

ZONING BOARD OF APPEALS  
MINUTES  
MARCH 28, 2017

The meeting was called to order by Chairperson Rick Garrity at 7:00 p.m. ZBA Members Gregory Constantino, Matthew Jones, Chip Miller and Reed Panther were present. ZBA Members John Micheli, Adam Miller and Thomas Whalls were excused. Also present were Building and Zoning Official Steve Witt, Planning Associate Kelly Purvis and Recording Secretary Barbara Utterback.

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

On the agenda was a public hearing regarding the property at 761 N. Park Boulevard.

PUBLIC HEARING – 761 N. PARK BOULEVARD

A REQUEST FOR APPROVAL OF VARIATIONS FROM THE GLEN ELLYN ZONING CODE AS FOLLOWS: 1. SECTION 10-4-8(E)1 TO ALLOW THE CONSTRUCTION OF A NEW TWO-STORY SINGLE-FAMILY RESIDENCE WITH AN ATTACHED GARAGE RESULTING IN A LOT COVERAGE RATIO OF 24.5% IN LIEU OF THE MAXIMUM ALLOWABLE LOT COVERAGE RATIO OF 20% FOR SINGLE-FAMILY DWELLINGS MORE THAN ONE STORY AND ACCESSORY STRUCTURES. 2 SECTION 10-4-8(F)1 TO ALLOW THE CONSTRUCTION OF A NEW TWO-STORY SINGLE-FAMILY RESIDENCE RESULTING IN A MAXIMUM RIDGE HEIGHT OF 38' IN LIEU OF THE MAXIMUM ALLOWABLE RIDGE HEIGHT OF 35' AND AN EAVE HEIGHT OF 26' IN LIEU OF THE MAXIMUM EAVE HEIGHT OF 25'. 3. 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.

(Ray Whalen, owner)

Staff Presentation

Building and Zoning Official Steve Witt and Associate Planner Kelly Purvis were present to speak regarding the proposed variation requests. Ms. Purvis stated that Ray Whalen, owner of the subject property at 761 N. Park Boulevard, is requesting approval of the following variations from the Glen Ellyn Zoning Code: 1. Section 10-4-8(E)1 to allow the construction of a new two-story single-family residence with an attached garage resulting in a lot coverage ratio of 24.5% in lieu of the maximum allowable lot coverage ratio of 20%. 2. Section 10-4-8(F)1 to allow the construction of a new two-story single-family residence resulting in a maximum ridge height of 38 feet in lieu of the maximum allowable ridge height of 35 feet and an eave height of 26 feet in lieu of the maximum eave height of 25 feet. 3. Any other zoning relief necessary to construct the project as depicted on the plans presented.

Ms. Purvis stated that the subject property is an interior lot located in the R2 zoning district on the east side of North Park Boulevard between Muirwood Drive and Oak Street. She stated that the zoning and land use immediately surrounding the subject property is R2 Single Family Residential. She added that the Notice of Public Hearing was published in the March 9, 2017 edition of the Daily Herald and mailed to property owners within 250 feet of the subject property and a placard was placed on the property. Ms. Purvis stated that there are no records of zoning variations being granted for this property. She also stated that before this property was subdivided in 2015, it was actually part of the property directly to the south (formerly 757 N. Park Boulevard). She stated that prior to the division of the two lots, permits were issued for a water softener, a room addition, electrical work, a house demolition and a new residence which was constructed on the southern lot at 757 N. Park Boulevard.

Ms. Purvis stated that Ray Whalen has owned the property since 2003 and it has been vacant since it was subdivided in 2015. She showed the ZBA photos of what the property looks at this time. She stated that the topography is unique as it slopes approximately 20 feet from the front of the lot to the back of the lot and due to this unique topography, Mr. Whalen is requesting two variations from the Zoning Code. She added that Mr. Whalen has suggested that constructing a detached garage on the property would be impractical and may negatively impact the surrounding properties. He also stated that a garage at the bottom of the slope of this lot would be difficult to enter and exit and may interfere with the grading and stormwater flow on the property. Ms. Purvis added that the driveway would be very close to the north property line of the property just to the north of the subject lot in order to meet the setback and impervious surface setback requirements. She added that many trees would also be required to be cut down if a garage were proposed in the rear yard, which would change the character of this wooded neighborhood. Ms. Purvis stated that based on the above, Mr. Whalen does not want to construct a detached garage on this property and would, therefore, not be eligible for the 500-square foot bonus that would be subtracted from the lot coverage, were he able to construct a detached garage. Ms. Purvis stated that Mr. Whalen is requesting a lot coverage ratio of 24.5 percent which is equivalent to the allowable lot coverage which would be 20 percent if there was the 500 square foot bonus for the detached garage. Ms. Purvis added that the slope of the property also affects the calculation of the average grade by which the maximum height of the proposed house is measured. She stated that due to the topography of the subject lot, the average grade is approximately 6 feet 8 ½ inches below the top of the foundation. She added that if the grade were level at the top of foundation, Mr. Whalen would be able to build a structure approximately 3-1/2 feet higher without requesting a variation. Ms. Purvis stated that Mr. Whalen has provided some additional materials which illustrate how changes in the grade can affect the allowable height of a structure per Village code.

Ms. Purvis stated that Mr. Whalen is requesting variations to construct a two-story home which exceeds the allowable ridge height by approximately 3 feet and the maximum eave height by 1 foot. She added that since this project exceeds the threshold of 300 square feet of disturbed

ground, the Village will require a grading plan and stormwater review. She also stated that a preliminary review of the drainage plan has been submitted to the Village, and Stormwater Engineer Ray Ulreich has indicated that adequate drainage for the project can be provided.

Ms. Purvis stated that staff has received several signed petitions both in favor of and against the requested variations.

#### Questions from the Zoning Board of Appeals

Ms. Purvis responded to ZBA Member Panther that no variances were granted per Village records for the home to the south at 757 N. Park Boulevard. ZBA Member Constantino stated that he requested records from the Planning and Development Department regarding the amount of lot coverage ratio for the two properties adjoining the subject property. He stated that the property at 765 N. Park Boulevard has a lot coverage ratio of 15.5 percent and the property at 757 N. Park Boulevard has a lot coverage ratio of 19.9 percent.

#### Petitioners' Presentation

Ray Whalen, contractor, 177 Sunset Avenue, Glen Ellyn, IL, Rich Steinbrecher, Surveyor/Engineer, Steinbrecher Land Surveyors, 141 S. Neltnor Blvd., West Chicago, IL, Dan Marshall, Marshall Architects, 812 E. Main, St. Charles, IL and Keith Kluge, 194 Glen Arbor Court, Glen Ellyn, IL were present to speak on the subject variation requests.

Mr. Whalen stated that both of the variation requests are based on the hardship and uniqueness of the topography of the property with a slope of approximately 20 feet from the front to the rear of the property. He stated he had considered building a detached garage to meet today's needs but because of the slope, that criteria would not be met and the slope would be very significant. He stated that there are homes to the north that have a similar sloped street that services homes to the south and there is a separate egress that allows another way out. Mr. Whalen stated that a detached garage could change the woody character of the subject area. He also stated there appears to be some concern in the petitions and other information that he has seen that by requesting this variation, a precedent would be set. He stated that the Village Board approved the 23-lot Amber Ridge subdivision in 2013 with 25 percent lot coverage ratio parcels due to requests from the neighbors and Glen Crest School for that lot coverage ratio. He added that former Village Planner Michele Stegall had prepared a staff report that indicated that 58 lot coverage variations had been approved since the lot coverage ratio was reduced from 25 percent to 20 percent. He added that 8 variations were for straight-up additions and 48 of the remaining 50 lot coverage variations were approved by the Village Board.

Mr. Whalen stated that as far as the increase in the area, he is trying to take the 20% lot coverage ratio permitted and add the 500 square feet of the bonus of the detached garage to one structure on the property. He added they are not really building any more bulk or mass—they are just consolidating it—and because of the slope and topography, they cannot really do that with a detached garage.

Mr. Whalen stated that regarding the slope, Glen Ellyn looks at average grade in kind of a unique way because if one has a down-sloping lot, he feels one is penalized because it is a negative number that decreases and if one is on a higher part of the hill, one can build a taller house. Mr. Whalen stated he wants to build a house that meets today's standards and needs and would be able to be resold down the road, would look architecturally interesting and would fit in with the character of the style of the home. Mr. Whalen added that the average grade of the subject home is approximately 6.7 feet below the top of foundation.

Mr. Marshall stated that the Village Zoning Code is set up so that if one decides to have a detached garage, one gets an extra 500 square feet, however, because of the drop of the lot, the petitioners have no choice regarding the 500 square feet.

#### More Questions from the Zoning Board of Appeals

Mr. Whalen responded to ZBA Member Reed that he will not own the subject home. ZBA Member Jones asked what the square footage of the home and the living space will be, and Mr. Whalen responded that the entire home has not yet been developed due to cost, however, the square footage will be approximately 4,000 square feet. ZBA Member Jones asked why the home cannot be built to fit on the lot without a variation. Mr. Marshall responded that part of the reason has to do with the two-car garage which is tight for the modern family so they wanted to get extra storage space out of the garage bay. He also stated that although none of the rooms are gigantic, they wanted certain room sizes which the market currently wants. ZBA Member Chip Miller asked what the ridge height is from the rear foundation to the highest point of the house and Mr. Marshall responded 41 feet. ZBA Member Constantino stated that the home at 757 Park Boulevard has an attached garage and a lot coverage ratio of 19.9%. He stated he wondered why the petitioner couldn't match that property or have less than a 5% increase which would be a 25% greater lot coverage ratio than permitted. Mr. Whalen responded that the lot at 757 Park Boulevard is approximately 1,600 square feet larger, which gave them an additional 320 square feet of LCR on that property. He added that that property's dimensions were 80 feet x 160 feet and the subject lot is 70 feet x 160 feet. ZBA Member Constantino asked what the square footage of the house at 757 Park Boulevard property is, adding that, according to his calculations, the square footage is 2,550-2,560 feet on a 12,800 square foot lot. Mr. Marshall responded that the lot coverage ratio for that property is 20%. ZBA Member Constantino asked if having a larger lot coverage ratio on a smaller lot in a more defined area would make the bulk look so much greater than the other lots and he also stated that some neighbors are expressing concern regarding the subject property. Mr.

Marshall felt that the extra 500 square feet will not make a difference. ZBA Member Constantino stated he was concerned because on a larger lot, the approximate lot coverage is 2,506 square feet and the petitioner is asking for 2,744 on a smaller lot and is having a hard time reconciling those numbers. Mr. Whalen responded that if they were granted the requested variation, the ridge on the proposed house would be 2 feet taller than the house to the south and it would be 5 feet shorter than the house to the north. He added that the house will not look greater from the streetscape. Mr. Marshall added that one thing that may have been alluded to as far as the height of the building on the south regarding not asking for variances is that they had to have quite a low pitch to pull that off and when one is up on the second floor, the eaves are pressed down rather low on the windows which is one of the driving forces of requesting this variation. He added that they did not feel it is the Zoning Code's intent to create that kind of uniformity of roofs on two houses in a row so they are hoping to get the variation so that they can have a steeper roof on the subject home and not look like they are making the subject home the same as the house next door. Chairperson Garrity stated that the petitioner could build the subject house shorter and Mr. Marshall responded they cannot because they cannot go any lower on the second floor. Mr. Marshall responded to Chairperson Garrity that the subject home is not the only type of home that could be built on the vacant subject lot, however, the footprint would be very small for a ranch. ZBA Member Panther asked if any consideration had been given to an attached garage at the rear of the home. Mr. Marshall stated the slope is very steep and the pad would need to be built out the back with retaining walls to keep it flat. He stated that design has been done before, however, it is difficult for homeowners to carry groceries, etc., to the house from that type of garage. ZBA Member Jones asked the petitioner if he could use the walkout basement area as living space since that was done to the house to the south. Mr. Marshall responded that they can usually have a guest room or rec room in that area, however, children's rooms do not work in that space. ZBA Member Jones also asked if the petitioner's biggest obstacle is the ridge height or the size of the home. Mr. Marshall responded that the size of the home would be the most important obstacle that helps them fulfill the requirements of the program to get the extra garage space and the room sizes. He added that his goal is to not have a home built like the home next door.

Mr. Steinbrecher stated that regarding a question he had been asked, if the garage was detached in the rear and per Glen Ellyn's requirements for the minimum size of a driveway, he worked up a 10-foot wide driveway which is the minimum width. He stated that with the existing drive, the square footage of an attached garage would be approximately 675 square feet of what is designed now, however, if detached, the garage would increase to 730 square feet so a net savings of impervious area would create less run-off to adjoining properties by approximately 1,000 square feet with an attached garage. He also stated that from an engineering or design standpoint, a detached garage would be very difficult to build with the slope on the property as the garage floor would be 10 feet above the existing grade and retaining walls would be needed to build up the grade. He added there would be drop-offs from the garage floor right off the side and added that the topography would be a hardship.

Mr. Steinbrecher also stated that the living space of the home is still the same and that the Zoning Code allows a 500-square foot bonus for a detached garage in order to promote detached garages.

Chairperson Garrity stated that the zoning variations that have been approved were all to existing homes—not to new homes—and that there is no reason that a home cannot be built to fit onto a blank slate. He also felt that the Zoning Code is being ignored in this case in order to maximize profits. Mr. Steinbrecher responded that he has reviewed many homes in Glen Ellyn and this lot is extremely unusual, and Chairperson Garrity stated there are similar homes near Lake Ellyn. ZBA Member Miller asked how moving water will be handled. Mr. Steinbrecher stated there is a County ordinance that requires rain gardens and dry wells to capture rainfall and Glen Ellyn follows that ordinance and, in fact, is even more restrictive.

Mr. Whalen asked the ZBA how many of the new construction Amber Ridge lots returned for an increase in the lot coverage ratio and Chairperson Garrity stated fewer than most. Chairperson Garrity added that variation requests also are generally at 21%-22% and that 24.5% is very unusual. Mr. Whalen added that the hardship for this property is the 20-foot drop which is unique.

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

Keith Kluge, potential purchaser of the subject house who currently resides at 194 Glen Arbor Court, Glen Ellyn, IL stated that he and his wife are in support of the variation requests based on the hardships. He stated their current home has approximately the same lot size as the subject lot and if the subject property was rotated 90 degrees and the topography was the same, that is what their lot looks like now. He stated they currently have an open-ended basement/walk-out basement and a 3-car garage and added he needs garage space for his two cars and three children's sports equipment. He added that his wife wants to be a chef so she would like a large kitchen on the first floor. He stated his family loves the subject lot, grade and trees in the back. He stated they would like a home that is aesthetically pleasing and is in line with the other homes in the neighborhood. Mr. Kluge responded to ZBA Member Jones that he and his wife have lived in Glen Ellyn for 15 years and his wife was born and raised here. Mr. Kluge also responded to ZBA Member Jones that they will not return to the ZBA for variations for concrete or pavement changes. Mr. Kluge responded to ZBA Member Constantino that he is not under contract to purchase the subject property.

#### Findings of Fact

ZBA Member Constantino stated that the petitioners are requesting zoning variations for the construction of a new single-family home at 761 N. Park Boulevard with a lot coverage ratio of approximately 24-1/2% and a ridge height of 38 feet and eave height of 26 feet in lieu of the maximum allowed 35 feet and 25 feet, respectively. He stated that the subject property is an

interior lot located in the R2 zoning district on the east side of North Park Boulevard and the surrounding properties are R2 Single Family Residential. ZBA Member Constantino stated that Village Associate Planner Kelly Purvis indicated there are no records of any prior variations on the subject property. He added that the subject property was formerly part of the 757 N. Park Boulevard property immediately to the south that was subdivided in 2013 and the owner first acquired title to the property in 2003. ZBA Member Constantino stated that the hardship and unique characteristic of the subject property are that the property slopes 20 feet from the front to the rear of the property line. He stated that the owner indicated that the garage is not a practical use or an option because of the location on the lot, the slope on the lot, driveway requirements, setbacks and potential damage and loss of trees. He added that because there will be no detached garage, this foregoes the right to a 500-square foot bonus for the ultimate calculation of the lot coverage. ZBA Member Constantino also stated that the slope affects the average grade used to determine where the building height is measured for the construction. He also stated that without a slope, it is conceivable that the building could be constructed 3 feet higher than the plane. He also stated that because the property will involve an area greater than 300 square feet, a grading plan and stormwater review will be required. He also stated that preliminary studies indicate that adequate drainage for the property can be provided. He stated that no variances were granted for the property at 757 N. Park Blvd.

ZBA Member Constantino stated that the owner, Ray Whalen, described the hardship as the slope of the subject property from the front to the back. He stated he considered a detached garage, however, the slope prohibits the practical use and construction of a garage on the rear portion of the lot. He stated that a detached garage would cause a loss of trees and he believes a change in the character of the neighborhood. He did not believe we are setting a precedent with this situation as there have been prior developments with similar issues. He stated that the prior lot coverage ratio variances from were 20% to 25% although not all of those were for new construction. ZBA Member Constantino stated that it was determined that the square footage for the lot coverage was based upon the fact that if he could have placed a detached garage on the property, he would have received a 500-square foot bonus, however, he is in fact asking for that bonus without a detached garage. He added that as far as the height issue, if the property was a flat even grade, he would be allowed a greater height for the building without a variance request. He also stated that because of the Village's manner of determining the average grade height, they lose the height allowance. He also stated that the building contemplated would be slightly higher than the property to the south at 757 N. Park Boulevard, several feet lower than the property to the north at 765 N. Park Boulevard and is still 3 feet below what would be allowed as grade averaging. He added that Mr. Whalen will not be using this property as his personal home.

ZBA Member Constantino stated that Architect Dan Marshall stated they considered a two-car garage but need more storage space. He added that the cumulative room size is larger for today's general requirements. He stated the house could be at or under 20% lot coverage,

however, the rooms would be smaller than desired. ZBA Member Constantino stated that the height variation requested is to vary the height compared to other buildings in the immediate area. He also stated that he could design a home on the subject lot that would comply with the zoning code and not require a variance. He stated that the owner or contractor usually has a choice of whether to detach a garage on a lot for an extra 500 square feet, however, in this case the owner does not have an option which is the hardship they face with this lot.

ZBA Member Constantino stated that Surveyor Rich Steinbrecher said that if the garage was detached, even with the minimum required width of a driveway, over 1,700 square feet of impervious surface would be required. Mr. Steinbrecher added that with an attached garage, approximately 675 square feet of impervious area would be required. He also stated that because of the topography and slope on the lot, a detached garage would be very hard to design and construct from an engineering standpoint.

ZBA Member Constantino stated that Keith Kluge, a party interested in purchasing the subject property, described his needs and desires for the building with his three children, cars, storage areas, the open floor plan they desire and the maintenance of trees on the lot. He stated he is in favor of the larger lot coverage ratio as requested and will maintain the neighborhood aesthetics and characteristics.

ZBA Member Chip Miller moved, seconded by ZBA Member Reed, to approve the findings of fact.

#### Comments from the Zoning Board of Appeals

ZBA Member Panther stated that he saw a hardship regarding the ridge and eave height variance request as the code as it stands is more restrictive on properties sloping from front to back versus sloping from back to front. He added that he sees that some homes in the area are in a similar situation in terms of height. He stated he would be supportive of the variation request for the ridge and eave height. ZBA Member Panther stated lot coverage ratio is more questionable in this case as he is not sure he sees a hardship. He felt that the petitioner desires to maximize the buildable area of the lot and added that the code does not prevent a reasonable return for the buildable area of this lot. He added that he sees the garage bonus as something that is not guaranteed to be met. He stated that approval of this request would set a dangerous precedent and several neighbors are also concerned.

ZBA Member Jones stated he is in favor of the relief for the ridge height being on that lot, however, he is against the variation for the lot coverage as the petitioner will be building a new home. He added that not being able to build a garage in the rear of the lot is a unique hardship to that lot in a certain way but does not prevent the petitioner from building a smaller house to code on the lot. He also stated the petitioner has the unique characteristic of a walk-out

basement because of this lot so although the petitioner cannot have a garage in the rear, he will get more use out of his basement because of this lot. He stated for that reason, he is against the requested lot coverage but would be in favor of the ridge and eave height to allow the petitioner to create a home that will fit in with the neighborhood.

Chairperson Garrity stated that he believes the issue was created by the petitioner when he subdivided the lot. He stated that if he had kept both lots together, he could have built a humongous house and there would have been no problems with a separate garage or issues with size and height. He stated the house is not existing so anything could be designed that would conform with the existing zoning rules. He did not think one should be able to use the code as a hardship as that would result in anyone being able to get anything they want in spite of the code. He also did not feel everyone is entitled to the 500 square foot bonus.

Chairperson Garrity was opposed to the lot coverage ratio, height and ridge without a house actually in existence or not even in the process of being built. He added that he felt that a house could be built at this location that conforms to the code.

ZBA Member Chip Miller stated that the petitioner builds beautiful houses and that the house that will be built at the subject location will be a nice house. He stated that he does not see a hardship regarding this house but does see a unique circumstance although that was created by the petitioner by splitting the lot. He also stated that he had an issue with the ridge height and added that he felt that not matching the ridge line and the roof line to the house next door that you built is not a hardship or a unique circumstance. He added that he will make two motions and will vote no for both of those motions. ZBA Member Chip Miller asked Mr. Whalen what the maximum ridge height was that one could build on the subject lot if it was flat, and Mr. Whalen responded 35 feet. Ms. Purvis responded to ZBA Member Chip Miller that if the lot was flat, the height of the building would be approximately 31-32 feet and a variation would not be required. ZBA Member Chip Miller stated he could vote yes for the ridge height request.

ZBA Member Constantino stated that he agreed with everything said by the ZBA Members. He stated he would be in favor of granting the ridge height as requested as he feels there is clearly a hardship with the limitations faced and method of determining the average grade. He did not feel there was an extraordinary request given the circumstances especially that the property to the immediate north would be a greater height although the subject property would be slightly greater than the 757 N. Park property. He added that the variance allows a certain height but if the grade was even, the height could be 3 feet taller than planned. He added that, therefore, he would be in favor of recommending a variance for the ridge height, however, is reluctant to recommend a variance for the lot coverage ratio as requested. He stated that this is new construction created by the circumstances at the time of the subdivision of the property. He also stated that the 757 N. Park Boulevard property was constructed with an attached garage and was under the 20% lot coverage ratio. He added that the planned construction would have more square footage than the property at 757 N. Park Boulevard on a smaller lot and he felt it would appear to have much greater bulk. He added that the nearly 4-1/2% variance requested

is approximately  $\frac{1}{4}$  or 25% more of the permitted lot coverage. ZBA Member Constantino felt these variations are too much for new construction and there is indication from the experts that a building could be constructed on the property that would fall within the zoning ordinance. He added that he would vote against recommending the lot coverage ratio as requested.

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

#### Motion 1 of 2

ZBA Member Chip Miller moved, seconded by ZBA Member Jones, that the Zoning Board of Appeals deny the request for the variation to Section 10-4-8(E)1 regarding lot coverage ratio based on the recommendation that a good hardship cannot be found for this request.

The motion to deny carried unanimously with five (5) yes votes and zero (0) no votes as follows: ZBA Members Miller, Jones, Constantino, Panther and Chairperson Garrity voted yes.

#### Motion 2 of 2

ZBA Member Chip Miller moved, seconded by ZBA Member Constantino, that the Zoning Board of Appeals approve the request for the variation to Section 10-4-8(F)1 for the maximum ridge and eave height due to the topography of the lot and regardless how the house was put in, this causes a unique situation.

The motion to approve carried with four (4) yes votes and one (1) no vote as follows: ZBA Members Miller, Constantino, Jones and Panther voted yes; Chairperson Garrity voted no.

#### Trustee Report

No Trustee Report was given.

#### Chairperson Report

No Chairperson Report was given.

#### Staff Report

Ms. Purvis stated that two items, 710 Meredith Place and 869 Hillside Avenue, will be on the ZBA agenda for the next meeting.

ZBA Member Micheli moved, seconded by ZBA Member Chip Miller, to adjourn the meeting at 8:10 p.m. The motion carried unanimously by voice vote.

Submitted by:  
Barbara Utterback  
Recording Secretary

Reviewed by:  
Kelly Purvis  
Associate Planner