

# MINUTES

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BOARD OR COMMISSION: Glen Ellyn Zoning Board of Appeals DATE: April 12, 2016

MEETING: Regular X Special \_\_\_\_\_ CALLED TO ORDER: 6:58 PM

QUORUM: Yes X No \_\_\_\_\_ ADJOURNED: 9:05 PM

MEMBER ATTENDANCE:

PRESENT: Chairman Garrity, Board Members Constantino, Micheli, C. Miller, Whalls, and Student Member A. Miller

OTHERS: Building & Zoning Official Witt, Recording Secretary Karen Blake

ABSENT: Board Member Bourke

AUDIENCE: None other than for Petitioners

## **CALL TO ORDER:**

The April 12, 2016 regular meeting of the Glen Ellyn Zoning Board of Appeals was called to order by Chairman Garrity at 6:58 PM at the Glen Ellyn Civic Center. A quorum was present.

Chairman Garrity reviewed the procedure for the meeting. All speakers will be required to be sworn in and to give their names and addresses. The public hearing will be closed prior to the vote. He noted that all Board Members have visited the properties in question.

## **APPROVAL OF MINUTES:**

None

## **PUBLIC HEARING - 290 MONTCLAIR AVENUE**

A request for approval of variations from the Glen Ellyn Village Zoning Code as follows: (1) Section 10-4-1(C) to allow an accessory structure (fence) to be erected on a zoning lot without the presence of a principal structure; and (2) any other zoning relief necessary to construct the project as depicted on the plans presented or revised at the public hearing or as a public meeting of the Village Board.

### Staff Presentation

Building & Zoning Official Steve Witt stated that the Petitioner, Matt Haber of Western DuPage Landscaping, is requesting to erect a fence on a lot with no principal structure on it. The owners of 762 Highview have purchased 290 Montclair, which adjoins their property. The 2-story residence and garage on 290 Montclair have been demolished. Section 10-4-1 does not allow an accessory structure without a principal structure. The property is located on the northwest corner of Highview and Montclair. Variations were previously granted on November 23, 1970 for a garage with a minimum setback, which are not an issue at this time.

### Questions from Board Members

ZBA Member Constantino asked if there has been any contact by residents with the Village. Mr. Witt answered no, there has been none. ZBA Member Whalls asked if there have been any petitions from residents. There have been none.

### Petitioner's Presentation

Matt Haber of Western DuPage Landscaping presented the layout of the property. Both the residence and garage have been demolished. The owners live in the house to the west, and wish to create an enclosed yard space as well as enclose the home. It will help identify the property and separate it from the public right-of-way open space. The fence will provide his clients with security and allow them to both beautify and use the space. Much care was taken to preserve trees, and there will be additional plantings to merge with the existing trees. The corner of the fence will be cropped out to allow for the 30-foot visibility triangle on the corner. The fence will be approximately 4 feet tall with brick columns, as has been erected in other parts of the Village. Finally, the variance will permit the owners to sell the lot separate from their home in the future.

### Questions to the Petitioner from Board Members

ZBA Member Whalls asked if this property had a hockey rink on it this winter. Mr. Witt stated that it did have a hockey rink and that such a thing would probably not be considered recreational equipment, but a residential sport court. As there is no structure on the property, if the rear yard was extended from the adjacent property, it would not be in compliance as it is not in the rear yard. Mr. Whalls addressed the Petitioner stating that the rink cannot be in the same location in the future. Mr. Whalls also asked that if trespassing is a problem, why not fence the entire property. Mr. Haber said that in some locations the vegetation is very dense.

The gate is on Highview, and the goal is to not make a fortress, but to enclose the majority of the property.

ZBA Member Adam Miller asked if trespassing has been an issue. Mr. Haber was not certain, but it would be a concern for an open lot, and the goal is to enclose and beautify the property and enhance the opportunity to sell the property in the future.

ZBA Member Micheli asked if there are other residences with similar variances. There are properties on Main and Park with fence panels with posts and brick columns. In some cases, the fence has tied in to plant material. In this case, the sides facing the street will be fenced and the other sides have heavy plantings.

ZBA Member Chip Miller asked about the fence height. It is 4 feet.

ZBA Member Costantino asked if there are future plans for additional fencing or improvements on the property. Mr. Huber said not at this time.

Board members discussed the standards for hardship or practical difficulty for approving a variance. Resale value and security are generally not sufficient hardships.

Corinne Schmitt of 672 Highview addressed the Board. She is the owner of the property in question. She noted that several properties and/or lots have been vacant in the past and used for pick-up soccer games. Her children's friends and the neighboring children can play on the subject property, but it will secure the property from others. The fence will go across the entire Highview frontage and end on Montclair at heavy bushes, which would have to be removed to extend the fence further. It will prevent pedestrians from trespassing by cutting across the corner. Finally, it will tie into the existing home and beautify an already nice piece of land.

ZBA Member Whalls reiterated his concern about the fence not going all the way to the property line on Montclair. Ms. Schmitt said that the bushes are so dense that someone could not push through them, and based on where they are located the fence would have to go inside of them. Mr. Whalls brought up the ice rink to her. She said that it is more of a figure skating rink and they would like to be able to keep it; however, although the location is the only spot level enough for a rink, she will not violate the Code.

ZBA Member Micheli expressed unease with how the fence will look not encircling the entire property, and that the bushes are the issue. Mr. Huber said that not running the fence along the entire north side of the property allows the immediate neighbors access, but prevents the area from becoming an open playfield. Ms. Schmitt stated that the driveway for the

neighboring house on Montclair is very nearly on the property line, and she expressed concern that a fence going all the way across the property would block the view and create a dangerous situation for them backing out into the street.

ZBA Member Chip Miller noted that there are other vacant lots used for play by children. He asked if the Petitioner feels the lot would become an attractive nuisance if not fenced. He also asked if a fence across the entire north side of the property would impede the neighbors from using their driveway. The Petitioner responded "yes" to both questions.

#### Persons in Favor of, or in Opposition, to the Request

No persons spoke in favor of, or in opposition to, the request other than Ms. Schmitt, the owner of the property.

#### Comments from the Zoning Board of Appeals

ZBA Member Constantino summarized what had been heard so far. The Petitioner is asking for an accessory structure without a principal structure on the property. There is no principal structure to be constructed in the foreseeable future. A fence would create a certain amount of security, and he noted that the plan is to preserve the existing trees. The fence would comply with all codes as though there was a structure on the property. The property will not be totally encircled by the fence because of existing landscaping. The fence would also prevent pedestrians from cutting across the corner lot. The hardship is that the Petitioner should not be required to erect a principal structure just to put up a fence, which will provide security, separation and privacy.

ZBA Member Whalls said that he would prefer to have the fence go all the way around the property, but understands why that is not possible. He has difficulty seeing the hardship in this matter and is 50/50 at this point. He made note of the fact that there have been no petitions from surrounding homeowners submitted to the staff expressing opposition to the plan.

ZBA Member Adam Miller said that he started out against the Petition. However, after hearing the presentation and the discussion, he sees that the fence is more of a deterrence to uninvited people using the property rather than trying to be exclusive. Now, he supports the variance.

ZBA Member Micheli also started out opposed to the Petition. He is now sensing the hardship of a lack of a principal structure preventing the owners from securing their property as other owners are allowed to do. He is concerned that the truncated fence might not fit in with the neighborhood, but sees the need for it.

ZBA Member Chip Miller echoed the others that he started out against the Petition. However, he can see an argument for the fence eliminating an attractive nuisance. Putting up reasonable barriers helps with liability issues. He also did not initially consider the impact to the neighbor's driveway if the fence went to the edge of the property line. He would have liked to see Zoning Board of Appeals petitions from neighbors, but if there is any opposition, there have been opportunities to speak against it.

ZBA Member Constantino said that he wants to approve the variation, and he sees the partial fence as a plus. The Petitioner has demonstrated safety concerns. Given that there is precedence of similar past decisions and for these reasons, he will suggest approving the variation.

Chairman Garrity is in favor of the variation. He does not see the lack of neighbor petitions as a problem. The Petitioner is trying to make the lot look good, the plan is good and the hardship is the lack of a structure. ZBA Member Whalls noted that there is a fence on Park near Lenox on a vacant lot.

ZBA Member Micheli asked for clarification that there is an existing green screen from the proposed end of the fence to the end of the property. Mr. Huber confirmed that there is an existing green screen.

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

ZBA Member Chip Miller moved, seconded by ZBA Member Micheli, that after considering the petition of resident Corinne Schmitt and landscape architect Matt Haber and the testimony and evidence presented at the public hearing, the Zoning Board of Appeals recommends approval of the variation requested after deliberations brought to light that the plight of the owner is due to unique circumstances and practical difficulties including the absence of a structure precluding a fence on the property that would otherwise be secured, and stopping the fence short of the property line to not create a life safety issue for the neighbor's ability to use their driveway.

The motion carried with five (5) yes votes and zero (0) no votes as follows: ZBA Members Constantino, Micheli, C. Miller, Whalls and Chairman Garrity voted yes.

**PUBLIC HEARING - 538-542 PHILLIPS**

A request for approval of variations from the Glen Ellyn Village Zoning Code as follows: (1) Section 10-4-1(H) to allow two contiguous substandard lots (538 and 542 Phillips Avenue) under common ownership, which are of such size as to constitute one conforming "zoning lot", to not be considered jointly as being a single parcel, lot or zoning lot to allow one of the two lots to be sold off at a future date; (2) Section 10-4-1(C) to allow an accessory building or structure to be erected on a zoning lot (538 Phillips Avenue) without the presence of a principal building on the same zoning lot to allow the construction of a detached shed and a fence on the lot after the demolition of the existing house and garage which currently exist on the 538 Phillips lot; (3) Section 10-5-5(B)4 to allow the construction of a 200 square foot shed in a required setback; whereas, the maximum allowable area for a shed is 150 square feet; and (4) any other zoning relief necessary to construct the project as depicted on the plans presented or revised at the public hearing or at a public meeting of the Village Board.

**Staff Presentation**

Building & Zoning Official Steve Witt stated that the Petitioners, Donna and John Blatchford, are the owners of 542 Phillips Avenue. They have a contract pending for the lot immediately to the west. The requested variances would allow two continuous substandard lots to be merged, to allow one of the lots to be sold off at a future date, and to allow an accessory structure without the presence of a principal building. The accessory structures would be a fence and a shed, with the shed being larger than allowed. The combination of the lots will bring them both into conformance. Both existing structures on the 538 Phillips lot will be demolished and the lot may be used to construct in the future a home for parents. Additional requested variations would allow the construction of a fence and shed on the 538 lot without a principal structure, the shed being 200 square feet as opposed to the 150 square foot size allowed by Code. Variations were previously granted on November 23, 1970 for a garage with a minimum setback, which are not an issue at this time. The lots are surrounded by residential uses. The permit history is not relevant to these variations. Notice was published on March 25, mailed to property owners, and a placard was placed on the property.

**Questions from Board Members**

ZBA Member Micheli asked if demolition of the houses will require removal of the driveway and/or apron and whether the curb cut will be retained. Although Mr. Witt said that the Public Works staff would make such determinations, the Petitioner stated that he is planning to restore the curb after demolition.

ZBA Member Constantino asked for confirmation that 59 feet is the nonconforming lot dimension as opposed to the 66 feet required. Mr. Witt confirmed the dimensions as well as the location of the proposed shed.

#### Petitioner's Presentation

Donna Blatchford and John T. Blatchford residing at 542 Phillips Avenue (the Petitioners) presented their plans and the need for the variances. Their goal is to have additional open space and ability to build a home for a parent. In the long run, it is important to be able to sell the lot. It is clear that the existing home would be a tear-down over which they would have no control. They plan to remove the structures and re-sod the property. They have discussed their plans with their neighbors, and their petition has nearly unanimous support. One neighbor has misgivings about removing an older home. They were unable to reach one other neighbor. Finally, St. Mark's expressed support for the idea that they would have some extra green space next to them for a while. In summary, they are enthusiastic about their proposal and neighbor support for the ability to control the lot rather than have a developer purchase it and hold it for an indeterminate amount of time.

The hardship is that the Petitioners are the only ones who could not develop the lot without the variances. Anyone else can build on or sell the lot. How the Code applies to them is a hardship. These are unique circumstances in that the Code applies uniquely to them. The variations will not increase traffic or necessitate expenditures of public funds. There will be more parking available since the curb will be restored.

They desire to erect two accessory structures without a principal structure on the lot. The fence is not intended to be a barrier but to delineate the lots, consistent with a colonial home. It will be a picket fence approximately four feet high and will otherwise conform with the Code as if there were a principal structure. The shed would be built in the northwest corner of the lot abutting St. Mark's dumpster and parking lot. The shed will help to mask that view. The 200-foot variance would allow for one car. The structure would be a woodshed type and also a garage type with a door.

#### Questions to the Petitioners from the Zoning Board of Appeals

ZBA Member Micheli asked if the Petitioners would consider erecting the fence around both properties. The Petitioners responded that it had been considered, but concluded that it would have to be nearly against the sidewalk, and not aesthetically pleasing. A simple short fence from their home would have a greater set back and be more appealing to the neighborhood. Part of the 538 lot and a bit on the side would be fenced. Neighbor children play in their yard, and they would not want to be bad neighbors by blocking it off. A barrier creating some type of

delineation is the goal without separation from the neighbors. It also will help the rectory and is open to that property. It was noted that the house has been empty for about 18 months.

ZBA Member Chip Miller said that he is not so much concerned with the location of the shed but with the size. However, it does the job of blocking unattractive sight lines. The Petitioners confirmed that it provides some privacy from the rectory parking lot.

#### Persons in Favor of or in Opposition to the Petition

Rinda Allison of 537 Hillside spoke in favor of the variations. As her home abuts the back of the 538 lot, she will have a nice green space adjacent to her home. The open space will help with water retention and will look open.

Ray Whalen of 177 Sunset Avenue, a current member of the Plan Commission, commented on the removal of the driveway. Public Works staff will weigh in on whether or not to replace the curb depending on future plans. ZBA Member Whalls said that the driveway approach may be kept, but the driveway itself will not be kept. ZBA Member Micheli expressed concern that there could be two curb cuts and aprons to the street. Mr. Witt said that utilities will be cut off at the main. The consensus was that just the apron and the curb cut will probably remain after demolition, but the Public Works staff will make that final determination.

#### Findings of Fact by the Zoning Board of Appeals

ZBA Member Costantino presented findings of fact as follows: Petitioners own 542 Phillips and have a contract to purchase 538 Phillips pending granting of three variances: allowing two contiguous lots to remain two lots; allow two accessory structures where there is no principal structure; and to allow a 200-square foot accessory building where the maximum allowed is 150 square feet. 542 Phillips is not a substandard lot, but 538 Phillips is non-conforming. Both are zoned R-2. The Petitioners presented their case, and noted that they have lived there for 16 years, and the house on 538 has been vacant for 18 months. They seek to create additional open space in the short term and eventually build on 538, with the ability to sell it in the future. The current, or a future, owner could sell it to anyone else to build. The Petitioners, being the adjoining lot owners, are penalized by the current Code for acquiring the property, as without the variance, they cannot build on the lot. This is a unique situation with these two lots. There will be no cost to the Village. The Petitioners will upgrade the lot with landscaping and fencing. They have the approval of most neighbors, although one would like to see the house renovated rather than demolished. The fence will be a small picket fence; the shed will be located in the northwest corner which abuts St. Mark's and would screen the dumpster and parking lot from residential view and allow slightly more storage.

ZBA Member Whalls moved to accept the findings of fact as presented, seconded by ZBA Member Chip Miller. The motion was approved by unanimous voice vote.

Comments from the Zoning Board of Appeals

ZBA Member Whalls feels positive about the Petition. He has walked the property and agrees that the house is definitely a tear-down. He understands why the Petitioners would want to screen the view into St. Marks' parking lot. There are several precedents to these types of variations.

ZBA Member Adam Miller is in favor of the variations with no comments.

ZBA Member Micheli expressed sympathy for the Petitioners in their struggle with the Ordinance as written. ZBA Member Constantino noted that there is only one non-conforming lot in this case. The goal of the Ordinance to create two conforming lots does not apply in this case as there is only one substandard lot. ZBA Member Micheli expressed concern that the apron and curb cut could remain for years. Chairman Garrity noted that there are several similar aprons and curb cuts around the Village and that the Village Board has approved them. ZBA Member Micheli expressed comfort with the size of the shed and is generally supportive.

ZBA Member Chip Miller said that the Petitioners did a good job of explaining the purpose of the size of the shed. He has no issues with supporting the requests.

ZBA Member Constantino expressed support for all three variation requests. He would be more reluctant if there were two non-conforming lots, but does not see a problem in this case. Considering the fence and shed, he understands the need for a larger accessory structure to block the site lines into the St. Mark's property.

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

ZBA Member Chip Miller moved, seconded by ZBA Member Whalls, that after considering the petition of residents Donna and John Blatchford and the testimony and evidence presented at the public hearing, the Zoning Board of Appeals recommends approval of the variations requested as presented after deliberations brought to light that the plight of the owner is due to unique circumstances in that only one lot is non-conforming. The requested fence will provide delineation of the property, and the size of the shed will aid in blocking the site lines to the dumpster and parking lot on St. Marks' property.

The motion carried with five (5) yes votes and zero (0) no votes as follows: ZBA Members Constantino, Micheli, C. Miller, Whalls and Chairman Garrity voted yes.

**OTHER BUSINESS:**

There was no other business.

**ADJOURNMENT:**

ZBA Member Chip Miller moved, seconded by ZBA Member Whalls, to adjourn the meeting. The motion was approved unanimously by voice vote. The April 12, 2016 meeting was adjourned at 9:05 PM.

Submitted by Karen Blake, Interim Recording Secretary  
Reviewed by Building & Zoning Official Witt, Village of Glen Ellyn