Also present were Trustee Liaison Pete Ladesic, Building and Zoning Official Joe Kvapil and Recording Secretary Barbara Utterback.

Chairperson Garrity explained the procedures of the Zoning Board of Appeals.

ZBA Member Kolar moved, seconded by ZBA Member Bourke, to approve the minutes of the May 27, 2014 Zoning Board of Appeals meeting. The motion carried unanimously by voice vote.

On the agenda was a continuation of a public hearing regarding the property at 795 Hill Avenue.

CONTINUATION OF A PUBLIC HEARING FROM MAY 13, 2014 – 795 HILL AVENUE

A REQUEST FOR APPROVAL OF TWO VARIATIONS FROM THE GLEN ELLYN ZONING CODE AS FOLLOWS: 1. SECTION 10-4-1(K)1 TO ALLOW CONSTRUCTION OF A SINGLE-FAMILY DWELLING ON LOT 4 AND THE SALE OR SEPARATION OF LOT 4 FROM LOT 3 ALTHOUGH THESE LOTS CAME UNDER THE COMMON OWNERSHIP OF RICHARD AND JENNIFER ROLINSKI ON JUNE 28, 2003 IN LIEU OF THE REQUIRED DATE OF JUNE 1, 1989. 2. SECTIONS 10-4-1(K)2 AND SECTION 10-4-1(J)4b TO ALLOW CONSTRUCTION OF A SINGLE-FAMILY DWELLING ON LOT 4 AND THE SALE OR SEPARATION OF LOT 4 FROM LOT 3 ALTHOUGH 33% OF THE IMPROVED LOTS ON THE BLOCK FRONTING ON HILL AVENUE ARE THE SAME OR LESS LOT WIDTH THAN LOT 4 IN LIEU OF THE MINIMUM REQUIRED 75%.

(Richard and Jennifer Rolinski, owners)

Chairperson Garrity stated that information was received from Village Attorney Greg Mathews who stated that the proposed agreement is not acceptable. Building and Zoning Official Joe Kvapil stated that he consulted with Attorney Mathews and Village Director of Planning and Development Staci Hulseberg regarding separating some of the requirements in one zoning section and the possibility of recommending in favor of some requirements and in opposition to other requirements. Mr. Kvapil stated that both Attorney Mathews and Ms. Hulseberg felt that all of the requirements under one section of the Zoning Code should be considered in their entirety and a recommendation should be made either to accept or deny all of the requirements of that code section at the same time. Mr. Kvapil also stated that Attorney Mathews advised that a denial by the Zoning Board of Appeals will be reviewed by the Village Board and that the Village Board could pass the variations with 4 of the 6 Trustees voting in favor of the requests.

Staff Presentation

Mr. Kvpil displayed a diagram of the subject property and stated that the minutes of the May 13, 2014 ZBA meeting were also included in the ZBA Members' packets as well as supplemental information related to similar homes in the area provided by the petitioners.

Petitioners' Presentation

Richard and Jennifer Rolinski, the petitioners, of 795 Hill Avenue, Glen Ellyn, IL were present to provide additional information regarding their variation requests. Mr. Rolinski presented and described photos and information regarding three homes in Glen Ellyn that are similar to their situation where the lots were nonconforming corner lots. He added that these homes were constructed in the last year or two (739 Hillside, 488 Carleton and 621 Duane Street). He also stated that something similar to these homes can be done at their home that will represent the neighborhood. Mr. Rolinski also indicated that there are two curb cuts at their home. He also stated that one of the lots is narrower than their proposed lot.

Questions from the Zoning Board of Appeals

Mr. Kvpil responded to ZBA Member LaVanway that the petitioners responded to one question from the ZBA instead of presenting an alternative recommendation. Mr. Kvpil also responded to ZBA Member Kolar that the diagram presented indicates that if the requested variations were granted, a home could be constructed within the buildable area of the property and he indicated the footprint of the maximum size home that could be built on the property. ZBA Member Micheli stated that the supplemental information states that the separation, sale and construction of the single-family dwelling lot should be considered collectively for a single recommendation by the ZBA since the conditions for the separation, sale and construction are all interrelated in the applicable code section. ZBA Member Micheli asked if the ZBA could forward these variation requests to the Village Board to make a recommendation with the suggestion that the Village Board approve one request and deny the other as a similar situation exists a few blocks from the subject property. Chairperson Garrity commented that the Village Board requests a definitive recommendation from the ZBA. Mr. Kvpil responded that the ZBA could make a recommendation to the Village Board as they see fit, however, he stated that he does not see a correlation to another property and that the recommendation should be based upon the subject situation and conditions only. He added that the ZBA can recommend approval of the variations as originally proposed which is granting a recommendation to approve the sale and separation but not the construction regardless of the recommendation of the Village Attorney and Director of Planning and Development. He also stated that the Zoning Code allows a partial recommendation to be forwarded. Mr. Kvpil responded to ZBA Member Micheli that there was no indication from the Village Attorney that there was anything illegal regarding making a recommendation about a portion of a Zoning Code section in lieu of an entire section. ZBA Member Bourke stated he would approve the requests with a

condition on the front yard setback and Mr. Kvapil responded to his question that there is 20 feet between the start of the maximum house area and the buildable lot area. ZBA Member Bourke asked if a condition could be placed on the requests to allow the petitioners to go 7-8 feet into the area and then the requests would be approved. Mr. Kvapil added that because of the 46.23 foot setback of the existing home, the ZBA could state that any new house on that lot could not be any closer than 46.23 feet to the front property line. Mr. Kvapil responded to ZBA Member LaVanway that bonuses do exist for detached garages and that the setback for a detached garage from the corner side yard lot line would be 18 feet and the setback from the rear property line would be 3 feet. Mr. Kvapil verified for ZBA Member Kolar that if the proposed variations were granted, two nonconforming lots would be created from a currently conforming lot. He added that the lots are two existing nonconforming lots and that the property is not being re-subdivided. He also added that the code states that because the lots are adjacent to each other, nonconforming and owned by the same person, the lots are considered to be one combined zoning lot. Mr. Kvapil responded to Chairperson Garrity that the subject lot could have been sold, separated and built upon in 1989 without a variation if one person owned both lots. Mr. Kvapil responded to ZBA Member Micheli that the code was more generous in 1989 as the lot coverage ratio was 25% in lieu of the current 20%.

ZBA Member Constantino asked for reasons other than economic (eliminating taxes) for the petitioners' request to sell their lot. Ms. Rolinski responded that there is a unique association to the land and the subject property and a hardship created by the zoning regulations. She stated that they are not solely seeking economic gain and that the property on Lot 4 incurs its own expenses separate from their lot. She added that Lots 3 and Lot 4 have separate P.I.N.'s and are taxed separately, there is no homeowner's exemption on Lot 4, and the taxes on the second lot stand alone. Ms. Rolinski added that in addition to being a financial hardship, it is also a hardship to maintain Lot 4 as lawn mowing, leaf disposal, yard waste disposal, watering, and snow removal/salting are necessary. Mr. Rolinski added that because of nearby Ben Franklin School, they must keep their sidewalk clear during the winter months. Ms. Rolinski also added that the additional driveway must be sealcoated and additional homeowner's insurance is required. Ms. Rolinski stated that they are not looking to solely make money on the subject property which would be an economic gain—they would like the property to be of use other than just a yard. Ms. Rolinski also stated they have personal health issues in their family that are financial hardships and that being required to keep the property is an unreasonable burden on their family. She also added that perhaps a park could be located at that site, however, a park could also affect a reasonable return on their property as some people may not want to live next to a park. Ms. Rolinski also stated that they would like the property to be used to its highest and best use and felt that economic gain for them is being looked upon as a bad thing when it is not so for builders and others involved in real estate sales. Ms. Rolinski stated that what is motivating them to pursue the buildability of the lot is their personal financial situation and that they can no longer use the lot as they did 10 years ago when they first purchased their property. She stated that when they purchased the property, they were aware that a variation would be required if they decided to build on the lot

and the fact that they would not be approved if they did not do their due diligence and consider that prior to purchasing the lot seems to her at odds with the purpose of the Zoning Board of Appeals. Mr. Rolinski added that a man who lives behind them should know they could build a structure on Lot 4 of their property. He also stated that he does not think that the three homes that he presented information about ever appeared before the ZBA. Mr. Kvapil stated that the home at 621 Duane Street appeared before the ZBA in the past.

ZBA Member Kolar asked the petitioners if they would be willing to donate Lot 4 to the nearby school or the Park District, and Mr. Rolinski responded not at this time. Ms. Rolinski asked if the owners of the lot could build a home there now if they owned the property in 1989, and Mr. Kvapil replied no because it does not meet the requirement for the number of improved lots of the same lot width on the block. She also felt that another home with a detached garage across the street would be similar to a home built on their subject lot. Mr. Kvapil agreed with Mr. Rolinski that the 55-foot wide lots in the subject area are nonconforming.

ZBA Member LaVanway asked if, without conditions, the entire home could be shifted northward and largely block the petitioners' view to the east as they are looking out the front door to the north and they could be hemmed in by a large side of a home and there also could be a detached garage on the southern border which would do the same thing for the neighbor facing east on Bryant to the north quadrant of their property. He added that that footprint, without conditions, would satisfy the 20% lot coverage of the detached garage, and Mr. Kvapil agreed. He added that both the westerly and southerly neighbors could be hemmed in with the home and detached garage. Mr. Kvapil agreed that the footprint could be shifted to the farthest north building line and the garage could still be constructed all the way to the south 3 feet from the southern property line. ZBA Member Constantino asked if it is a requirement that a new home on Lot 4 could not be any closer to Hill Avenue than the average homes on Hill Avenue. Chairperson Garrity stated there was an exception, and Mr. Kvapil added that the Zoning Code permits the first house constructed on a vacant lot to be built within the permitted building area regardless of the positions of the houses on either side.

Mr. Kvapil made a correction which was that the petitioners mentioned building another detached garage on the adjacent lot which could not be done as two of the same accessory structures cannot be constructed on one zoning lot (Lots 3 and 4). He stated that the petitioners could, however, build an accessory structure equivalent to a detached garage. Mr. Kvapil added that there is an existing difficulty with the subject property because of the configuration of the home, driveway and garage on combined Lots 3 and 4 which are not in the most effective location they could be on the lot and that the house does not take advantage of the combined lot for lot coverage area. He also stated that if a new home were to be constructed on the combined Lots 3 and 4, it would not be in the same configuration, size, shape and position as the existing home; therefore, the existing conditions on Lots 3 and 4 as a combined lot could be considered a practical difficulty because they are not designed and

positioned in the most effective, well-positioned manner or location for a single-family home.

ZBA Member Kolar asked if the lots are split, would any additional work done on the other lot with the existing home require a variation, and Mr. Kvapil responded no. Mr. Kvapil added that Lot 3 has a home on it and the lot and home are existing nonconforming. He stated that if a proposed addition to Lot 3 was within the setback requirements, lot coverage ratio requirements and height requirements, the home could be expanded.

Comments from the Zoning Board of Appeals

ZBA Member Constantino stated he did not see a hardship regarding the variation requests as they were based on economics until Mr. Kvapil pointed out that the configuration of the home, the driveway and detached garage are not in the best location possible and were not created by the current homeowners. ZBA Member Constantino stated he was in favor of recommending approval of the variation requests with the condition that the front setback be at least as much as the existing home on Lot 3. ZBA Member LaVanway agreed with ZBA Member Constantino's opinion and added that he did not have an issue with 33% of the improved lots on the block fronting on Hill Avenue in lieu of the minimum required 75% as the character of the neighborhood would not be disturbed. He stated, however, that he struggled with separating the lots due to blocking light, sight lines and enjoyment of the land on the neighboring properties and would request conditions of approval. ZBA Member Kolar felt that the request was economically based and the request creates two undersized lots. He also added that Lot 4 was being taxed as vacant land. He added that he wasn't sure that the properties mentioned as examples at this meeting by the petitioner would have been considered undersized lots from a square footage standpoint. ZBA Member Micheli stated that he agreed with ZBA Member Kolar regarding the properties mentioned in the handout. He also stated that he does not see a basis for hardship under the rules as he understands them and sees the requests as purely economic which is not a valid reason for granting a variance. He did, however, see more than ample reason to allow the lots to be separated. He also stated he found it difficult to blindly grant the variance for construction and, given the difficulty with this lot, it would have been nice to see what would be proposed on the lot. ZBA Member Bourke stated that the subject requests can be passed with conditions by the ZBA at this meeting and the ZBA will see the project if variations are requested by a new owner. He was in favor of recommending approval of the requests with the condition regarding the front of the lot.

Mr. Kvapil stated that there could be a condition that increases the setback for any detached garage that might be constructed near the south property line. He also responded to Chairperson Garrity that the house could be constructed as shown with a 500-square foot detached garage in the rear yard.

ZBA Member Constantino suggested recommending a variation that would provide for a minimum of a 45-foot front yard setback, a minimum 10-foot rear yard setback and a 10-foot

setback on the south lot line. He added that future owners could apply for a variation(s) if necessary.

Motion

ZBA Member Bourke moved, seconded by ZBA Member Constantino, to recommend approval of Section 10-4-1(K) of the Zoning Code to allow construction of a single-family dwelling on Lot 4 and the sale or separation of Lot 4 from Lot 3 although these lots came under common ownership of Richard and Jennifer Rolinski on June 28, 2003 in lieu of the required date of June 1, 1989 and to recommend approval of Sections 10-4-1(K)2 and Section 10-4-1(J)4b to allow the construction of a single family dwelling on Lot 4 and the sale or separation of Lot 4 from Lot 3 although 33% of the improved lots on the block fronting on Hill Avenue are the same or less lot width than Lot 4 in lieu of the minimum required 75% with the conditions that: 1. The front yard setback shall be no closer to the house than the Lot 3 house. 2. In the rear, the setback shall be no closer than 10 feet to the property line. He added that the unique circumstances regarding this project are the position of the house on Lot 3 in relation to the total property and the ongoing maintenance required of a lot near a school. He added that the proposed variations will enhance the neighborhood in all directions around the property.

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

Trustee Report

Trustee Liaison Ladesic reported on energy issues related to the Village.

Staff Report

Mr. Kvapil stated that the next ZBA meeting will be cancelled.

The meeting was adjourned at 8:32 p.m.

Submitted by:

Barbara Utterback
Recording Secretary

Joe Kvapil
Building and Zoning Official