

**VILLAGE OF DOWNERS GROVE
ZONING BOARD OF APPEALS
JUNE 22, 2016 MINUTES**

Call to Order

Chairperson Earl called the meeting to order at 7:00 PM.

Roll Call

Present: Mr. Domijan, Ms. Eberhardt, Mr. Kulovany, Ms. Majauskas, Mr. McCann,
Mr. Werner, Ch. Earl

Absent: None

A quorum was established.

Staff: Stan Popovich, Director of Community Development
Scott Williams, Village Planner

Also Present: Bill Styczynski, Studio 21 Architects,
221 8th Street, Downers Grove, Petitioner
Paul and Jean Boyd, 5312 Florence Avenue, Owners

Minutes of March 23, 2016 meeting

Mr. Werner moved, seconded by Mr. Domijan, to approve the minutes of the March 23, 2016 meeting as corrected.

All in favor. The Motion passed unanimously.

Meeting Procedures

Chairperson Earl asked those in attendance to silence their phones. She 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 with regard to the case on the Agenda. She noted that members of the Zoning Board of Appeals have had an opportunity to review the materials provided by Staff and in some cases have visited the site in question. In order for a requested petition to be approved there must be a majority of four votes in favor of approval. Chairperson Earl added that the Zoning Board of Appeals has authority to grant petitions without further recommendations being made to the Village Council. She 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 and comments made during this portion of the meeting are considered testimony. She said that Staff would make its presentation first, followed by comments by the Petitioner. She added that if anyone in the audience wishes to speak either in favor of or in opposition to the petition, they would be able to do so following the Petitioner's presentation. When the public participation portion of the meeting is closed, the Board will deliberate on the information provided and vote to either approve or deny the petition.

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16-ZBA-0004: A petition seeking a variation to allow an outdoor fireplace to face the street. The property is currently zoned R-4, Residential Detached House 4. The property is located on the northwest corner of Florence Avenue

and 6th Street and is commonly known as 5312 Florence Avenue, Downers Grove, IL (PIN 09-09-304-029). Bill Styczynski, Studio 21 Architects, Petitioner, and Paul & Jean Boyd, Owners.

Staff's Presentation:

Mr. Scott Williams introduced himself as Planner for the Village of Downers Grove. The property in question is located at the northwest corner of Florence Avenue and 6th Street and is an R-4 Residential Detached House 4 corner lot. He showed an overhead projection of the site that depicts the patio on which the variance is being requested. He said they are considering the required street setback, and the original home is nonconforming. The relief requested is for a 22.6" setback from the front property line while the required setback is 25 feet from the front property line. He referenced a drawing provided by the owner depicting the "street yard," which differs from a "street setback," and which shows the location of the existing patio that is to be replaced by a new patio. The petitioner's request is for a variance for the fireplace that will be located in a pergola with a four-foot tall fence around the new patio. The fireplace is not permitted in a street yard.

Mr. Williams then showed a slide of the west elevation. He read from the Village's Municipal Code requirements for a wood burning outdoor fireplace. Since the fireplace is one component of the over-all proposal to provide shade, it would be constructed on the proposed patio under the pergola. This would encroach 2.5' into the required street setback. He displayed photographs of the building, saying that the last time the Zoning Board of Appeals considered an accessory structure proposed for a street yard was case 15-ZBA-0006, which made essentially the same argument as the subject petition, that accessory structures are not allowed in street yards.

Mr. Williams then reviewed why Staff is recommending denial of the petitioner's request. As stated in Staff's report dated June 22, 2016, 16-ZBA-0004, Page 3, the Planning Staff finds that there are no unique circumstances associated with this property that warrant granting the requested variation for the following reasons:

1. The issues resulting in the request for an outdoor fireplace in the street yard are the result of actions by the petitioner in creating a house addition that has taken up much of the rear yard closest to the interior side yard.
2. The granting of this variation would create a precedent that would allow accessory structures of substantial height within the street yard for residential properties throughout the Village where no physical difficulty or practical hardship with the property exists. The location of an outdoor fireplace in the street yard erodes the semi-public nature of the street yard by bringing private activities into the semi-public space.
3. The issues resulting in the request are not unique to the property and could be applicable to all other lots in the Village, not just corner lots with a nonconforming setback.

Staff believes that the petition does not meet the criteria for a variation and that there are no unique circumstances or hardship for granting the variation.

Mr. Domijan asked if the patio work is permitted, without the addition of the fireplace. Mr. Williams said that the patio would be permitted. It is the fireplace that does not meet Code requirements. He further replied that the pergola does meet the requirements.

Mr. Kulovany asked if they would be allowed to put in a ground level fire pit closer to the house, and Mr. Williams said they would not because it would not meet ventilation requirements. He was then asked to show where the fireplace could be placed without encroachment and he said that it could not be placed in the street yard since it would violate the Code requirements. Mr. Kolovany then asked if the petitioner could install outside shades on the west end of the pergola to be raised up and down. Mr. Williams said he thinks if it is vertical it could be allowed, and he would look at that as it is of a temporary nature.

There being no other questions for Staff, Chairperson Earl called upon the Petitioner to make his presentation.

Petitioner's Presentation:

Mr. Bill Styczynski of Studio 21 Architects introduced himself as Petitioner for this case. He is also a resident of the Village. He stated that the Ordinance does not designate a difference between a front yard and a corner side yard. Both setbacks are treated equally, which is a 25' setback from each property line. He indicated he would never advocate putting an outdoor fireplace in a street setback in front of a house, as it does not belong there. In this case, the outdoor fireplace can be perceived as being in a rear yard as the fireplace would appear to be in the rear yard, although technically in the street setback. They are requesting a 10% or 2.6' setback to allow the fireplace in their chosen location. He said that he is asking the Zoning Board to review the case on its individual merits, and in doing so they would not set up a precedent for future residents wishing an outdoor fireplace.

Mr. Styczynski then discussed the street yard saying that they agree with the Village's identification of the street yard; however, in extensively reviewing the Village's Zoning Ordinance they could find no restriction in placing a fireplace in a street yard, versus street setback. He listed some of the many restrictions included in a street yard; however, when the Petitioner asked Staff to refer them to the section of the Zoning Ordinance regarding street yards, Staff referred them to Sec. 14.100B which Mr. Styczynski said establishes what is allowed in street setbacks. It states that a fireplace is not allowed in a street setback. He noted that in no way is there reference to this being in a street yard. They are therefore asking for the variation of 2.6' into the required minimum street setback that would allow the fireplace to be placed 10' from the home and a minimum amount into the setback. He said they find this to be a reasonable request and is within the guidelines of an Administrative Adjustment as stated in the Village's Zoning Ordinance. He thinks it sets a tone as to what a reasonable request is for a variance.

The Petitioner said he thinks that Staff feels this is not simply a street setback issue, but a street yard issue as well, and also is concerned with precedent. Mr. Styczynski explained that in their understanding of the Ordinance restrictions, they believe this is something that would be a variance for a minor adjustment so the owner can provide shading to use their outside patio. Other designs would have provided more shade, but would require multiple variations. They designed the petition so that the only variance relates to the fireplace, which was designed to be a shading feature of the patio.

Mr. Styczynski then reviewed the Staff remarks in Staff's report dated June 22, 2016. He noted that his letter of May 20, 2016 addresses the Standards and Review Criteria. He commented that Staff expressed a concern with height. The pergola structure is 10' tall, with the fireplace chimney 13' tall. The Ordinance allows an accessory structure to be 23' high, and he doesn't think height is a valid issue. With regard to the uniqueness of the property, Mr. Styczynski noted

that the property was built in 1928, which would have conditions unique to this specific lot. Current ordinances could not anticipate every condition likely to occur, and that is why the variation process is in place. If this were a teardown, they would probably not be looking for variances. He noted that the owners are not doing this for monetary gain. Lack of shading is the issue. The pergola adds shading and the fireplace will add more shading. Trees can provide shading but it will be many years before they can provide that shading. He said that each case should be looked on based on its individual merits.

As for the character of the locale, Mr. Styczynski noted that the proposed location of the fireplace would be perceived as being located in the rear yard, or 22.6' from the side lot.

Mr. Styczynski said that granting this variance would allow the exterior fireplace to be built as part of the outdoor space. Granting the variance does not allow for any special privilege beyond what would normally be allowed to any other property owner if desired, which would be to add an outdoor fireplace as an outdoor amenity. If others were to submit petitions of this nature, it would be the responsibility of the Zoning Board of Appeals to review each of those petitions based on their individual merits.

Mr. Styczynski commented that one other issue to consider is hardship. He said if they had the existing house without the addition built in the rear, Staff would agree that a fireplace in the rear would not require a variance. However, if the owners had hypothetically built the fireplace and wanted to add on a mud-room to the rear of the house, by using the definition of "street yard" as interpreted by Staff, the question would be whether the fireplace would remain or would have to be removed to build the mud room. Basically, he said that given the proposal as submitted, the way the fireplace would be used will not adversely affect the surrounding neighborhood.

Mr. McCann said that it appears according to Mr. Styczynski that the Code is not addressing a street yard or a street setback. Mr. Popovich replied that according to Mr. Styczynski's interpretation, an owner could build a detached garage in front of their home as long as they remained within the setback. The Village, however, has consistently interpreted this as not allowing detached garages in the "street yard" as it is not permitted by Code.

Ms. Majauskas asked if they are saying that because a fireplace is not allowed, the Administrative Adjustment cannot be allowed, and Staff said that was correct.

Mr. McCann said the question appears to be whether the Code allows it to be built in a street yard, and if it does, can it be allowed 2.6' into the setback.

Mr. Kulovany asked if the petitioner understands that the Board does not have to grant this variance, and Mr. Styczynski said he did. Mr. Kulovany then inquired as to the Petitioner's plan if the variance is not granted. Mr. Styczynski replied that he would have to discuss that with the owners. If that were to occur he thinks the Village Ordinance should be clarified to look at a separate front street setback from a side street setback on a corner piece of property. Most Village's have that specification.

Chairperson Earl responded that the Ordinance language was reviewed and updated recently. She said that this request is a straight out variation, and this is very different than the exceptions that have been reviewed over the past years. Administrative Adjustments are not unused tools and have been conducted over the past year.

Mr. Styczynski acknowledged that there are exceptions on what can be done in a street yard, but because a fireplace is not specifically prohibited, in their view it should be allowed. Chairperson Earl replied that for some time, open fire pits were not allowed at all in the Village.

Mr. Domijan explained that in the absence of specific language, the Board cannot rewrite the language of the Ordinance.

Mr. McCann asked whether the encroachment is necessary to get the fireplace 15' from the house, and Mr. Styczynski said it is in order to get it 10' from the house.

Ms. Majauskas asked whether they the fireplace could be made smaller, and Mr. Styczynski said they could not make it small enough, or rotate it.

There being no further questions or comments, Chairperson Earl called for anyone in the audience who wished to speak either in favor of or in opposition to the petition.

1. Paul Boyd of 5312 Florence, owner of the property, said he was present with his wife. He thanked the Board for their time. He said they moved into the Village in 1999 and showed some photographs of the house from when they purchased it to the remodel in 2011. He noted that they are only seeking a variance of 2'6" and he also reviewed the Standards and Review Criteria of the Village's Zoning Ordinance.

Mr. Boyd said that he thought the intent of Section 14.100B was to prevent people from building all types of structures in their front yard area. He felt the strict interpretation by Staff of the Code is contrary to the spirit of the Code, while their project is in line with the intent of the Code.

Mr. Kulovany asked what their plan would be if this were denied. Mr. Boyd replied they would need to do something to make that space useful and cannot survive when the heat is very high. They may have to redesign the pergola or reposition the fireplace. They do not know at this time. They feel that the proposal submitted to the Board is the best approach for the site. Mr. Boyd said that precedence would not be an issue as he thinks there are very few lots that would qualify for this type of request.

2. An adjacent neighbor voiced support for the request to allow an outdoor fireplace in the street yard.

There being no further questions, Chairperson Earl closed the opportunity for future public comment.

Board Deliberation:

Chairperson Earl explained that the rules for variations are much stricter than for exceptions. She sympathizes with the petitioner as she also lives on the northwest corner of Florence Avenue near the subject property. It is not a unique circumstance in her opinion. She asked if there were any contrasting opinions.

Ms. Majauskas said she loves the design and it is beautiful and stunning. However, the Code does not ask whether it is stunning or not. She would love to speak in favor of the request; however, when it comes down to a decision, a fireplace is a complete luxury addition. In her time on the Board, no one has ever come in or said they need a garage in their front yard, and the

Board consistently says no. She is having a difficult time saying yes to something that is luxury. She has to defer to Staff, as this has been interpreted one way in the past. Many homes have lost trees, and planting more trees is not an instant gratification. Added trees would eventually solve the problem. She has a hard time saying yes to the fireplace, even though people in the neighborhood are not opposed to it.

Mr. McCann said he appreciates how Staff has interpreted Sec. 14.100B. But that section is entitled "Setbacks" which is the 25'. He referred to Chart 14-1 that contains a table referencing fireplaces that are permitted in certain setbacks. The question is how to interpret it, and the drafter doesn't provide a clear understanding. He has looked at other parts of the Code related to the distance from a house. He sees nothing for fireplaces as they apply to street yards. He said if it is a permitted use there is nothing barring putting it in a front yard as long as it is within the setback. They are dealing with whether or not they can have a fireplace in a specific space, and staff has interpreted this in good faith. He, however, sees nothing in Sec. 14.100B regarding street yards but only regarding street yard setbacks. It seems to him that this should probably go back to Staff for consideration as to whether it should get an Administrative Adjustment based on the 10% figure. He thinks they are trying to apply the Ordinance as it is expressly written.

Mr. Kulovany commented that if this was brand new construction they would not be having this discussion. At one time these were considered two front yards on a corner lot. He doesn't see the differentiation between street yards and setbacks.

Mr. McCann replied that he thinks there is a street yard, and there is a street setback. He thinks the only issue is whether they get the 2.6' requested.

Ms. Majauskas said there is a list of permitted obstructions, on Chart 14-4 that doesn't show fireplaces. Mr. McCann said that on page 14-5 they show fire pits as permitted obstructions. Ms. Majauskas said she thinks this still encroaches into the setback, and the street yard is irrelevant.

Mr. McCann replied that Staff's position is that a fireplace is not allowed anywhere in street yards. Mr. Williams said that was correct.

Mr. McCann explained that "street yard" now defines any yard that abuts a street, so there's no front yard or side yard. The concern is that if it is allowed here, they open the door to someone building a fire pit in the front yard.

Mr. Kulovany said they are looking at a 2'6" encroachment, which sounds like 10%, however it represents almost 42% of the 6' structure. He asked whether this would be allowed if the structure was 42" wide.

Chairperson Earl said she is concerned that the fireplace will give the effect of being in the front yard. She suggested they could use temporary shades in the pergola, and questioned whether the fireplace is essential to the project.

Ms. Majauskas asked whether the shading of the porch is something the Board should be considering. Chairperson Earl said the shading could be done perhaps in other ways than installing a fireplace.

Mr. Kulovany said when he first drove by the location he drove by Florence and this looked like part of the back yard. Then he went down 6th Street. He liked the improvement to the house with the beautiful addition; however, that created the situation that has negatively impacted this request. He said looking at the views with the masonry, pergola, etc., it also looks like a room addition. The public nature of side yards and corners is to maintain public view. He would hope that those who lost their ash trees would install replacement trees, or call the Village for parkway trees. He said he would be voting against this as the Board must vote based on the Ordinance.

Mr. McCann said he thinks this is consideration for an Administrative Adjustment.

Mr. Kulovany moved to deny the accessory structure variation for the subject property for case 16-ZBA-0004 commonly known as 5312 Florence Avenue. Mr. Domijan seconded the Motion.

AYES: Mr. Kulovany, Mr. Domijan, Ms. Eberhardt, Ms. Majauskas, Ch. Earl

NAYS: Mr. McCann, Mr. Werner

Motion to deny carries 5:2.

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Community Development Director Stanley Popovich said that there was a variation granted for 4326 Prince Street in June of last year. The petitioner has not yet installed the sign that was granted for the variation. The variation granted was a 5' variation off the setback. The petitioner has been unable to install the sign as she has been out of the country for most of the year, and has now requested a six-month extension. Notice on this was not required.

Mr. McCann moved to extend the date to obtain a permit for the variation in case 15-ZBA-0004 to 180 days, until on or about December 24, 2016. The Motion was seconded by Mr. Kulovany.

AYES: Mr. McCann, Mr. Kulovany, Mr. Domijan, Ms. Eberhardt, Ms. Majauskas, Mr. Werner, Ch. Earl

NAYS: None

The motion carried unanimously.

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ADJOURNMENT:

Ms. Majauskas moved to adjourn the meeting, seconded by Mr. Domijan.

All in favor. The Motion carried unanimously.

Chairperson Earl adjourned the meeting at 8:47 PM.

Respectfully submitted,

Tonie Harrington
Recording Secretary