

VILLAGE OF DOWNERS GROVE  
ZONING BOARD OF APPEALS  
APRIL 27, 2011 MINUTES

**Call to Order**

Chairman White called the meeting to order at 7:30 PM.

**Roll Call**

**Present:** Mr. Benes, Mr. Domijan, Ms. Earl, Mr. Enochs, Mr. Isacson,  
Ch. White

**Absent:** Ms. Majauskas

**A quorum was established.**

**Staff:** Damir Latinovic, Jeff O'Brien

**Also present:**

- Christine Greve, Anna Bielski, 7804 Williams, Downers Grove, IL**
- Richard Klockow, 7808 Williams, Downers Grove, IL**
- Theresa Jones, 2 New Castle Ct., Woodridge, IL**
- Donovan Davis, 11308 Glenbrook Circle, Plainfield, IL**
- Richard Scott, ARA Food Service, 533 Prairie Ave., Downers Grove, IL**

**Meeting Procedures**

Chairman White explained the function of the Zoning Board of Appeals, and reviewed the procedures to be followed during the public hearing, verifying with Staff that all proper notices have been published. He then called upon anyone intending to speak before the Board on the Agenda item to rise and be sworn in, as the public information portion of the meeting is an evidentiary hearing. Chairman White explained that there are seven members on the Zoning Board of Appeals, and for a requested variation to be approved there must be a majority of four votes in favor of approval. He added that the Zoning Board of Appeals has authority to grant petitions, without further recommendation to the Village Council.

**Minutes of October 27, 2010**

**Mr. Isacson moved to approve the minutes of the October 27, 2010 Zoning Board of Appeals meeting as presented. Mr. Domijan seconded the Motion.**

**AYES:** Mr. Isacson, Mr. Domijan, Mr. Benes, Ms. Earl, Mr. Enoch, Ch. White

**NAYS:** None

**The Motion passed unanimously.**

.....

**ZBA-01-11** A petition seeking a side yard setback variation for the property located on the west side of Williams Street approximately 177 feet north of Plainfield Road, commonly known as 7804 Williams Street, Downers Grove, IL 60516 (PIN 09-28-310-025), Anna Bielski, Petitioner/Owner.

**Petitioner's presentation:**

Ms. Christine Greve, 7804 Williams Street, Downers Grove, Illinois, said that they are petitioning for a variation regarding placement of a patio enclosure along the side of the building. In order to place the sunroom in the back yard and meet the setback, they would have to go down into their basement, and through the garage to get out to what would be the back yard patio area. Placing it along the side makes more sense. They are qualified for a 6'-wide enclosure, but are requesting an additional 3' to make it a more reasonable space.

Mrs. Earl asked if there were pictures, and was informed that the petitioner has provided a packet of pictures for the Board's review.

Ms. Greve noted that she also has letters from neighbors, including the home directly to the south of them. The way the house is configured, there is no access to the back yard from the main living area. Other homes in the immediate area have access directly from the main living area.

Mr. Benes inquired whether this was the only home built in this fashion. Ms. Greve said within the 200' radius, their home appears to be the only one without direct access to the back yard. They currently have an existing cement patio in the back yard. They would use only 9'-wide area of that patio.

Mr. Domijan asked for clarification of a few of the photographs. Ms. Greve referred to photos #7 and #9, which show the area they intend to use. She said the home was like this when they moved in. They are asking for less than half of the variance allowed.

Mrs. Earl asked how long they have lived in the home, and Ms. Greve said they have lived there fifteen years. She said that none of the neighbors had any objection to the petition and didn't understand why they had to request the variance in the first place. Ms. Greve added that they had a temporary screened-in area, which eventually fell apart. They want to put in a permanent screened-in area because there are elderly people living in the home, one of whom has Alzheimers, and the permanent sunroom would allow them to enjoy the outside yet prevent them from leaving the premises.

There being no further questions and/or comments from the Board, Chairman White called upon Staff to make its presentation.

**Staff's presentation:**

Mr. Damir Latinovic, Planner for the Village of Downers Grove, said the property at 7804 Williams Street is zoned R-3 Single-family residence. It is a split-level home with a two-car attached garage. The petitioner is seeking a side-yard setback variation to construct a sunroom addition on the south side of the house, which would be 4.4' from the south property line. The required setback is 7.5'. The existing house is 13.4' from the south property line. The proposed sunroom would be 9'x16' with a height of 8'. He described the layout of the rooms inside the house.

Mr. Latinovic said that based upon the standards, there is no unique circumstance warranting granting the variation, as there is sufficient space in the back yard of the house to construct a sun

room which meets all required setbacks. According to the Village's standards, Staff believes that Standards 1, 2, 4, 5, and 9 have not been met. Based upon comparison to other lots in the area, Staff does not believe that there is sufficient reason to grant the variation, as there are no unique circumstances preventing the petitioner from constructing the room on another part of the property. Staff believes allowing the variation would confer a special privilege to the petitioner that is not given to other homeowners in the area. Staff recommends denial of the requested variation; however, Mr. Latinovic stated that if the Board approves the request, they should consider including the condition on Page 4 of Staff's report in their approval.

Mr. Enochs asked about the previous temporary structure, and whether Staff has any concern that another temporary structure that is movable would be constructed as proposed. Mr. Latinovic said that could not be done because the proposed structure is attached to the house and would need a permanent foundation. The petitioner is looking to create a formal sunroom that would blend in on the side of the house. A temporary movable structure does not have to meet setback requirements, as it is not deemed an accessory structure.

In response to Chairman White, Mr. Latinovic said he is not familiar with temporary sunroom structures that can be moved or taken down with the season.

Mr. Benes inquired about the Sunroom Specialists spec sheet provided which refers to five pre-fabricated roof sections. He asked, since this would be permanently attached to the building, whether it meets the Village's Building Codes. Mr. Latinovic replied it would have to meet the Building Code as the petitioner will have to get a building permit.

Mr. O'Brien responded that the Village does allow pre-fabricated structures to be connected to the existing or main building. They would just have to meet the Village's Building Codes.

Mr. Benes said that pre-assembled or pre-fabricated roof panels are relatively new, similar to modular homes and modular units, which are not allowed. He said that now they are suddenly accepting the pre-fabricated part of the roof structure, which to him doesn't seem to follow the Building Code. Mr. O'Brien said it is common to see pre-fabricated panels, or roof structures on commercial properties.

Mr. Isacson asked for clarification of Standard #2 regarding unique circumstances. He asked if the layout of the home on this specific piece of property were to be considered unique, would it then apply to someone else. Mr. Latinovic said variations are given to the property or land, not to the structure. Staff does not look at the existing structure layout or the user of the property when considering the standards. Ultimately the land or property does not need a side yard variance. It would be possible to meet all setbacks if the addition is constructed in the back yard.

Mr. Enochs said that it could then be considered an unfortunate condition of the layout of the home, but not a unique circumstance. Mr. Latinovic said that was correct.

There being no further questions of staff, Chairman White asked anyone who wished to speak either in favor of, or in opposition to the petition, to come forward.

Mr. Donovan Davis of 11308 Glenbrook Circle, said he represents 4-Seasons who are bidding to do the project. In regards to the prefabricated roofs, it is very common to have them in sunrooms. They have been using them for 30 years and they are very strong, meeting all of the

required codes. He said this particular room is a 4-season room, which is a permanent structure that has double-paned insulated glass. He explained that they could put in a 6' addition without a variance and from the outside it would be fine; however, the additional 3' being requested makes a difference from the inside. He noted that the existing patio is already used space, and they intend to use a portion of that space for the sunroom. They are looking for the additional 3' to make the addition more livable and enjoyable. It's not a topographical issue, but it is an issue of being able to access the space realistically from the house. There are elderly people in the home and to have them go downstairs, through the garage, and upstairs again would be inconvenient and tricky for the elderly people.

In response to Chairman White, Mr. Davis said they have R-42 insulation in the roof, which has the aluminum extrusion on the inside with a foam panel. It's a very strong roof.

Richard Klockow of 7808 Williams, neighbor of Ms. Greve, said he saw the photographs and has no objection to the proposal. He agrees that the exit to the back yard on this house could be a problem. He is looking forward to seeing the addition.

Ms. Greve said she knows the house could be modified; however, they would have to open up a wall and build stairs to get back to the ground level. It would be impractical and wasted space. She would be more than happy to turn the house around if she could.

There being no further comments, Chairman White closed the opportunity for further public comment, and opened the discussion to the Board's deliberation.

### **Board Deliberation:**

Chairman White asked the Board's preliminary thoughts on the petition.

Mrs. Earl said she understood the petitioner's situation. There are many split-levels in Downers Grove, and many homes with the same floor plan, and there is nothing unique about this home at all to warrant the request. When the variation stays with the land, she cannot see granting it.

Mr. Isacson said he is sympathetic with the problem. He said that the characteristics are so similar to so many other homes, however, that it could cause a precedent. He understands the problem with the access and wishes they could work around it somehow.

Mr. Benes said that this particular home in the Knottingham area was done by one developer and the Plan Commission reviewed this when the development was built. This design makes it difficult to use the back yard of this home efficiently. Very few homes have this type of problem regarding access. He finds nothing wrong with the variation they are presenting, because they are within the boundaries of the requirements established by the Village's Building Codes. He would rather see them build this than try to find another way to build something inappropriate.

Chairman White said looking at the aerial, the location of the garage is different than the house in the pictures. With the homes shown on the aerial, the others do have access from the living area into the back yard without having to go through the garage and stairwells. The difficulty from a conceptual point of view is that they have to accept the zoning standards. He noted that in the past, exceptions were made based on homes built in a unique way. In some ways, what they decide tonight reflects what they believe the purpose of the Board should be. Should it be a

judicial function where the facts are reviewed, and accepted academic standards of zoning are applied? There's no right or wrong answer to the question. In his opinion, if the problem were presented to a zoning class, the only answer would be to deny. By the strict standards taught in school, it would be to deny. The issue does, however, nicely clarify the philosophical dilemma. All of the neighbors say they are fine with the request, yet the Board is the final arbitrator in this situation.

Mr. Domijan said that this is a dangerous path, and when they have made exceptions in the past it's been done with preference to those properties where there is a front setback or porch atmosphere to foster neighborhood. In this case they are talking about a unit that is separate from the public walkways, and it is enclosed.

Mrs. Earl said it is not as though they cannot build anything. They can build a 6' room.

Mr. Isacson said he wants to grant the request and he is sympathetic with the cause. The Board's responsibility is to interpret whether the request is rational or reasonable. He could be convinced to approve this and would like to find a way to do this

Mr. Enochs said he thinks the layout of the home is a challenge, and he is stuck with the idea of the "uniqueness" of the situation and the home.

Chairman White said his understanding of zoning law is that these are not precedential in the sense that other people can just come in and request the same thing. He noted that the variation would not be for the entire length of the property, but for the footprint of the sunroom. If the house were to be torn down, the variation would run with the land but only for that portion where the sunroom footprint existed.

Mr. Isacson said that one of the things he neglected to see in his initial analysis was the approval of the adjoining neighbor. Many of the homes in the neighborhood have direct access to the back yard through the normal living area. He does support this, but was concerned with the issue of how many more people would be coming in for the same request.

Mrs. Earl said they have setbacks for a good reason.

Mr. Enochs asked about the original setbacks, and Mr. O'Brien said they were five feet.

Chairman White said that the Village chose to enlarge the setbacks for policy reasons. Downers Grove is very diverse in terms of housing. In his opinion, this is a practical matter, and he could see a problem with them being lax in interpreting this in favor of the petitioner. However, the Board, based on his experience, has consciously and deliberately chosen to protect the sense of neighborhood. He is totally sympathetic to the argument, and will probably vote yes. In response to Mr. Enochs, Chairman White said there would be an emotional precedent and a potential precedent, and there's no question there could be a problem caused by their interpretation.

Mrs. Earl said that when they have strayed from setbacks, usually it has been when the request was for a front yard or for interaction with the neighbors. This doesn't meet those criteria.

Mr. Benes asked why she says it doesn't meet the "criteria." Criteria by the 8 or 9 standards is

an opinion, and her opinion might be different from his. He also referred to another comment made by the Chairman, that if this was put before a zoning class they would deny it. Downers Grove was settled more than 175 years ago and has had subdivision upon subdivision upon subdivision since then. There have also been changes since 1965. Prior to 1965 this problem did not exist and if the house was built before then they would not have to ask for a variation. The Code allows that variation abilities have to be provided to homeowners. This is what the petitioner is asking for.

Mrs. Earl said that she agrees with him; however, in this situation she does not see a unique circumstance. She is seriously concerned about setting a precedent.

Mr. Benes said he can see the point of the petitioner having a problem with having to go up and down stairs and through the garage to get to the yard. He asked Mrs. Earl in her four years on the Board how many times she has seen something come up a second time because of a variation granted the first time. That has never happened.

Mrs. Earl responded that when she joined the Board they were hearing four cases a night. They have not had a meeting in six months because they have set precedents. The Board let it be known that they would judge the request on nine standards. She cannot be sitting there and be swayed by emotion. This is not one of the cases where she can be swayed. The 6' room is not ideal for them; however, it is doable.

Chairman White asked if anyone feels they have not expressed their perspective on this issue.

Mr. Domijan said there is merit to both sides of the argument.

Chairman White said he has heard comments that the Zoning Board of Appeals is being too lax in some cases.

Mrs. Earl commented that she understood Mr. Benes' comments about not wanting to see homes in older areas become teardowns in the Village; however, she does not think that is the case for this particular subdivision. It is a newer subdivision, 45 years old.

Chairman White said that before moving to Downers Grove he was on the Zoning Board of Appeals in Woodridge where it was impossible to get a variation approved because they had extraordinarily strict standards. The Village of Downers Grove established its Zoning Board of Appeals based on what it wanted to see done. The question is whether objective standards have been met.

Mr. Isacson said he is glad they had this discussion because he's moved back and forth on the issue, which is the reason the discussion is worthwhile. He said if the Board is thought to be too lax, he is willing to accept that.

Mr. Domijan said he believes the Board has been very strict with the Sign Ordinance.

Chairman White said he doesn't necessarily agree with the comment regarding the Board becoming lax in its decisions. It's more than just this one case. The question is whether the Board is being even-handed for all the neighborhoods in the community.

There being no further comment Chairman White called for a motion.

**Mr. Benes moved that in case ZBA-01-11, the Zoning Board of Appeals grant the petition for a variation as presented, subject to the following condition as stated in Staff's report dated April 27, 2011.**

- 1. The proposed sunroom addition shall substantially conform to the plans and specifications attached to staff report dated April 27, 2011 except as such drawings may be changed to conform to Village codes, ordinances, and policies.**

**Mr. Isacson seconded the Motion.**

**AYES: Mr. Benes, Mr. Isacson, Mr. Enochs, Ch. White**

**NAYS: Mr. Domijan, Ms. Earl**

**The Motion to grant the petition carried 4:2.**



Mr. O'Brien said there are no items for the May meeting as of yet.

Chairman White noted that there has been no workshop for this Board with the Village Council for many years. This is an independent Board that is not reviewed by Council. He recommended that the Board meet with the Council Liaison and Village Attorney to obtain guidance, or a comfort level. With the two "Nays" tonight, he wants to be very clear as to the direction they should be heading. He wants to know that they are going in the direction that Council wants. It should also be a public meeting. He noted that he hasn't received any feedback in several years and thinks it would be prudent to have a workshop.

Mr. O'Brien said he would look into Chairman White's recommendation and discuss it with the Village Manager.

Mr. O'Brien said that the Plan Commission should be making a recommendation on Monday concerning the Comprehensive Plan. It will then go to the Council for its review.

There being no further business, Chairman White adjourned the meeting at 8:26 PM.

Respectfully submitted,

Tonie Harrington  
Recording Secretary

VILLAGE OF DOWNERS GROVE  
ZONING BOARD OF APPEALS  
JULY 27, 2011 MINUTES

**Call to Order**

Chairman White called the meeting to order at 7:30 PM.

**Roll Call**

Present: Mr. Benes, Mr. Domijan, Ms. Earl, Mr. Isacson, Chairman White

Absent: Mr. Enochs, Ms. Majauskas

A quorum was established.

Staff: Stan Popovich, Jeff O'Brien

Also present:

Brad Gerace & Paul Gerace, Primo/J.W. Skutnik, Inc.,

780 W. Army Trail Road, Carol Stream, IL

Paul & Patti Henning, 5131 Belden Ave., Downers Grove, IL

**Minutes of April 27, 2010**

**Mr. Benes moved to approve the minutes of the April 27, 2010 Zoning Board of Appeals meeting as presented. Mr. Domijan seconded the Motion.**

**AYES: Mr. Benes, Mr. Domijan, Mr. Isacson, Ms. Earl, Ch. White**

**NAYS: None**

**The Motion passed unanimously.**

**Meeting Procedures**

Chairman White explained the function of the Zoning Board of Appeals, and reviewed the procedures to be followed during the public hearing, verifying with Staff that all proper notices have been published. He then called upon anyone intending to speak before the Board on the Agenda item to rise and be sworn in, as the public information portion of the meeting is an evidentiary hearing. Chairman White explained that there are seven members on the Zoning Board of Appeals, and for a requested variation to be approved there must be a majority of four votes in favor of approval. He added that the Zoning Board of Appeals has authority to grant petitions, without further recommendation to the Village Council.

.....

**ZBA-02-11 A petition seeking a front yard setback variation for the property located on the east side of Belden Avenue approximately 160 feet north of Maple Avenue, commonly known as 5131 Belden Avenue, Downers Gove, IL 60515 (PIN 09-08-308-006). Brad Gerace, Primo/J.W. Skutnik Inc., Petitioner; Paul and Patti Henning, Owners.**



**Petitioner's presentation:**

Mr. Brad Gerace of J.W. Skutnik, Inc., Carol Stream, Illinois stated that the Henning's came to his company when they purchased their home to consider a reconstruction of the existing screened-in porch that was in disrepair and not on a foundation. Mr. Gerace said they also noted that the front stoop was sagging significantly and would also be considered as part of the construction. He then displayed the design under consideration for the porch. Their goal was to provide continuity with the actual structure.

Mr. Gerace noted that under the Village's Zoning Ordinance, Section 28.1201 the petitioner may remove the existing screened porch structure, provide adequate support and rebuild it under the same guidelines. Their design for the porch addition meets the requirements. The front stoop and stairs may be removed and rebuilt according to the same Ordinance; however, they wanted continuity and are therefore seeking to extend the porch, which would require a setback variation.

Mr. Gerace used the design slides to show the existing structure and the proposed structure. Their intent is to extend the existing porch area to incorporate the front stoop, stairs and entrance to the home. The new porch will be an open porch, rather than screened in.

Mr. Benes asked what the reason for the petition was, and Mr. Gerace said they are requesting a front yard setback to allow for the extended stoop and staircase and reducing the front yard setback from 20 feet to 13.57 feet.

Ms. Earl asked if the screened in porch would be removed, or remain a screened in porch. Mr. Gerace replied that the new porch would be entirely open.

Chairman White asked whether the existing screen porch has HVAC and Mr. Gerace replied that it does not. The original owners built the porch. There is electrical on the exterior wall of the existing home, and there is heat as well. They will remove the electrical component from the screened area.

Ms. Earl inquired as to the age of the home. Mr. Gerace responded that it was originally built in 1910, and is currently owner-occupied.

There being no further questions and/or comments from the Board, Chairman White called upon Staff to make its presentation.

**Staff's presentation:**

Mr. Stan Popovich, Planner with the Village of Downers Grove, explained the petition before the Board, noting that the property is located in an R-4 Single Family Residential zoning district and is improved with an existing single-family home and a detached garage. The petitioner is seeking approval to remove the existing three-season porch and replace it with an open design porch that will extend to the north to incorporate the front steps and portico. The proposed 18-

foot northern extension of the front porch would replace the existing steps, stoop and portico, thereby increasing the non-conforming front yard setback. The Zoning Ordinance requires a 25-foot front building setback and a 20-foot open front porch setback. The Zoning Ordinance allows the replacement of the three-season porch in the same location; however, the proposed expansion of the porch would result in an expansion of an existing non-conformity, which is not allowed. The existing steps, stoop and portico could be replaced in the same location under the Ordinance.

Mr. Popovich stated that staff finds no unique circumstances, physical hardship or practical difficulty associated with the property that would warrant granting the requesting variation. The proposed porch represents a horizontal expansion of a legal nonconforming structure's footprint, which has not historically been permitted within the required setback. If the variation was approved by the Board, it could be construed as being applicable to all non-conforming structures in the Village that have no unique circumstance of physical hardship. Therefore, Staff recommends denial of the requested variation.

Mr. Popovich then reviewed the standards for granting variations, as shown on pages 3 and 4 of staff's report. Staff believes that standards 1-6, and standard 9 have not been met. Standards 6, 7 and 8 have been met. Mr. Popovich noted if the Board chooses to grant the requested variation that they include the condition shown on page 4 of staff's afore-mentioned report.

Mr. Domijan noted that the portico and front stoop could be replaced as is, and asked if the front stoop conforms to the new size for stoops. Mr. Popovich said it does conform. The Zoning Ordinance allows encroachment into required yards if the steps are no higher than four feet. Mr. Domijan asked if the existing portico was setback further from the front property line than the three-season room. Mr. Popovich referred to the plat which shows the portico is not as close to the front property line as the three-season room.

Ms. Earl said she measured the site and the three-season room and portico are about even and the portico does not extend out further than the three-season room.

There being no further questions of staff, Chairman White asked anyone who wished to speak either in favor of, or in opposition to the petition, to come forward. There were no responses.

Mr. Gerace then referred to the Zoning Ordinance 28.1201, Section 3 that states that a legal non-conforming structure may be reconstructed . . . as long as the existing non-conformity is not increased. He said the Hennings purchased the home for a decent yield. He added that when they met to discuss the construction, they considered the term "degree of non-conformity" to mean that it would not be closer to Belden Avenue. In their initial discussions during the purchasing stage, they discussed extending the porch straight out, and not closer to Belden Avenue.

Chairman White asked whether they have spoken with any of the neighbors regarding this proposed change.

Mr. Gerace responded that while working on the siding on the house, he did speak with

neighbors and they only asked whether it has been approved yet. The neighbors are aware of the proposed porch and the hearing before the Board.

Mr. Popovich said Staff received a few phone calls from neighbors in the condominiums across the street merely inquiring about the hearing. Staff received no complaints.

There being no further comments, Chairman White closed the opportunity for further public comment, and opened the discussion to the Board's deliberation.

**Board Deliberation:**

Chairman White asked the Board's preliminary thoughts on the petition.

Ms. Earl said this is a very old house, but the lot is situated strangely. She noted that the owners want to replace an existing closed-in area with a larger open area, and she thinks that is a good trade off. It is not a living space, but is an open space. She favors this request.

Mr. Isacson said this is an older house and the owners are seeking a way to preserve the house rather than remove it. He said that Mr. Gerace's final comment that they were looking to extend the porch, but not bring it further forward. Mr. Isacson said that is a good point. He added that he believes they are removing a portion that looks more like part of the house rather than a porch. If the intent of the Ordinance is to allow porches closer to the street, the proposal for extending the porch accomplishes that.

Mr. Domijan said he is struggling with this because the existing portico is the key. The addition was built some time ago and is non-conforming. They have an opportunity to go in the direction that the code specify, and if they reduce the width of the proposed porch from 5'-7" to 4', the porch is still functional. Fixing the façade is a great step for this property. With the decreased size, the whole thing would work. He would want to maintain the existing portico setback line.

Mr. Isacson questioned how the decrease would be comfortable. He did not think the Village would approve extension of the porch area. Rebuilding the portico and sun porch would have to be exactly on the same footing. Mr. Domijan responded that by backing the porch up, they would be moving closer to compliance.

Chairman White asked for clarification of the discussion, saying that the petitioner asked for a 13.57' setback. He asked Mr. Domijan what figure would he consider appropriate, and Mr. Domijan responded that if it was less than 5'-7" he could agree.

Mr. Benes said the three-season room was probably built before the Code was established and is legal non-conforming.

Mr. Domijan said they are only six feet short of the required 25'.

Mr. Benes said they are talking about several different things. The petitioner's solution is to request the 13.57' setback across the whole front of the building for uniformity, with no break.

He thinks Mr. Domijan is stating that should have a break along that front line.

Mr. Domijan responded that he was not saying they should have a break. He said that the façade with the change is an improvement for the property; however, he questions whether they have to expand or continue the legally non-conforming rating of the structure. They can get the same façade or any façade. He believes the existing portico line should have been considered as opposed to using the three-season room. He understands the motivation; however, they are looking toward expanding a legal non-conformity.

Mr. Benes said that this variation allows it to be conforming. Ms. Earl also said it would considerably open up the area.

Mr. Isacson said the proposal would open up the area of the existing three-season room, giving the appearance of openness to improve the appearance.

Mr. Domijan agreed; however, he said he did not think they must use the legal non-conforming footprint to its maximum encroachment to Belden Avenue. He doesn't dispute that this is an improvement.

Chairman White said he saw parallels with this and a house on Chicago that was approved for a breezeway through a variation. He noticed later that the whole house had been remodeled. This is a variation on the 20-foot porch setback, not the 25-foot house setback. He noted that the porch would be on a foundation. On the basic issue, he doesn't have a problem with this because they are trading "house area" for an open porch.

Mr. Domijan said that this property has the closest structure to Belden Avenue of any of the houses on the street.

Ms. Earl said that once the sun porch is removed, it will affect the square footage of the house, which adds up to dollars lost.

Mr. Domijan said the Board has the choice or option to look at alternatives to the requested variation.

Chairman White asked if the Board members felt they had an opportunity to express their feelings regarding this petition.

There being no further comment Chairman White called for a motion.

**Mr. Benes moved that in case ZBA-02-11, 5131 Belden Avenue, the Zoning Board of Appeals grant the petition for a variation as requested, subject to the plans and drawings presented and the condition stated on page 4 of staff's report dated July 27, 2011. Ms. Earl seconded the Motion.**

Chairman White clarified that this is an exception to the 20-foot open porch setback line, and not the 25-foot building setback line.

**AYES: Mr. Benes, Ms. Earl, Mr. Isacson, Ch. White**

**NAYS: Mr. Domijan**

**The Motion to grant the petition carried 4:1.**

.....

Mr. O'Brien said that the Village Council will continue its meetings on the Comprehensive Plan on August 16<sup>th</sup>.

Mr. O'Brien added that there is still one opening for the Illinois Planning Association training session in October, being held in Evanston. The deadline is Friday and the Village will assume the fee.

There being no further business, Chairman White adjourned the meeting by voice vote at 8:13 PM.

Respectfully submitted,

Tonie Harrington  
Recording Secretary

**VILLAGE OF DOWNERS GROVE  
ZONING BOARD OF APPEALS  
AUGUST 24, 2011 MINUTES**

**Call to Order**

Chairman White called the meeting to order at 7:35 PM.

**Roll Call**

**Present:** Ms. Earl, Mr. Enochs, Mr. Isacson, Ms. Majauskas,  
Ch. White

**Absent:** Mr. Benes, Mr. Domijan,

A quorum was established.

**Staff:** Damir Latinovic, Planner; Jeff O'Brien, Planning Manager

**Also present:**

Doug and Joann Purcell, 4836 Saratoga Ave.

Ron Sandack, 4833 Linscott Ave.

Brian Dietrich, 4832 Saratoga Ave.

**Minutes of July 27, 2010**

**Mr. Isacson moved to approve the minutes of the July 27, 2010 Zoning Board of Appeals meeting as presented. Ms. Earl seconded the Motion.**

**AYES:** Mr. Isacson, Ms. Earl, Mr. Enochs, Ch. White

**NAYS:** None

**ABSTAIN:** Ms. Majauskas

**The Motion passed 4:0:1.**

**Meeting Procedures**

Chairman White explained the function of the Zoning Board of Appeals, and reviewed the procedures to be followed during the public hearing, verifying with Staff that all proper notices have been published. He then called upon anyone intending to speak before the Board on the Agenda item to rise and be sworn in, as the public information portion of the meeting is an evidentiary hearing. Chairman White explained that there are seven members on the Zoning Board of Appeals, and for a requested variation to be approved there must be a majority of four votes in favor of approval. He added that the Zoning Board of Appeals has authority to grant petitions, without further recommendation to the Village Council.

.....

**ZBA-03-11** A petition seeking rear and side yard setback variations for a detached garage for the property located at the northwest corner of Saratoga Avenue and Franklin Street, commonly known as 4836 Saratoga Avenue, Downers Grove, IL 60515 (PIN 09-07-213-015), Doug and Joann Purcell, Petitioners /Owners.

**Petitioner's presentation:**

Mr. Doug Purcell resides with his wife and co-petitioner, Joann Purcell, at 4836 Saratoga Avenue. Mr. Purcell distributed copies of their property survey and explained that they are requesting variations to allow a detached garage to be 2'-6" from the side and rear property lines. He noted that their property slopes from the house to the garage, and if they were to comply with the Zoning Ordinance regulations they would have to move the driveway 4.5' toward the house. Moving the driveway would result in a 1-1/2-foot drop-off from the yard to the driveway and would also require constructing a retaining wall. It would also be about 1-1/2' from an existing tree and about 1-1/2' below the base of the tree. The tree would not survive, and is the only tree in the back yard. It is a mature 4' diameter tree. Also, moving the driveway and garage over 5' would create an extremely small back yard. The garage presently is 6" from the rear property line. Moving it to meet the regulations would decrease the size of the back yard and would affect the property value. He cannot park in front of or on the side of his house because the property is in Prince Pond area, which has a no parking restriction.

Mr. Purcell said that they believe they have a hardship in that the children would not have a bigger back yard, they would have to remove the tree, and have to step down to the driveway, and that diminishes their property use and value. As to unique circumstances, Mr. Purcell said that the slope of the property is a unique condition, and they cannot go around the existing tree. He reviewed the other standards of the Ordinance, saying their request would not alter the essential character of the locality. Because they are in the downtown area and particularly Prince Pond neighborhood, they have smaller lots than other corner properties. The topography of the property also prevents them from meeting the requirements. Mr. Purcell said that they believe the conditions for the variation, if granted, would not be applicable to other properties again because of the specific slope of their property. The variation also would not provide a special privilege to the owners of the property due to the grade drop off.

Mr. Purcell said if they received the variances, it would help the drainage of the area. In addition, there are several garages in the area that do not conform. Building a new garage would increase the property value as well as the aesthetic appearance to the neighborhood. They have proposed to build the smallest garage they can build with the variance.

Ms. Majauskas asked if the south facade side of the garage will be substantially in the same spot. Mr. Purcell responded that the door side faces the street and will be moved up about one foot or a foot and a half. That is as far as they can move it because of the grading issue.

Mr. Isacson asked the difference in dimensions between the existing and proposed garages. Mr. Purcell said the existing garage has the door in the middle and is a standard two-car garage. He said he intends to rebuild it with a 22' x 22' garage, adding about 1.5' to the size.

Mr. Enochs inquired as to the existing setback and why they are going closer to the lot line on the north side. Mr. Purcell said he does not have to go closer to the lot line, and can make it work if that variance for side setback is not approved. He does not plan to go the full amount that would be allowable. The main concern is to the west boundary. If he goes more than 2-1/2' from the west property line it creates the problem with the tree and the drop-off.

Ms. Majauskas asked if they are worried about the tree if the variation is granted. Mr. Purcell said they are not worried because the driveway will remain in the same location. The variation will place the garage only slightly closer to the tree.

Mr. Enochs asked if they have looked into an exception of rebuilding the garage where it currently stands. Mr. Latinovic responded that they could reconstruct an existing nonconforming structure provided that reconstruction does not exceed 50% of the current value of the structure. But if the garage is demolished completely, the new one can only be rebuilt up to current code which meets meeting the current setbacks of five feet.

Mr. Enochs said that Mr. Purcell's letter noted that several new garages in the area had been given a 2.5' variance, and asked for data on that. Mr. Purcell responded that one was just granted on Saratoga and Prairie, and the Sandack garage is also 2.5' from the lot line.

There being no further questions and/or comments from the Board, Chairman White called upon staff to make its presentation.

**Staff's presentation:**

Mr. Damir Latinovic, explained the petition before the Board, noting that the property is located in an R-4 Single Family Residential zoning district, on the northwest corner of Saratoga Avenue and Franklin Street. The lot is 50'x 132' and has a single-family residence with a detached two-car garage. The petitioner is requesting side and rear yard setback variations for a new detached garage. The proposed setback is 2.5' from both the side and rear property lines. He said that the existing garage is located 3.45 feet from the north property line and 0.3 feet from the west property line. The existing garage is located 26 feet from the south property line, and the proposed garage would be located 25.5 feet from the south property line along Franklin Street. If the existing garage were to be improved to more than 50% of its current value, it would have to comply with all zoning requirements.

Mr. Latinovic said the petitioner would like not to have to move the driveway due to the grade change of the property. He indicated there was a possibility of having to remove the existing tree in the rear yard. Staff believes there is no unique circumstance with the property that warrants granting the request. There is no physical hardship or practical difficulty associated with the petition to require the garage to be placed in the proposed location. Staff does not believe the presence of a mature tree creates a hardship. In addition, staff believes the petitioner has the ability to construct a detached garage that can meet the setback requirements. Mr. Latinovic continued that if the requested variation was to be approved by the Zoning Board, it could be construed to be applicable to all residential lots in the Village where no unique circumstance or physical hardship exists, and therefore, staff recommends denial of the request.

Mr. Latinovic then reviewed the Standards for Granting Variations, stating that staff believes standards 1, 2, 4, 5 and 9 have not been met. He reviewed staff's analysis of the standards as shown on pages 3 and 4 of staff's report dated August 24, 2011. Standards 6, 7 and 8 have been met. Mr. Latinovic asked, if the Board chooses to grant the requested variations, that they include the condition shown on page 4 of staff's report.

Ms. Majauskas asked if staff is in agreement with the drainage issue, namely that it would cause more problems if the garage is moved over 5' versus 2.5'. Mr. Latinovic said that drainage is the



primary reason for requiring a 5-foot setback. He noted that it is up to the owner to demonstrate that the 2.5' setback would be enough to create a swale that would not negatively affect adjacent properties prior to issuance of a building permit.

Ms. Majauskas said she is referring to the side where the tree is located. She asked if the Village agrees that the step down will cause other drainage issues. Mr. Latinovic said ultimately the difference would be how the water moves along the retaining wall.

Ms. Majauskas asked for confirmation that staff agrees there should be a retaining wall. Mr. Latinovic responded that staff has not seen a grading plan for the property, but it is likely that some type of small retaining wall or a higher curb may be required.

Mr. Isacson said it makes sense to him that if the existing structure is 6" from the west line with no drainage problems, moving it 2' further east would make the water runoff situation better.

Mr. Enochs said the issue of unique circumstances always seems to come up. He is concerned about the comment that others have mature trees and have to design around them. He asked if staff sees an alternative for designing around this mature tree. Mr. Latinovic said staff has not recommended specific designs to the applicant. He indicated that, staff typically does not consider trees as a unique circumstance or a physical hardship.

Chairman White commented that it is his understanding that following a text book example of what a physical hardship is, a tree is not considered one. That's how staff analyzes it and how it should analyze and evaluate the request. He completely understands that point of view. However, the Board has in the past viewed presence of mature trees as a unique condition.

Chairman White questioned how many garage variations like this one have been granted since the Zoning Ordinance was modified. He recalled that the Board may have become more strict on these types of requests. Mr. O'Brien said there have been less than 5 since the Ordinance changes were made. Mr. Latinovic said that the revised regulations were adopted in September of 2006.

There being no further questions of staff, Chairman White asked anyone who wished to speak either in favor of, or in opposition to the petition, to come forward.

Mr. Ron Sandack, residing at 4833 Linscott Avenue, showed the location of his property in relation to the subject property on the overhead projection. He noted that the lots in their neighborhood are such that you can almost touch each other's garages. He said that his garage variance occurred in 2007, after the Zoning Ordinance was changed, and that they received a 50% variation basically permitting them to rebuild their garage in its existing footprint. Mr. Purcell is not asking for that, but is asking to move it a few feet in, which will not totally restrict their side yard. The concept of practical hardships is not one of science. If you could build a new house on that lot you would definitely configure it differently, probably with an attached garage. The question is practical hardships. If they move the garage and are 100% compliant, the tree is gone, or the garage is up against the tree and the tree house is gone. The small remaining portion of property between the house and garage is also gone. When staff says it is not a hardship, they are technically correct. Mr. Sandack said the question is, under these circumstances, whether the hardship is a practical one or an impossible one. It is a situation in which the Board is required to make a judgment call. The Purcells will be pinched on the value

of the property if they are forced to meet the requirements. It will create a stormwater issue if they have to meet the setback requirements. There is no issue now, but there may be one if they have to be 100% compliant. He referred to Mr. Purcell's comments regarding parking in the area, saying that essentially being 100% compliant renders his property far more difficult in respect to its use—the expected use any resident, real estate owner would want—such as pulling their car up next to their house to remove groceries, etc. There is a tree house in their mature tree.

In his previous position, Mr. Sandack said he has been in situations where residents insist that touching a tree on private property ought to be the province of the Village of Downers Grove. But consistency ought to be applicable in connection to that argument. Anyone living in that section of town knows that one of Downers Grove's unique aspects is its trees. If the garage is moved, the tree is gone. He thinks that would be a bad outcome. He said they could probably put a one-car garage on that property, but that goes to diminishing property value. While there are ways for them to be in 100% compliance, he believes it is impractical, and restricts the use of their property. He has heard it said that something like this can open up a whole issue of precedence. That is not the case. Mr. Sandack commented that this Board makes its decision on a case-by-case basis. There is nothing in this petition that will stamp forevermore that every corner lot now gets a 50% variance per se. The facts of each case need to be analyzed by the Board. This is a unique situation, and the neighbors around the area all know there are stormwater issues, and small lots. The whole concept of a variation is that there are chances to be other than in strict compliance with the rules. He suggested that all of the criteria Mr. Purcell has put before the Board does meet the requirements. He understands and respects staff's position because they are doing what they are supposed to do. However, in this situation Mr. Sandack believes the criteria have been met and hopes the Board sees it that way too.

Mr. Brian Dietrich, 4832 Saratoga said they also have a mature tree on their property line and if the garage gets moved over five feet there's a chance that both trees will be lost. Secondly, if the garage is moved over five feet, his family will lose their view of Prince Pond from their patio.

Mr. Purcell then submitted a letter to the Board from his neighbor to the west who favors the requested variation. Regarding the tree being unique, Mr. Purcell said this particular tree is significant because it is large and the only one in their yard. He had not even considered the question regarding the water issue if the garage is moved over, and he sees that has to be considered as well.

Chairman White asked what hardship there would be in moving the garage toward the north lot line.

Mr. Purcell said he can live with the existing 3.5'; however, he would prefer to move it to 2.5'. Moving it to 5' would present a problem with the parking issue and the slope of the driveway. He had hoped not to have to replace the entire driveway.

There being no further comments, Chairman White closed the opportunity for further public comment, and opened the discussion to the Board's deliberation.

### **Board Deliberation:**

Chairman White asked the Board's preliminary thoughts on the petition.

Ms. Majauskas said in general she is in favor of both of the variances. If they are looking for a unique circumstance, she commented that the statement by the neighbor that he lose his view of Prince Pond could be thought of as a unique situation, and one that she has not heard before. The one issue she has is that they have a petitioner who says they have a large tree, etc. She does not understand the argument that 2.5' will not hurt the tree but 5' will.

Ms. Earl said she could go with the 2.5' from the rear yard setback. She is having a difficult time going any closer on the north side when they already have 3.5' there. She has a problem with moving closer to that lot line. As for talking about trees on the record, an arborist study might have helped that case if it were truly that important.

Mr. Enochs said he drove by the house and was struck by no other practical way to build a garage on the site. He said the Board members have the responsibility to determine if there is a unique circumstance, and he thinks it is unique. He then agreed on the issue of the setbacks. The question is whether they grant all or nothing, or can they grant 2.5' on one side and 3.5' on another. Chairman White said they can split it, and Mr. Latinovic agreed.

Mr. Isacson commented with regard to the rear setback, that if you come further south from the north lot line then you start pinching the amount of space between the new garage door and the sidewalk, as well as the slope from north to south. As far as moving it closer to the tree, he would have to think that the drip line is less impacted at 2.5' versus 5'.

Ms. Earl said no matter what they do, the tree is going to be majorly affected by any construction.

Ms. Majauskas said the 2.5' doesn't bother her that much. The yard size being small, it makes more sense given the lot size to move the garage further in the corner. However, the extra 1.5' goes to the increased size of the garage from 20' to 22'.

Chairman White said he would fully support the variation from the west property line. He thinks there would be a significant impact on the reasonable return of the house. He believes they could not build a viable two-car garage, and they have a small lot. This neighborhood is different than many other neighborhoods. They could push the garages into the corners, but he doesn't think that is necessarily a solution. Different parts of Downers Grove have different setbacks and larger lots. Other towns might examine this situation in a different manner. Without the evidence of the short parking, there would be no hardship. Part of his concern is that in the process they are increasing the garage by 1.5', and basically, a two-car garage is necessary for a reasonable return. The basis for the variation for the north lot line is less compelling. The reality about larger cars fitting on the driveway is a question as well. He would agree that a 22' x 22' garage is standard.

**Mr. Isacson made a motion that the ZBA grant the requested variation associated with case ZBA-03-11 as presented with the following condition:**

1. The proposed garage shall substantially conform to the plans and specifications attached to the Staff report, dated August 24, 2011 except as such plans may be changed to conform to Village codes, ordinances, and policies.

**Mr. Enochs seconded the Motion.**

**AYES: Mr. Isacson, Mr. Enochs, Ms. Majauskas, Ch. White**

**NAYS; Ms. Earl**

Chairman White noted that Ms. Earl would approve the west variation but not the north.

**The Motion passed 4:1.**



Mr. O'Brien said he did not believe they would have any petitions before the September meeting

There being no further business, Chairman White adjourned the meeting by voice vote at 8:35 PM.

Respectfully submitted,

Tonie Harrington  
Recording Secretary

**APPROVED 1/25/12**

**VILLAGE OF DOWNERS GROVE  
ZONING BOARD OF APPEALS  
OCTOBER 26, 2011 MINUTES**

**Call to Order**

Chairman White called the meeting to order at 7:30 PM.

**Roll Call**

**Present:** Ms. Earl, Mr. Isacson, Ms. Majauskas, Ms. Souter, Ch. White

**Absent:** Mr. Domijan, Mr. Enochs

**A quorum was established.**

**Staff:** Damir Latinovic, Planner  
Tom Dabareiner, Director, Community Development

**Also present:**

**Richard Grant, Atlantic Homes  
Scott Schreiner, Designtek Engineering  
Andrea Crowley, Griffin & Gallagher  
Bestie Perine, BNP Builders  
Kevin Clinnin, 1742 Brian Grant Court  
L. Hubbard, 1746 Brian Grant Court  
Suzanne & Eric Shover, 6120 Springside Ave  
Boon & Shirley Moy-Lee, 1773 Boundary Court  
Raymond Ponstein, 5736 Fairmount Ave.  
William Ponstein, 6012 Hillcrest Ct.  
William Ponstein, 1786 Boundary Ct.  
Leonard Buzucky, 1792 Boundary Ct.**

**Minutes of August 24, 2010**

**Ms. Earl moved to approve the minutes of the August 24, 2010 Zoning Board of Appeals meeting as presented. Mr. Isacson seconded the Motion.**

**AYES:** Ms. Earl, Mr. Isacson, Ms. Majauskas, Ch. White

**NAYS:** None

**ABSTAIN:** Ms. Souter

**The Motion passed 4:0:1.**

**Meeting Procedures**

Chairman White explained the function of the Zoning Board of Appeals, and reviewed the procedures to be followed during the public hearing, verifying with Staff that all proper notices have been published. He then called upon anyone intending to speak before the Board on the Agenda item to rise and be sworn in, as the public information portion of the meeting is an evidentiary hearing. Chairman White explained that there are seven members on the Zoning Board of Appeals all of whom have had the opportunity to review the documents for the petition prior to the meeting. In order for a requested variation to be approved there must be a majority

**APPROVED 1/25/12**

of four votes in favor of approval. He added that the Zoning Board of Appeals has authority to grant petitions without further recommendation being made to the Village Council.

.....

**ZBA-04-11 A petition seeking a rear yard setback variation for the property located at the bulb of Brian Grant Court cul-de-sac, approximately 285 feet west of Saratoga Avenue, commonly known as 1736 Brian Grant Court, Downers Grove, IL 60516 (PIN 09-[18-308-043), Griffin & Gallagher, LLC, Andrea T. Crowley, Petitioners; Atlantic Homes, Inc., Owners.**

**Petitioner’s presentation:**

Ms. Andrea Crowley, attorney for Atlantic Homes, explained that the requested variance is the result of the configuration of this lot compared to the other lots on the cul-de-sac. When the lot was created in 2006, no attention was paid to the lot lines that existed on the site. She explained that there were wetlands located south of the cul-de-sac, and Lot 7, upon which the house is to be built, has virtually no back yard area, as compared to Lot 6. Although the lot is buildable, essentially the proposed house would have to be placed on the lot in such a way that there would be no back yard, and the house would look as though it had been tucked onto a corner of the lot. Ms. Crowley said that they are requesting the variation to place the proposed home in greater conformity with the other lots in the cul-de-sac. The uniqueness of the situation is caused by the configuration of the road and how it impacts what would technically be the rear yard and the side yard of this lot. The variance would allow a more practical placement on the property. In addition, if the variance is not granted it will greatly diminish the value of the property. The Lot, without the variance, will have no back yard and will back onto an open field in the front and will diminish the other homes in the subdivision. She said the variation makes common sense, and the setback that they are requesting is the exact setback as the lot adjacent to the subject property. Ms. Crowley indicated that they hoped the Board would see the necessity of granting the variation. She noted that the builder and other representatives of the petition were present to answer questions.

Ms. Majauskas asked Ms. Crowley who developed the subdivision, and she replied that it was developed by Atlantic Homes. In further response to Ms. Majauskas, Ms. Crowley said the lot configuration was decided in order to address the issue of preserving the wetlands across the street. The Village requested preservation of the wetlands. The Street was arched in such a way as to avoid the wetlands, instead of their original plan, which was to remove a portion of the wetlands. When the subdivision was created in 2006 there were no residences on the lots, and the developer did not anticipate the types of homes that would be built on the lots. The objective was to obtain approval of the subdivision for that site.

Ms. Souter noted that in the Board’s packet it states that the applicant was the original developer of the site and was aware of Staff’s interpretation of the rear lot line. She asked for clarification that the developer knew about the lot line at the time the subdivision was created. Ms. Crowley replied that while they knew the configuration of the lot, there was no specific home anticipated for that specific lot at that time.

Ms. Majauskas commented that she would have thought the architect at the time would have

## **APPROVED 1/25/12**

created the lot in such a way that a home could be placed on it without a variation. Ms. Crowley responded that at the time, they did not know what type of home would be marketable and would be built on the other lots in the subdivision. The home currently planned for Lot 7 would be comparable to the other homes in the subdivision. In further response, Ms. Crowley said that when the subdivision was planned, they did not anticipate the size of the houses that would be preferred at this point in time. If a house is placed on Lot 7 that fits on the lot as configured, it will not be consistent with the other homes in the subdivision. They can build a much smaller house on the lot, but it would not be consistent with the neighborhood.

Ms. Majauskas said she did not follow the applicant's logic that if they reconfigure the house on the lot it will be too close to the neighbors. Ms. Crowley replied that it is not a matter of the house being too close to the neighbors, but that the house would have to be placed in such a way that would eliminate any back yard without the variation.

Ms. Crowley said their reasons for requesting the variation include the lopsided placement of the house, which will cause it not to conform to the other houses, the fact that without the variation they will lose the back yard, and the consistency of the subdivision. She added that they believe this lot has a unique situation because of the existence of the wetlands across the street. It is their experience that people who purchase in a subdivision are looking for uniformity and the aesthetic appearance of the subdivision. Building a house on this lot without a variance would be out of character with the rest of the subdivision.

Ms. Majauskas asked for clarification again as to whether it is the back yard or the side yard that would be the problem. Ms. Crowley said if the house is moved back to the regular setback line it will appear to have only an open field in front of it. They reviewed the plans to determine where the rear and side yards are located.

Chairman White made reference to Exhibits A & B, saying it looks as though the same basic 4700 square foot house could be built and placed in the corner. He said the north lot line for 1738 is the side lot line; however for 1736 the north line is the rear lot line. He said that if the house were made somewhat smaller than the 4700 square feet it could be placed on the lot.

In an effort to clarify some of the questions being raised, Chairman White asked Staff to make its presentation at this point.

### **Staff's presentation:**

Damir Latinovic stated that the property commonly known as 1736 Brian Grant Court is located at the bulb of Brian Grant Court cul-de-sac, approximately 285 feet west of Springside Avenue, and is zoned R-3 single-family residential. The property is currently vacant. Mr. Latinovic explained that the petitioner is requesting a rear yard setback variation to construct a new single-family home ten feet from the rear property line, where 20 feet is required under Section 28.1112 of the Zoning Ordinance.

Mr. Latinovic noted that the property is part of the Brian Grant Court subdivision that was approved on April 4, 2006. The subject lot was approved with an exception for 107-foot lot depth to the rear (north) property line where typically the Subdivision Ordinance requires 140 feet. He said that the two curvilinear front lot lines are a result of the road curvature, which exists to avoid the wetlands located south of the cul-de-sac. The north property line of 1736

## **APPROVED 1/25/12**

Brian Grant Court is considered the rear property line, as it is the most parallel and distant to the front lot lines. He went on to say that the west, east and south property lines are considered side lot lines. Mr. Latinovic described the lot as having a lot width of 190 feet, resulting in a 19-foot side yard setback, or 10% of the lot width measured from the west, east and south side property lines as shown on Exhibit A. He said that the proposed house would be 30.03 feet from the front property line and would meet all other bulk requirements of the Zoning Ordinance.

Chairman White asked Staff to explain how the front and rear lot lines are calculated for 1738 Brian Grant Court. Using the overhead plans for the site, Mr. Latinovic explained how side and rear lot lines are configured based on their relationship to the front lot lines.

Chairman White asked hypothetically if the lot at 1736 was made to be more of a mirror image of 1738, would it be possible to change the definition of the lot line. He asked if portion of 1736 was part of 1730 the north line would be redefined in the side yard. Mr. Tom Dabareiner, Director of the Community Development Department, said they would still need a variation, as the lot would be a narrower lot.

There was more discussion on ways to reconfigure the lot lines of the subdivision to allow for construction of the home without requiring a variation, and on the definitions in the Ordinance of rear and side yard lot lines. Mr. Dabareiner then clarified that at this time they are not discussing about an appeal or a reinterpretation of the lot line definitions but a request for rear yard setback variation. Anything other would be a totally different case.

Mr. Latinovic said when the petitioner applied for the building permit it was discovered that the proposed home does not meet the required rear yard setback, and the petitioner is awaiting the decision of the Board to proceed.

Mr. Latinovic said that Staff finds no physical hardship associated with the property that warrants granting the requested variation for the following reasons: 1) there is no practical difficulty associated with the property that warrants granting the request; 2) the applicant is the original developer of the subdivision and was aware of Staff's interpretation of the rear lot line and required rear setback; 3) the petitioner has the ability to construct the proposed new home and meet all setback requirements as shown in Exhibit B; and 4) if the requested variation was approved, it could be construed to be applicable to all similarly situated residential lots in the Village where no physical hardship exists with the property.

Mr. Latinovic then reviewed the Standards for Granting Variations as shown on pages 2-4 of Staff's report dated October 26, 2011. He referenced Section 28.1803 of the Zoning Ordinance, which specifies practical difficulties or particular hardships that would allow a variation. According to Staff's analysis, Standards 1, 2, 4, 5, 6, and 9 have not been met. Therefore, Staff believes there is no physical hardship or practical difficulty associated with the subject property, and based on its analysis, Staff believes the standards for granting a variation have not been met. Mr. Latinovic said that Staff recommends denial of the requested variation. He requested that should the Board decide to approve the request, the variance should be subject to the condition noted on page 4 of Staff's report dated October 26, 2011.

Ms. Souter asked for clarification that the IEPA does not allow building on a wetland, and Staff said that was correct. She then said that the developer configured the subdivision this way only because he had to preserve the wetland. Mr. Latinovic responded that he was not familiar with



## **APPROVED 1/25/12**

all issues when the subdivision was being proposed. He said he thinks that sometimes there are ways to reconfigure the grading and slope of a property to modify the extent of a wetland.

Mr. Dabareiner said that the developer's representative already commented that it was configured this way because reconfiguring would be more expensive.

There being no further questions of Staff, Chairman White asked anyone who wished to speak either in favor of, or in opposition to the petition, to come forward.

1. Mr. William Ponstein of 6012 Hillcrest Ct. said he was the owner of the vacant property to the north of the subject lot. He stated this was all brought up at the Plan Commission at the time of subdivision approval, and they were granted numerous exceptions and they knew what they had to build on. His primary concern has to do with the grading from Boundary Hill Subdivision to the north. He pointed out on the site plan where the overland water route travels, and should there be a 100-year storm, there will be serious problems because the required 20 feet allows for that kind of overflow, and the requested 10 feet would not provide enough room for the water flow. He also referred to Lot 5 in Boundary Hill, saying that whoever builds on that lot is entitled to the 20 feet on this subject property, which would then result in 40' of back yard between homes, as the Ordinance requires.

2. Eric Shover of 6120 Springside Avenue said his concern is that he bought his home a few years back with the assumption there would not be any construction in the back. The subdivision has gone in and was undeveloped for quite some time, which was inconvenient. 1730 was built with a variance, and the house is ten feet from his back yard. Now they're talking about putting another house off ten feet, and they are basically having a back yard with 30-foot high homes. He said they are seeing their back yard become basically surrounded by very tall homes. He said it is an unattractive situation to find themselves in after purchasing their home six years ago. They expected having the wetlands back of them.

3. Kevin Clinnin, resident and homeowner of 1742 Brian Grant Court, said he is in favor of the petition. Since he purchased his own a little over a year ago he has noticed that of the four lots that have been built, the developer has built homes successfully in the \$800,000 - \$950,000 range and the homes have sold almost immediately. Mr. Clinnin said he thinks they are doing a good job with a good plan. He sees two options for the subject property. The developer could build the home as planned and have no rear yard, which will make selling the home virtually impossible. Mr. Clinnin said the other option would be to build a smaller home to fit on the lot at a lower price, which would be completely inconsistent with the other properties in the subdivision. The look and feel of the neighborhood would be tremendously diminished and affect the value of the other properties.

4. Laurie Hubbard of 1746 Brian Grant Court said they purchased their home a short time ago, and chose the home because of the design of the community.

5. Suzanne Shover of 6120 Springside Ave commented that she agrees with her husband regarding how close the other homes are to their home. She would love to see the neighborhood developed, but doesn't want to see a house be built that will not sell. They already have a vacant lot that gets overgrown. Although she doesn't like having the houses so close, she wants to see the development completed and see all of the homes sold.

## **APPROVED 1/25/12**

6. Mr. Leonard Buzecky of 1792 Boundary Ct. says he has a house without a back yard. Their home is very unusual and is different from most homes. He thinks that the people knew what they were getting into when they subdivided. In his situation, he wanted to build a sunroom and could not do it because of the 20-foot requirement. He understands they may have a hard time selling the home, but there is always someone who will purchase the lot. His back yard may be small but he is happy with it.

There being no additional public comments, Chairman White gave the petitioner the opportunity to provide a summary and address comments that were made.

Chairman White asked the applicant why they need this particular house. He said it seems they could put a similar size home and just change the front elevation and driveways. It may not be the exact same design, but they could still build on the lot. He asked why they can't change the design of the house to comply with the setback, filling in the area in the southwest corner. It would be a different house, but the same size as proposed.

Richard Grant of Atlantic Homes, the developer, explained using the overhead plan why the home would have to be placed where it is. Mr. Grant explained that to build a home with garage and living room in the front there is not enough width on the property to keep that home up front without the variance. If the variance is not granted he would have to move the home to the back resulting in no back yard and that will not sell. People in this price range want certain size back yards.

Ms. Majauskas also pointed out if they reconfigure the house and change the garage location so that the house faces south they could come up with a design.

Mr. Grant replied that the house proposed fits with the rest of the homes in the area and this is the only type that sells in today's market.

Mr. Dabareiner got up and explained using the overhead plan that a home of similar size but a different design can be reconfigured and placed on the property closer to the front where the current house is proposed which would allow for larger backyard desired by the developer.

Chairman White said from a zoning perspective this design is not necessary to yield a reasonable return. He said he thinks moving the house back to meet the setbacks would be a bad idea. There would be no back yard. But you can have a different style of a house with the same amenities and square footage, but that doesn't mean it will not yield a reasonable return.

Mr. Grant explained that when the subdivision was created he only worried about the wetlands and how to create lots around that. At that time he figured he would be building 3,000 sq. ft. homes. He knew the north property line was the rear property line but did not think about it because he thought he would build 3000 sq. ft. homes. Today that is not the case and he has to build larger homes that will sell and fit the neighborhood with stone, same size and colors. Mr. Grant said that at the time the plans were drawn he did not remember what the rear setback was.

Ms. Majauskas asked if it was his position that no 4500 square foot house could be built in that area and why is he stuck on this design?

Mr. Grant replied that the buildable area is not enough to build the house that is similar to the

## **APPROVED 1/25/12**

other homes in the neighborhood.

Ms. Souter agreed with the other Board members that there could be a way to reconfigure the house and still fit it on the lot and make it similar to the other homes by picking up the same color of brick and stone and yield a reasonable return.

Chairman White then reviewed the sizes of the various houses in the subdivision which vary between 4400 and 4700 square feet. He said that they should be able to build a 4400 square foot house on that lot that would not be out of the character with the subdivision.

Ms. Crowley reiterated that going with the house as proposed would be consistent with the neighborhood. The goal was to keep the property consistent with the other properties in the subdivision.

Mr. Dabareiner clarified the comments made earlier that someone would build a swimming pool in the front yard if the house is pushed to the back, or sheds, and that would not happen because accessory structures are not allowed in front yards.

Per question from the audience, Mr. Latinovic explained that the buildable area on the property is represented by the hash marks on the plan shown on the overhead projector. In general structures such as sheds, garages, etc., are not allowed in front of a home.

Chairman White asked the length of the proposed house, and was told it was 90' on the north side, and 53' north to south. The front property line is 93' away from the north rear property line, which after the front 30-foot setback and rear 20-foot setback are deducted leaves a 43-foot buildable with where a redesigned home can be constructed. The house at 1742 is more square shaped house and is 4400 square feet.

There being no further comments, Chairman White closed the opportunity for further public comment, and opened the discussion to the Board's deliberation.

### **Board Deliberation:**

Chairman White asked the Board's preliminary thoughts on the petition.

Ms. Majauskas referred to the original layout in 2006, saying at that time they could have done anything they wanted, and this is what they chose to do. She said they do not want to change their design, or consider other options. She doesn't think they even attempted to mitigate the situation without requesting a variance. She doesn't understand why they cannot find another configuration for the building design. Ms. Majauskas didn't think the applicant met most of the Standards of the ordinance.

Chairman White asked if anyone disagreed.

Mr. Isaacson said this is possibly the first time he has heard surrounding residents speak both for and against a petition evenly.

Ms. Souter said she hasn't seen proof that an alternative could not be built, and she is struggling with that.

**APPROVED 1/25/12**

Ms. Earl said that you can fit a house with a reasonable return in that space. She didn't see any effort by the developer to make it work. They received 17 exceptions when the subdivision was plotted in 2006, and she felt that they could put something substantial there.

Mr. Isaacson asked if it matters that Mr. Domijan did not appear. Mr. Latinovic said he is not sure if Mr. Domijan replied he will be attending the meeting or not. He clarified that his vote might have been important if there was a split vote or lack of a four-vote majority.

Mr. Dabareiner said that they have often given a petitioner a chance to wait another month if it appeared that four votes would not be available because not all members of the board are present at the meeting.

**Ms. Majauskas moved that in case ZBA-04-11, the requested variation be denied. Ms. Earl seconded the Motion.**

**AYES: Ms. Majauskas, Ms. Earl, Mr. Isacson, Ms. Souter, Ch. White**

**NAYS: None**

**The Motion to deny the requested variation passed unanimously.**

.....

Mr. Dabareiner said that the Village will require ZBA members to have photo id's made up, so it's clear who is wandering about private property subject to ZBA hearings. The Plan Commission already has theirs.

Mr. Isacson mentioned that Mr. Benes was a member of the Board for 35 years and he asked if something would be done for him. Mr. Dabareiner said if the Board chose to do something personally they can, but he thought the Mayor and Council would have some type of recognition for someone who has served that long.

Mr. Latinovic said the next meeting will be held on November 9<sup>th</sup> as there is one item on the agenda. The December meeting is scheduled for the second Wednesday, December 14th.

There being no further business, Chairman White adjourned the meeting by voice vote at 8:48 PM.

Respectfully submitted,

Tonie Harrington  
Recording Secretary

VILLAGE OF DOWNERS GROVE  
ZONING BOARD OF APPEALS  
NOVEMBER 9, 2011 MINUTES

**Call to Order**

Chairman White called the meeting to order at 7:35 PM.

**Roll Call**

**Present:** Mr. Domijan, Mr. Enochs, Ms. Earl, Mr. Isacson, Ms. Majauskas, Ms. Souter and Ch. White

**Absent:** None

**A quorum was established.**

**Staff:** Jeff, O'Brien, Planning Manager  
Stan Popovich, Planner

**Also present:**

Eugene Kociecki, 1496 Burberry Lane, Schaumburg, IL  
Mike Philipp, 4915 Main Street

**There were no minutes to approve**

**Meeting Procedures**

Chairman White explained the function of the Zoning Board of Appeals, and reviewed the procedures to be followed during the public hearing, verifying with Staff that all proper notices have been published. He then called upon anyone intending to speak before the Board on the Agenda item to rise and be sworn in, as the public information portion of the meeting is an evidentiary hearing. Chairman White explained that there are seven members on the Zoning Board of Appeals all of whom have had the opportunity to review the documents for the petition prior to the meeting. In order for a requested variation to be approved there must be a majority of four votes in favor of approval. He added that the Zoning Board of Appeals has authority to grant petitions without further recommendation being made to the Village Council.

.....

**ZBA-05-11 A petition seeking a setback variation for a sign at the property located on the north side of Ogden Avenue approximately 200 feet west of Fairview Avenue, commonly known as 406 – 414 Ogden Avenue, Downers Grove, IL 60515 (PINs 09-05-214-016, -017 and -018); Eugene Kociecki, Petitioner and Owner.**

**Petitioner's presentation:**

Mr. Mike Philipp, attorney with Wiedel, Hudzik, Russ and Philipp, explained he represented Mr. Kociecki. He explained the variation request was for a side yard setback variation to permit a monument sign to be 15 feet from the side property line where 25 feet is required. Mr. Philipp noted the building was constructed in 1987 and includes four tenant spaces, two of which are currently vacant and two of which are occupied. He noted a U.S. Cellular store recently approached Mr. Kociecki about occupying one of the vacant spaces but due to the sign issue,

## **APPROVED 1/25/12**

they decided not to move to this building.

Mr. Philipp noted his belief that the unique situation on the property is the location of the building, parking areas, and the location of the access drives. He noted the location of the previously removed sign and stated that that location is not a reasonable location for a new 10-foot tall sign. He noted the old location is within the prime parking spaces in front of the store. He noted vehicles could obscure large portions of the sign if it was located within the parking spaces.

He referenced Exhibit B on the screen and located the Ogden Avenue curb cuts. He noted there are no other properties on Ogden Avenue with similar situations. He noted the only reasonable sign location is the location Mr. Kociecki is proposing.

Mr. Philipp believed the property can not yield a reasonable return based on the U.S. Cellular not choosing to locate in one of the vacant tenant spaces. He believes it is preferable to have the sign located in the open space at the southwest corner of the property.

Mr. Philipp noted the entire frontage is dedicated to vehicle circulation and is open enough to allow vehicles to move freely. He noted various properties along Ogden Avenue, including the CVS, Sears, Doggie Day Spot and others that had their monument sign within landscaped grass areas. He noted his belief that the only other property similar to this one on Ogden Avenue is located at 650-654 Ogden Avenue.

Mr. Philipp noted it is not a mere inconvenience to locate the sign in the required location. He felt the sign would look odd if it wasn't located 10-feet from the front property line as visually it would not line up with other signs along Ogden Avenue.

Mr. Eugene Kociecki introduced himself as the owner of the property. He noted his longevity of ownership of this property and that he recently removed the non-conforming pole sign per the Village's request. He noted everyone he has talked to about the sign noted the only place to put the sign was in the grass area at the southwest corner of the property. He noted that U.S. Cellular did not lease one of the vacant spaces because of the sign. Mr. Kociecki stated he will not install the sign if the variance is not granted because it would not be visible. He is worried about the sign and that is all he's been thinking about.

Chairman White inquired about the Brown's Chicken property and how the two sites are similar. Mr. Philipp noted he wasn't familiar with the site. Mr. Isacson noted the difference is that Brown's Chicken is a single tenant while this is a multi-tenant space.

Chairman White asked if a sign could be installed adjacent to the van that was shown in the exhibits.

Mr. Philipp noted that would interfere with the on-site traffic flow and might require the removal of additional parking spaces. Mr. Kociecki noted a light pole used to be in this general location but it kept getting hit and knocked over.

Chairman White noted a sign was placed in that location it could potentially create two separate parking lots.

## **APPROVED 1/25/12**

### **Staff's presentation:**

Mr. Popovich noted the property at 404 – 416 Ogden Avenue is on the north side of Ogden Avenue, approximately 200 feet west of Fairview Avenue. The property is zoned B-3, General Services and Highway Business and is improved with a four-unit shopping center. He noted the petitioner is requesting a side yard setback variation to construct a monument sign 15 feet from the west (side) property line where 25 feet is required per Section 28.1502.01(A)(2) of the Zoning Ordinance.

Mr. Popovich referenced Exhibit A identifying the location of the previously removed sign and the proposed location for the new sign. The petitioner is requesting a variation to install the sign as shown on Exhibit A because this turf area is only 20 feet wide and if he were to install a sign 25 feet from this property line in this location, it would be in the middle of the drive aisle. Mr. Popovich noted the proposed location would comply with the 10-foot setback from Ogden Avenue. The proposed location would require the elimination of a single parking space to the north so that the required landscaping can be accommodated.

Mr. Popovich stated staff does not believe there are unique circumstances which require a variation. He noted there were no physical or practical difficulties with the property which preclude a code-compliant sign. The petitioner has the ability to construct a sign in a code-compliant location. Mr. Popovich referenced Exhibit B which identified all available locations on the site that meet the setbacks. Mr. Popovich identified Exhibit C which identified potential sign locations that did not require changes to the site. Mr. Popovich noted the sign did not have to be within the parking spaces but could be slightly to the south of the parking spaces and still provide an adequate drive aisle for vehicles to pass through. Finally, Mr. Popovich noted if the variance were granted, it could be applicable to all properties within the B-3 zoning district where no physical hardship exists.

Mr. Popovich reviewed the standards for granting a variation. He noted the property can yield a reasonable return if the sign is located in a code compliant area. There is a large area on the parcel where a sign can be located and the sign could be located in the previous location. Mr. Popovich pointed to different areas on the site where a sign could be located. Mr. Popovich noted the property is no different than other properties on Ogden Avenue where a sign is located within a parking area. Mr. Popovich noted the Saab Dealership, the Advanced Auto Parts, the Garden Spa and about a dozen other properties have similar sign arrangements where a compliant sign is within a row of parking spaces.

Mr. Popovich noted standard three was met while it was staff's belief it is a mere inconvenience that the petitioner can not install a sign as their preferred location. Mr. Popovich reiterated that the petitioner has a variety of locations where a sign could be located within.

Mr. Popovich stated the hardship was not the result of the property owners' actions; the sign would not impair surrounding properties of light or air; and that the land use characteristics of the site will remain the same.

Mr. Popovich noted that a special privilege would be conferred on the petitioner if the variance were granted. The property is not unique as there are numerous properties on Ogden Avenue with a similar layout. He noted there are alternative sign locations on the property. Mr. Popovich concluded that staff was recommending denial of the petition. He indicated if the ZBA chose to grant the variation, it should be subject to the condition listed on page four of the staff

## **APPROVED 1/25/12**

report.

The Board discussed the potential to close the two existing curb cuts and replace them with one new curb cut. A new sign could then be located within a landscaped area near the new curb cut. Discussion ensued with the feasibility of this option. The Board discussed how to re-arrange the parking lot to accommodate a code-compliant sign.

Ms. Earl asked about the Village's policy for closure of curb cuts on Ogden Avenue.

Mr. Popovich stated curb cuts are typically closed during the redevelopment of a site. Mr. Popovich noted that if the petitioner wished to close a curb cut, there might be grant funding available through the Ogden Avenue Site Improvement Strategy (OASIS) program the Village offers.

There being no further questions of staff, Chairman White asked anyone who wished to speak either in favor of, or in opposition to the petition, to come forward.

Mr. Philipp noted that the site is not undergoing a redevelopment so they are not proposing any curb cut reductions.

There being no further comments, Chairman White closed the opportunity for further public comment, and opened the discussion to the Board's deliberation.

### **Board Deliberation:**

Chairman White asked the Board's preliminary thoughts on the petition.

Mr. Domijan noted the proposed location would increase the green space on the property with the removal of the one parking space.

Ms. Souter noted if the sign were to be located on the east side of the property it could be blocked by the adjacent CVS signs. Per a question, Mr. Popovich noted the CVS signs were non-conforming and would have to be brought into compliance by May 4, 2012.

Chairman White noted there are not similar sites along Ogden Avenue with two curbs cuts and the location of the building as it is in this location. He believed the location of the building coupled with the design of the parking lot and site access create a unique condition. He stated he was in favor of the petition.

That being, said he does like to play devil's advocate. He noted it would be nice to eliminate curb cuts to harmonize traffic along Ogden Avenue. The Chairman went on to note that relocating the sign to the center of the lot would create difficulties for users of the parking lot as it would separate the southern lot from the western parking area. He indicated that this condition may create back-ups on Ogden Avenue. He did not believe a sign is the tipping point to require the closure of curb cuts. Chairman White believes the site is unique and that the Board will be able to differentiate between different properties if a similar request were to be before the Board in the future.

Chairman White asked if anyone disagreed. No additional thoughts or comments were



**APPROVED 1/25/12**

presented.

**Mr. Domijan made a motion that the ZBA grant the requested variation associated with case ZBA-05-11 as presented with the following condition:**

- 1. The proposed sign shall substantially conform to the plans and specifications attached to the Staff report, dated August 24, 2011 except as such plans may be changed to conform to Village codes, ordinances, and policies.**

**Mr. Isacson seconded the Motion.**

**AYES: Mr. Domijan, Mr. Isacson, Ms. Earl, Mr. Enochs, Ms. Majauskas, Ms. Souter, Ch. White**

**NAYS: None**

**The Motion passed 7:0.**

.....

There being no further business, Chairman White adjourned the meeting by voice vote at 8:25 PM.

Respectfully submitted,

Stan Popovich, AICP  
Planner