

**VILLAGE OF DOWNERS GROVE
ZONING BOARD OF APPEALS
JULY 27, 2016 MINUTES**

Call to Order

Chairperson Earl called the meeting to order at 7:03 PM.

Roll Call

Present: Mr. Domijan, Mr. Kulovany, Mr. McCann, Mr. Werner, Ch. Earl

Absent: Ms. Eberhardt, Ms. Majauskas,

A quorum was established.

**Staff: Rebecca Leitschuh, Senior Planner
Swati Pandey, Village Planner**

Also Present: Scott Tanaka, 2430 61st St., Downers Grove, IL Owner

Minutes of June 22, 2016 meeting

Mr. McCann referred to page 6 of the minutes and the paragraph beginning “Mr. McCann said”, and asked that the sentence near the end of that paragraph beginning “He, however, sees nothing in Sec. 14.100.B” end with the words “regarding street yard setbacks.”

Mr. Kulovany moved, seconded by Mr. Domijan, to approve the minutes of the June 22, 2016 meeting as amended.

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.

.....

Approved 8/24/16

16-ZBA-0005: A petition seeking a variation to allow accessory structures on a separate lot without the principal structure. The property is currently zoned R-4, Residential Detached House 4. The property is located on a corner lot on 61st Street between Leonard Avenue and Janes Avenue and is commonly known as 2430 61st Street, Downers Grove, IL (PIN 08-13-403-017, -018). Scott Tanaka, Petitioner and Owner.

Staff's Presentation:

Ms. Swati Pandey, Planner for the Village, said this petition requests the installation of accessory structures on a lot without a principal structure. The Owner has two lots, which are corner lots, one of which faces Leonard Avenue, and the other which is a vacant lot along Janes Avenue. She displayed a plat of survey for the property for lots 8 and 9. The petitioner approached the Village requesting a variation to allow construction of a sport court for basketball and pickle ball, as well as a concrete patio on the vacant lot. He was advised that this was not allowed as an accessory structure must be located on the same lot as a principal use, and there was discussion of proceeding with an administrative lot consolidation. However, it was found that according to the Subdivision Ordinance in Section 20.507.d.3, properties cannot be consolidated that have a common lot line that is shared for less than one hundred feet. That condition is not met on this property as the lot is only 55' wide. Staff explored other options for the petitioner, and it was determined that the petitioner could apply for a variation request and present his case before the Zoning Board of Appeals.

Ms. Pandey showed the site plan for the property. She described the lot location, which is primarily a residential neighborhood with single-family homes. The property to the north is vacant and is zoned R-4. Staff recommends denial for the variation request, as the Zoning Ordinance does not permit accessory uses and structures on the separate lot. She reviewed the standards for a variation request and noted that there are no particular hardships, practical difficulty or unique circumstances with the land that warrants the requested variation. Staff's reasons as stated in its report are as follows:

1) Corner lots are not unique to the neighborhood or to Downers Grove. The owner is not prevented from making reasonable use of both lots, and can legally develop both lots with a single family home and other approved uses in accordance with the Zoning Ordinance.

2) The variation could set a precedent for future requests to allow accessory structures and buildings on any vacant lot.

Ms. Pandey then reviewed the Standards and Review Criteria as noted in the staff report dated July 27, 2016, 16-ZBA-0005, 2430 61st Street, pages 2-4. She said if the Zoning Board of Appeals decides to approve the request, Staff asks that it be approved with the conditions that the sport court and patio shall comply with all plans and documents submitted by the petitioner as part of its variation application, or as amended by the Zoning Board of Appeals. She noted that Staff believes that the Standards of Approval for granting a variation have not been met and recommends denial of the requested variation.

Mr. Domijan asked about the right-of-way on 61st Street or is it vacated. Senior Planner Rebecca Leitschuh said that it has not been vacated and there is no intention to do so at this time.

Approved 8/24/16

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

Petitioner's Presentation:

Mr. Scott Tanaka of 2430 61st Street, Downers Grove, identified himself as Petitioner and owner of the property, which he purchased in November of 2015. He explained that he contacted the Village in May and was told there were two options available, which would be the variation or the lot consolidation. He spent \$1000 for the permit for the lot consolidation and eventually was told that there was no option other than the variation. He said that the Village was unwilling to reimburse him the \$1000, and that is why he is seeking the variation. He feels like the ignorant homeowner, particularly since he looked at Staff's report that shows he did not meet any of the variation criteria. He teaches math and is a basketball coach at a high school, and moved to Downers Grove to be close to his 5-year old son. He saw the property and considered it a great opportunity to install the basketball court for his son. He said he understands that this could set a precedent and apologized for not being as prepared as he should have been for the meeting. He spoke with neighbors and explained that this was not a public basketball court. As for a physical hardship, he joked that it is a pretty difficult lawn to mow. He doesn't want to jeopardize the surroundings, although he thinks it would enhance the surroundings. Mr. Tanaka said that no one in the neighborhood that he spoke with had any issue with his requested variation when they realized that it would not be a public court.

Mr. Domijan asked what materials would be used, and Mr. Tanaka said that it would be concrete, as it would last the longest. He would assure that the water would run off correctly. In further response to Mr. Domijan, he said he would make sure that it was approved to run off into the proper drains. If that could not be assured, he would not get it done. There are drains on Janes and on 61st Street that were recently improved. Mr. Domijan asked if there is a community park nearby, and Mr. Tanaka said there are several. He just wanted the convenience of having the court on his own property.

Mr. Kulovany asked what Mr. Tanaka's plans were for the lot when he purchased it, and Mr. Tanaka said it was for a basketball court; however, he didn't examine it properly beforehand. If this doesn't go through, he will have to have fencing installed as people use it as a public lot and have their dogs eliminating on the property. When he saw the property he saw it as a fantastic opportunity for his son to play. As a basketball coach, he wanted to be able to play with his son. In further response, he is a first-time homeowner and used his realtor's judgment that he would be able to build the sports court on the vacant parcel. In hindsight, had he known about this he still would have purchased the property. The realtor did know his plans for the property.

Mr. Kulovany then asked about using the driveway for a portable backstop. Mr. Tanaka said as a basketball junkie, that's not close to what he wanted to do for his son. But if he has to use that, he will.

Mr. McCann asked about the options given by the Village for an administrative consolidation, and whether the Village said it could be done. Mr. Tanaka said he was definitely told it could be done and that's why he spent the money for that option. He said that apparently Staff missed the 100' requirement. Had that not happened, he would not be requesting the variation. He assumed the administrative consolidation was going to work and that is why he paid that much money for the application fee, the plat of survey, etc. The application fee was reimbursed. Mr. Tanaka said

Approved 8/24/16

he did everything they asked him to do, which took a lot of time to have the drawings prepared, etc.

There being no further questions from the Board, Chairman Earl called upon anyone from the public who wished to make a statement. There being none she closed the opportunity for future public comment.

Mr. Tanaka said he appreciates the Board coming to the meeting to hear his request. He said he hoped his neighbors understood that he didn't want to upset the neighborhood.

Board Deliberation:

Chairperson Earl explained that the rules for variations are much stricter than for exceptions. She said they need four positive votes for approval.

Mr. Kulovany asked Staff whether there is a contingency for a homeowner when the Village makes a mistake that costs them a \$750 charge. Ms. Leitschuh replied there is nothing to cover that situation. She said it is unfortunate because there was an amendment to the Subdivision Ordinance in 2012 and since this doesn't come up very often, Staff went with the previous understanding and interpretation. However, they later realized that the amendment in 2012 prohibited this type of construction. As a result, the fee for coming before the Zoning Board of Appeals was waived.

There was some discussion as to whether a fence would be allowed. Mr. Kulovany said that it looks as though the Petitioner was forced to spend the \$750, but if they need a Plat of Survey in order to get a fence installed, the Petitioner would have to spend that amount anyway.

Mr. McCann asked what is actually seen as a structural use in the Code, and the definition of structure seems to include a walkway, or parking lot. The only provision in the Code that he's been able to find is for parking that serves the primary lot, but that is for commercial use rather than residential use. He could not find any justification for an accessory structure on a residential lot.

Mr. Domijan said that for a while flag lots were becoming prominent in the Village and that is what he thinks drove the amendment to the Subdivision Ordinance.

Mr. McCann said he doesn't see this as a unique situation; however, there seems to be no other way around it. He said a while back a petitioner wanted to put up a shed but it could not be granted for largely the same situation as this.

Mr. Werner noted that to allow this is beyond a reasonable interpretation of the Code, and would set a precedent. The Board is limited on what it can do, based on its effect on future requests.

Mr. Domijan further noted that the variation would stay with the land if another person bought that property.

Ms. Earl said if there was something truly unique with the land the Board would be able to grant it; however, without that unique status the Board cannot grant it.

Approved 8/24/16

Mr. McCann moved to approve the variation as requested. Mr. Kulovany seconded the Motion.

AYES: NONE

NAYS: Mr. McCann, Mr. Kulovany, Mr. Domijan, Mr. Werner, Ch. Earl

The Motion to approve was defeated unanimously.

Mr. Tanaka expressed his appreciation to the Board for trying to find a way to approve this. He said if they can find any way for him to recoup the \$750 he would appreciate that. Mr. Domijan explained that if he is considering the fencing, he would need to have the Plat of Survey done and he has already had it done for the lot consolidation.

.....

CASE 16-ZBA-0003

Ms. Leitschuh said that Case 16-ZBA-0003 specific to 5400 Janes Boulevard was granted a variation for on-site storage adjacent to a residential area. The Board reviewed the petition. Ms. Leitschuh said they are now requesting a six-month extension as they are working with the Illinois EPA and the results from the on-site testing have not yet come back. Their legal staff has advised them until all the information comes back from the EPA not to do anything on the site.

Mr. McCann moved to approve the extension on case 16-ZBA-0003 as requested. Mr. Kulovany seconded the Motion.

AYES: Mr. McCann, Mr. Kulovany, Mr. Domijan, Mr. Werner, Ch. Earl

NAYS: NONE

The motion was approved unanimously.

.....

Ms. LEITSCHUH said that there is a variation request for next month's meeting.

.....

ADJOURNMENT:

Mr. Kulovany moved to adjourn the meeting, seconded by Mr. McCann.

All in favor. The Motion carried unanimously.

Chairperson Earl adjourned the meeting at 7:55 PM.

Respectfully submitted,

Tonie Harrington
Recording Secretary