

**VILLAGE OF DOWNERS GROVE
ZONING BOARD OF APPEALS MINUTES
OCTOBER 22, 2003**

CALL TO ORDER

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

ROLL CALL

Present: Mr. Baker, Mr. Benes, Mr. Domijan, Mr. Gray, Mr. Lukas,
Ch. White
Absent: Mr. Sleeter

A quorum was established.

MINUTES

Mr. Lucas suggested a grammatical change to page six of the minutes of the September 24, 2003 minutes.

Mr. Benes moved to accept the minutes of the September 24, 2003 meeting as amended. Mr. Gray seconded the Motion.

**AYES: Mr. Benes, Mr. Gray, Mr. Baker, Mr. Domijan, Mr. Lukas,
Ch. White**

NAYS: None

Chairman White declared the minutes accepted as amended.

MEETING PROCEDURES

Chairman White explained the procedures to be followed for the meeting, reviewing the variation petition before the Board. He said that the Board has the authority to either grant or deny the variation petition, and the Board's decision is the final decision. Chairman White then asked anyone in the audience who intended to testify in this public hearing to rise and be sworn in. Ms. Amanda Browne, Village Planner, then read the published public hearing notice.

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V-8-03 A petition seeking a reduction of the minimum required side yard for an addition to a single family residence for property located at the northeast corner of Chicago Avenue and Washington Street, commonly known as 848 Chicago Avenue, Downers Grove, IL (PIN 09-05-325-021); Charles & Kisa Kaiser, Owners/Petitioners.

LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC HEARING - Notice is hereby given that a public hearing will be held by the Zoning Board of Appeals at 7:30 p.m. on Wednesday, October 22, 2003 in the Council Chambers of the Village Hall, 801 Burlington Avenue, Downers Grove, Illinois, on a petition seeking a reduction of the minimum required side yard for an addition to a single family residence. The property is located at the northeast corner of Chicago Avenue and Washington Street, commonly known as 848 Chicago Avenue, Downers Grove, IL (PIN 09-05-325-021) and is legally described as follows:

The west 50 feet of the South Half of Lot 3 in Block 7 of Plat of Richmond and Whitney's Addition to Downers Grove, in Sections 5 and 8, Township 38 North, Range 11, East of the Third Principal Meridian in DuPage County, Illinois (PIN 09-05-325-021)

Individuals with a disability requiring a reasonable accommodation in order to participate in any meeting should contact the Community Response Center (630) 434-CALL(2255) prior to the meeting. Wheelchair access may be gained through the side (south) entrance of Village Hall. All interested persons should attend this hearing and will be given an opportunity to be heard. The hearing may be continued from time to time without further public notice. Zoning Board of Appeals, William White, Chairman. Published in the Downers Grove Reporter, Friday, October 3, 2003.

Chairman White informed the Board and the audience that the petitioners came to his office in Downers Grove seeking an attorney, and when he realized that the case concerned a variation request, he explained to them that he could not handle the case since he was a member of the Zoning Board of Appeals. He said that there was no discussion about the case with the petitioner, and they subsequently obtained another attorney.

Ms. Browne noted for the Board's information and consideration that there had been a significant discovery on the part of the Code Services Department that affects the magnitude of the variation that is being requested by the petitioners. As a matter of background information, Ms. Browne explained that with respect to the processing of permit applications, the Code Services Department is responsible for the review of all construction permit applications with respect to conformance with the Building Code and the Zoning Ordinance. If an aspect of the permit application is found to be substandard with respect to a provision of the Zoning Ordinance, the petitioner is informed and is instructed to bring the plans into conformance.

Ms. Browne said that the Code Services Department discovered yesterday that they were incorrect when they told Planning Staff that an error had been made with respect to the calculation of the height of the structure and subsequently when determining the minimum side yard setback requirements. The minimum required side yard is in fact 5 feet, as it was originally approved, not the 7.6 feet as noted in the Staff report. So the only error they made was telling us that they made an error. Therefore, the variation is not a 48% variation as noted in the Staff report. The variation being requested is 3.93 feet in lieu of the minimum requirement of 5 feet, or a 21.4% variation of 1.07 feet.

Ms. Browne commented that Code Services apologizes for the confusion, and also for not discovering sooner that they in fact had not made an error. Had this issue been resolved prior to the distribution of the staff reports, the staff report would have reflected the correct requirement.

Mr. Benes asked for clarification that the issue is in regard to the height of the roof. Ms. Browne said the design of the structure has not changed; however, the point to which Code Services measured the defined height to was incorrect. Referring to the side elevation plan, Ms. Browne clarified that the dormer is excluded

from the calculation of the height, and added that there is also an elevated planting bed on that side of the building. Therefore, the height of the structure as measured per Code is less than 20 feet in height, resulting in a required setback of 5 feet.

PETITIONER'S PRESENTATION

Mr. James Russ, of 4915 Main Street, said he was the attorney representing Charles and Kisa Kaiser, petitioners for the variation. The property is located at 848 Chicago Avenue on the northeast corner of Chicago and Washington Street. It is zoned R-4 which requires a minimum side yard setback of 5 feet. He confirmed Ms. Browne's statement regarding the Code Services discrepancy, and added that he was at the meeting yesterday afternoon when Code Services discovered their error.

Mr. Russ said the petitioner is seeking a reduction of the side yard setback from the required 5 feet to 3.93 feet. The home was purchased by the petitioners in 1998, who began designing an addition to the home in 2000 to accommodate their growing family. The two-story addition includes a kitchen/eating area, family room, master bedroom and bath. The plans were approved by the Code Services Department, and construction was started in March of 2003.

Mr. Russ continued, stating that the property to the east of the subject property was also undergoing reconstruction during the period of construction for the subject addition. When the driveway was installed on the property to the east, the petitioners noticed that it appeared to be encroaching into the Kaiser's yard. The Village was contacted, and the Kaisers commissioned a new plat of survey. This new plat of survey indicated that the original survey for the property was, in fact, wrong. The new survey showed that the Kaiser addition was actually encroaching into the minimum required side yard on their property.

Mr. Russ said that the original survey showed a side yard setback on the southeast corner of 6.1 feet, and the most current survey shows that the side yard setback is actually 5.33 feet. The addition was being built according to the figures provided on the original survey, thereby requiring a variation to allow a 3.93-foot setback instead of the minimum requirement of 5 feet. He indicated that once the discrepancy in the survey was discovered, all construction on the addition was halted; however, based upon a discussion between Mr. Russ and the Village Manager last week, authority was granted to the petitioners to continue construction on the property under their own risk. The home is presently open to the elements, and the Kaisers have two children under the age of 3. With the colder weather approaching, the Kaisers were concerned about the health and welfare of the family and to enable them to get heat into the home. The intention was not to minimize the variation petition in any way, but was strictly from a health/safety issue.

Mr. Russ continued, stating that under Section 28-1802b of the Village's Zoning Ordinance, the Board is authorized to grant a variation from the side yard requirements up to 50% of the required side yard. The petitioners are asking for a 1.07-foot reduction in the side yard, which equals 21.4%, which is well within the authority of the Board to grant. Mr. Russ then read Section 28-1803, which specifies conditions to be considered for granting of the variation.

Relating to Section 28-1803, Mr. Russ explained that the home in its present condition cannot obtain a reasonable return since it is inhabitable, and the Kaisers have already paid out over \$100,000 for the construction of the addition. The petitioners relied on a professional survey of the property to design their

addition. He noted that the addition was brought further east than necessary since the petitioners thought they had an additional foot. The petitioners were the ones who discovered the error, and the original surveyor has acknowledged that an error was made. Mr. Russ said that the addition to this property will not alter the character of the neighborhood and will not impact the property to the east. The owners to the east of the subject property have been contacted, and they have no objection to the petition.

Mr. Russ then referred to six additional factors in Section 28-1303(b) of the Zoning Ordinance, which are to be considered in the variation request. He reviewed those factors, noting that the basis of the variation is an inaccurate survey, which is a unique situation, and which was not caused by the petitioners. He said that the encroachment is on the driveway to the east and not to the actual building, so it will not impair that property in any way. The homeowners to the east have no objection to the variation petition. Mr. Russ said this will remain a single-family residence and will not alter the character of the neighborhood, and the variation will enable the petitioner to correct the errors made by the surveyors. He noted the forthrightness of the petitioners in coming to the Village when the error was discovered.

Mr. Russ said the petitioners have worked well with the Staff and have attempted to comply with the Village's Ordinance in every way. The Codes would have been met had there not been an error in the survey. The petitioners have spoken with their surrounding neighbors, and no objection to the variation has been voiced by any of the neighbors.

Mr. Lukas referred to a letter the Board received from Mr. Prince and asked if he is the homeowner of the property to the east, and Mr. Russ responded that Mr. Prince is the owner of the property to the east.

Mr. Gray asked whether the property was built prior to the current Zoning Ordinance, and Mr. Russ said it was.

Mr. Baker asked about the disclaimer statement that appears on the original survey. Mr. Russ responded that it was a standard disclaimer on a survey, but he does not know why it is not on the new survey.

Mr. Benes asked whether the actual lot line is still correct. Mr. Russ said that the lot line was correct, however, the placement of the house on the survey was incorrect.

STAFF'S PRESENTATION

Ms. Browne said that the petitioner has given an excellent presentation regarding the request for a variation and the background on the error in the survey. She then reviewed Staff's report as it was presented to the Board in their packet, noting the numerical figures will reflect the discrepancy of the Code Services Department as previously outlined.

Ms. Browne explained that the subject property is currently improved with a single-family residence with a detached garage. The subject property is 50 feet in width along Chicago Avenue, 148.6 feet in depth along Washington Street, and approximately 7,430 square feet or 0.17 acres in area. She again pointed out that the information provided in the Staff report concerning the requested variation was prepared prior to the discovery of the error on the part of the Code Services Department in determining the minimum required side

yard. The minimum required side yard is 5 feet, and the proposed yard is 3.93 feet, resulting in a 21.4% variation request.

Ms. Browne stated that the petitioner applied for and was issued a construction permit for a two-story addition to their residence, which is currently under construction. Ms. Browne described the two-story addition, which is located on the north side of the existing residence, and at its maximum dimensions, measures approximately 30 feet east to west and 37 feet north to south.

The original survey submitted with the construction permit application did not indicate the easterly-required side yard dimensions; however, dimensions shown on the survey indicated that the easterly side yard of the residence prior to construction would be at least 6.1 feet. Additionally, the proposed site plan submitted with the construction permit application indicated that the resulting side yard would be 5.0 feet. Also, the proposed topographical survey submitted with the construction permit application indicated a resulting side yard of 5.0 feet.

Ms. Browne continued, stating that during construction, concerns by the petitioner regarding neighboring construction prompted a re-survey of the subject property. The re-survey confirmed that the actual setbacks of the residence prior to the construction of the addition were actually at least 5.2 feet. With the 1.1-foot extension of the addition closer to the easterly side property line, the actual resulting side yard of the addition is 3.93 feet.

The R-4 zoning district requires a minimum side yard of five feet plus one additional foot of setback for every one foot in height over 20 feet, with height being measured from the average grade at the front of the structure to the midpoint between the bottom of the eave and the top of the peak. In this case, the height of the structure as it applies to the addition adjacent to the easterly side yard requires a side yard setback of 5 feet. The existing side yard of the addition is 3.93 feet at its closest point, which represents a 1.07-foot or 21.4% reduction.

Ms. Browne then reviewed the evaluation of variations as stated in Section 28-1803 of the Zoning Ordinance, *Standards for Granting a Variation*:

“A variation shall be permitted only if the Board finds that it is in harmony with the general provisions and interests of this Zoning Ordinance and that there are practical difficulties or particular hardships in the way of carrying out the strict letter of the provisions of this Zoning Ordinance. In its consideration of the standards of practical difficulties or particular hardship, the Board shall require that: (1) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located; (2) The plight of the owner is due to unique circumstances; and (3) The variation, if granted, will not alter the essential character of the locality.”

Ms. Browne summarized that the proposed side yard of the second story addition represents a reduction of the required yard by 1.07 feet or 21.4%. She said that the Board is authorized to consider the request per Section 28-1802(b) of the Zoning Ordinance and to potentially grant the request provided the petitioner has satisfactorily addressed to the Board the standards for granting the requested variation per Section 28-1803 of the Ordinance. She further stated that the Staff Development Team would recommend that if the variation

request is granted, consideration be given to including the following condition as part of the Board's decision:

1. Compliance with all applicable Federal, State, and Village laws, ordinances, regulations and policies.

Mr. Baker asked if this error had not been found at this time, but was discovered some time in the future after it was approved, what would have occurred. Ms. Browne responded that if this had come to the Village's attention after the construction permit had been finalized and signed off on by the Village, she did not know what action would have to be taken, and would probably have to defer to the opinion of the Village Attorney in that situation. If this were new construction, there would have had to have been an as-built certification; however, she does not know if that is true for an addition.

Mr. Russ added that he had spoken with Mr. Mourek of the Code Services Department who indicated that they will require a spot survey from this point forward for all additions as well as new construction. He believes the Village always has the right to come back and request that a variation be requested.

Ms. Browne explained that a spot survey, or an "as-built" survey, is prepared after construction takes place, and is required to be submitted to the Village prior to a certificate of occupancy being issued.

Chairman White called upon anyone wishing to speak either in favor of, or in opposition to the petition.

Mr. Andy Rubey of 820 Chicago said that several neighbors were in attendance at the meeting, and on behalf of them he confirmed Mr. Russ' statement that the neighbors have no objection to the Kaiser's request for a variation to allow the construction of the addition to their home.

There being no further comments, Chairman White closed the public portion of the meeting.

BOARD'S DELIBERATION:

Mr. Gray said that since the percentage of the variation is reduced, he is in favor of granting the variation.

Mr. Baker said this is a unique situation and represents a difference of only a foot; he sees no reason to oppose this.

There being no opposing opinions from the Board members, Chairman White called for a Motion.

Mr. Benes moved that in Case V-8-03, the Zoning Board of Appeals grant the variation as requested by the petitioner and as depicted on the site plans and building elevation drawings submitted with the application, subject to the following condition: 1. Compliance with all applicable Federal, State, and Village laws, ordinances, regulations and policies.

Mr. Lukas seconded the Motion.

AYES: Mr. Benes, Mr. Lukas, Mr. Baker,

Mr. Domijan, Mr. Gray, Ch. White

NAYS: None

Chairman White declared the Motion passed unanimously.

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Ms. Browne informed the Board that the Village has hired another Planner, Mr. Keith Sbiral, and she introduced him to the Board. She said that Mr. Sbiral began working with the Village on Monday, and that we are excited to have him on Staff.

There being no further discussion, Chairman White adjourned the meeting at 8:12 PM.

Respectfully submitted,

Tonie Harrington
Recording Secretary

Amanda Browne, Planner
Planning and Community Development