

**VILLAGE OF DOWNERS GROVE
ZONING BOARD OF APPEALS MINUTES
MAY 28, 2003**

Call to Order

In the absence of Chairman White, Chairman Pro-Tem Lukas called the meeting to order at 7:30 PM.

Roll call

Present: Mr. Baker, Mr. Benes, Mr. Domijan, Mr. Lukas, Mr. Sleeter

Absent: Mr. Gray, Ch. White

A quorum was established.

Minutes

Mr. Sleeter moved to accept the minutes of the March 26, 2003 meeting as presented. Mr. Domijan seconded the Motion.

AYES: Mr. Sleeter, Mr. Domijan, Mr. Baker, Ch. Lukas

NAYS: None

ABSTAIN: Mr. Benes (due to absence)

Chairman Lukas declared the minutes accepted as submitted 4:0:1.

Meeting Procedures

Chairman Lukas explained the procedures to be followed for the meeting, reviewing the petitions before the Board. He said that the Board will make a recommendation regarding the rezoning petition, and the final decision regarding that matter will be made by the Village Council. He said that the Zoning Board has the final authority in the case of the variation, to either grant or deny the petition. Chairman Lukas then asked anyone in the audience who intended to testify in this public hearing to rise and be sworn in.

Chairman Lukas asked Ms. Browne to read the published public hearing notice for the first petition.

MC-5-03 A petition seeking rezoning from Village R-1, Single Family Residence District to Village R-4, Single Family Residence District for property located at the northwest corner of Puffer Road and 63rd Street (PIN 08-13-416-017,-018); Foxland Properties, Inc. Owner/Petitioner.

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, May 28, 2003 in the Council Chambers of the Village Hall, 801 Burlington Avenue, Downers Grove, Illinois, on a petition seeking rezoning from Village R-1, Single Family Residence District to Village R-4, Single Family Residence District for property located at the northwest corner of Puffer Road and 63rd Street. (PIN 08-13-416-017, -018). The property is legally described as follows:

Lots 10 and 11, except the north 10.0 feet thereof, Lot 12, except the north 10.0 feet of the east 25.0 feet thereof and Lot 13 except the north 7.0 feet thereof and except the west 31.0 feet lying south of the north 7.0 feet thereof, all in Block 18, Downers Grove Park Subdivision, a subdivision of part of the south half of Section 13, Township 38 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded March 23, 1927 as Document 232126 in DuPage County, Illinois (PIN 08-13-416-017,-018).

Individuals with a disability requiring a reasonable accommodation in order to participate in any meeting should contact the Public Information Office (630) 434-5550 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, May 9, 2003.

Petitioner's Presentation:

Ms. Joanne Zalusky of Foxland Properties, 18 S. 5th Street, Geneva, Illinois, said that as owner of the subject property, Foxland wishes to have the parcel rezoned from R-1, Single-family Residential to R-4, Single-family Residential. She indicated that they intend to build three single-family residences on the

subject property, and they believe that the proposed R-4 zoning is compatible with the surrounding properties.

Mr. Benes asked about the partial lot shown on the plat of survey as Lot 13.

Ms. Zalusky responded that the portion of Lot 13, which is a small strip of land that is not useable by itself, will be utilized in conjunction with Lot 12 immediately to its east.

There being no further questions from the Board, Chairman Lukas asked Ms. Browne to make the Staff's presentation.

Staff Presentation:

Ms. Amanda Browne, Planner with the Village of Downers Grove, said the petitioner is seeking approval of a petition to rezone the subject property from R-1, Single Family Residential to R-4, Single Family Residential. The subject property is located at the northwest corner of 63rd Street and Puffer Road and is comprised of three previously subdivided lots as well as a 19 foot wide portion of a fourth lot.

Ms. Browne noted that the subject property is undeveloped, and the current owner of the property has advised that they desire to develop the subject property for single family residential purposes. The subject property was annexed by the Village in July of 1992 as a surrounded property, and was zoned R-1, Single Family Residential upon its annexation pursuant to Section 28-402 of the Zoning Ordinance. The owner is seeking to rezone the property to R-4, Single Family Residential similar to the residential properties surrounding it to the north, northwest and northeast within the area commonly referred to as the Hobson Triangle.

Ms. Browne described the subject parcel as 176.00 feet in width as measured east to west along its southerly property line adjacent to 63rd Street, 125.16 feet in depth as measured north to south along its easterly property line adjacent to Puffer Road, and 127.87 feet as measured north to south along its westerly property line. Its northerly property line is comprised of three offset sections, with a total east to west dimension of 176.00 feet. The total area of the property is approximately 22,309.2 square feet or 0.512 acres.

The lots which comprise the subject property have the following lot characteristics as noted on the Plat of Survey submitted by the petitioner. The easterly parcel, noted as Lot 10, has an east to west dimension along 63rd Street of 57 feet, a north to south dimension ranging between 125.16 feet and 125.07 feet and an area of approximately 7,131.56 square feet. The middle

parcel, noted as Lot 11, has an east to west width along 63rd Street of 50 feet, a depth ranging between 125.07 feet and 124.98 feet and an area of approximately 6,251.25 square feet. The westerly parcel, Lot 12 and a portion of Lot 13, has an east to west width along 63rd Street of 69 feet, a depth ranging between 124.98 feet and 134.90 feet and an area of approximately 8,926.42 square feet.

Ms. Browne indicated that, based upon the proposed R-4 zoning designation, each of the three lots qualifies as a legal nonconforming lot of record for individual construction purposes pursuant to Section 28-1201(a) of the Zoning Ordinance. She further noted that because part of Lot 13 would not independently meet the minimum lot area and width requirements to be deemed a buildable lot, it is the intent of the owner to utilize it along with the parcel immediately adjacent to its east, Lot 12, as a single zoning lot for one residential structure.

The zoning surrounding the subject property is as follows: the residential properties to the north, northeast and northwest are zoned R-4, Single Family Residential; the residential properties to the east and west are zoned R-1, Single Family Residential; the commercial properties to the southwest are within the Village limits of Woodridge and are zoned B-2, Community Shopping; the commercial properties to the southeast are within the Village limits of Downers Grove, and are zoned B-2, General Retail Business; the commercial property located one block east of the subject property at the northwest corner of 63rd and Belmont is zoned R-1, Single Family, but was developed for commercial activity pursuant to a court order.

Ms. Browne said the subject property appears on the Village's Future Land Use Map with a land use designation of Residential at 6 to 11 dwelling units per acre which is a medium density residential designation intended for low density multiple-family housing. This designation is comparable to the R-5, Two-family Residence and R-5A, Townhouse Residence zoning districts, within which detached single family residences are a permitted use.

Ms. Browne explained that the petitioner is seeking a more conservative zoning designation than the R-5 or R-5A Districts, as townhouse developments generally require larger assemblages of property than the subject property in order to function for attached single family purposes. The owners are proposing to develop the property consistent with the zoning of the detached single family residential areas surrounding it to the north, northwest and northeast, where typical lots range in width between approximately 50 to 55

feet and range in area between approximately 6,750 to 7,260 square feet in area.

Ms. Browne said that although the petitioner's request is a more conservative zoning designation than anticipated by the Future Land Use Plan, the request is consistent with the trend of residential development in the surrounding area.

Mr. Sleeter asked about the court decreed decision for the 63rd Street and Belmont and whether it applied only to that site. Ms. Browne said that was correct, the court order applies only to the corner site where the Walgreen's is located, and was entered into before the area was annexed into the Village.

Mr. Domijan asked about the vacated alley to the north of the property, and asked whether it is a Village right-of-way. Ms. Browne responded that the alley was vacated prior to the area being annexed into the Village. The area that was once formerly the public alley is now held in private ownership by the property owner to the north of the subject property.

Mr. Baker asked about the portion of the parcel that is being divided and whether that is also being rezoned. Ms. Browne replied that no division of land is proposed by the petitioner as part of this case or otherwise. The area that was at one time Lot 13 was previously divided into the westerly and easterly portions, with each portion being obtained by the owner on either side. This division took place prior to the subject property being annexed in 1992. The lots which comprise the subject property are therefore pre-existing.

Mr. Benes asked about access onto 63rd Street and whether it is a County roadway. Ms. Browne said that 63rd Street is under the jurisdiction of DuPage County, and that the petitioner has asked the County regarding driveway access to the lots. The petitioner has indicated that the County agreed to allow the westerly and the center property to gain access by way of 63rd Street; however, the corner lot will have to access by way of Puffer Road.

Mr. Domijan asked whether it was safe to say that Lot 13 does not actually exist. Ms. Browne responded that what was originally Lot 13 has been divided, and the portion of Lot 13 owned by the petitioner cannot be utilized as an independent lot of record. It is far too narrow and too small to be utilized on its own for any permitted use. The only options are for the petitioner to use it in conjunction with the lot to the east as one "zoning lot", or to sell it to the property owner to the west who could utilize it in conjunction with their property. But it cannot be used by itself for any principal use.

There being no further questions from the Board at this time, Chairman Lukas called for anyone in the audience who wished to speak either in favor of or in opposition to the petition.

Judy Rosko of 6285 Chase said her property is Lot 15, located to the north and west of the subject property. Her concern is that for the past few years the neighbors have had problems with flooding in their back yards. They have gone both to the Village and the County about this problem. Ms. Rosko said that she is concerned about making sure that the owners of the subject property address the stormwater needs of the property and the area.

Ms. Rosko further noted that she reviewed the size requirements, and the property is 22,209 square feet, which falls short of the requirement of 7,500 square feet per lot for three lots. She is not opposed to building two homes on the site, but does not want to see three homes. Ms. Rosko said it is difficult to speak about the issue since there are no drawings or plans available for the residents to see.

Ms. Rosko then asked what a nonconforming lot was.

Ms. Browne said essentially, a nonconforming lot of record is one that was created prior to being subject to the regulations of the Village, which in this case, would be prior to its annexation. If a lot were divided prior to its being annexed, it has certain lawful nonconforming rights with respect to its depth, width and area.

Ms. Browne added that lawful nonconforming lots must meet certain criteria to be buildable lots of record. The lot must either be a) within 75% of the minimum requirements for lot width and lot area of the underlying zoning district, or b) they must be at least 50 feet in width and 7,500 square feet in area.

With respect to the subject lots, Ms. Browne said that Lot 10 at the corner is within 75% of 7,500 square feet and is greater than 50 feet in width, therefore, it would be a buildable lot of record in the R-4 District. Lot 11 in the middle is also within 75% of the lot area and width requirements and would, therefore, be a buildable lot of record in the R-4 District. Lot 12 and the portion of Lot 13, when combined as a single zoning lot, is over 8,900 square feet and greater than 50 feet in width, therefore, exceeding the minimum requirements.

Ms. Rosko said that the builders who came to talk to the neighbors told the neighbors that they had built other homes on 63rd Street, which look very

nice; however, she thinks they do not look like they belong. She believes that they are putting big buildings on postage stamp sized lots.

Mr. Benes asked Ms. Rosko more about her concerns over the flooding in the area. Ms. Rosko responded that Lots 15 and 16 to the north flood. The lots along Puffer are higher, and the water comes from the north. There are also problems with Lot 7, as they are pitching their water into the back yard and ruining the septic systems. Neighbors have discussed this issue with the County Health Commission, but the owner ignores them. Ms. Rosko added that she and another neighbor have had to go into the back yards with sump pumps to remove the excess water. There is also a terrible odor from the septic fields as well. She noted that Lot 9 is very low as well, and the water just sits in that lot.

Mr. Benes asked if the water was coming from the subject area, and she said it was not, but those lots are higher than her property.

Mr. Sleeter said he could understand her concerns about the flooding, but noted that this particular rezoning is actually less dense than what was called for in the Future Land Use Plan. He said that the Future Land Use designation was R-5A, which is townhome residential.

Ms. Browne clarified that the designation of Residential at 6 to 11 dwelling units per acre could accommodate either R-5, which is two family residential, or R-5A, which is townhouse residential. Ms. Rosko said that the builder told her if they do not build the homes, they will put a plaza on that site.

Chairman Lukas explained that this Board has no control over the stormwater management of any future development. This is the first step that the petitioner must take with respect to the zoning of the property in order to be able to develop it for three single family residences. If the property is rezoned, the builder or developer will have to provide plans for the structures to the Village for review. He informed her that the best suggestion he could give her would be to contact Ms. Browne as to following the whole process. He noted that the Village Council has the final authority with respect to this rezoning request.

Mr. Jim Nehls of 6237 Chase, Lots 16 and 17 on the map, addressed the Board. He said he would much rather have single-family homes as opposed to a townhome or a retail mall. He said the builder also spoke with him and indicated that he would be putting in a 2,400 square foot house on each of the three lots. Mr. Nehls said he thinks that is a huge house.

Mr. Nehls added that his Lot 16 is where all the water of the area accumulates. If they put in a 2,400 square foot house, it will be higher than the rest of the area. He said that the County has already performed dye tests in his back yard because of the water issue. Neither the Village nor the County is providing a solution to the problem. Mr. Nehls said that he would prefer two houses as opposed to three, since the homes that the builder is planning are so large.

Mr. Nehls asked about the front setback requirements off Puffer for Lot 10. Ms. Browne used the overhead projection to show where the property line starts, indicating that the street pavement lies within the public right-of-way. The setback requirements start where the property line begins. In the proposed R-4 District, the front setback requirement is 25 feet plus additional setback based upon the height of the structure. In the case of all 50 foot wide corner lots; however, the setback is reduced in an amount to allow a certain minimum buildable width within the property.

Mr. Nehls repeated his concerns over the problem with the water flooding, saying that it has been an ongoing problem for over 12 years. One of the residents has filed a case in court trying to get action by the County. He asked that this be taken into consideration.

Ms. Browne noted that the staff in the Stormwater Management Division of the Public Works Department will determine whether any proposed construction plans satisfy the minimum requirements regarding stormwater management. Whether one, two or three structures are proposed, the plans are reviewed by Stormwater Management. An approval of the request in zoning does not automatically permit three structures to be constructed. If the proposed plans do not meet all of the applicable Ordinance requirements including stormwater, zoning, construction, etc., the plans can be denied.

Chairman Lukas said that the comments made by the residents are part of the record of this public hearing and will be forwarded to the Village Council as part of this case.

Ms. Dorothy Moss of 5336 Lane Place asked about Lot 13 not being buildable. Ms. Browne explained again that Lot 13 is not being divided or split as part of this rezoning proposal. The lot was previously divided into two portions, with each portion being held in common ownership with the lots on either side. Due to the size of the portion of Lot 13 owned by the petitioner, it can not be utilized independently as a lot with a house on it. Ms. Moss asked who owns Lot 13, and Ms. Browne said that the westerly portion is owned by the lot

owner to the west, and the easterly portion is owned by the petitioners, who own Lot 12, Lot 11 and Lot 10.

Ms. Moss reminded the Board that one of the charms of Downers Grove is its low density. She hopes they remain conscious of keeping the density low.

Mr. Nehls asked again about the size of the buildings that can be placed on those lots. Ms. Browne explained that the Zoning Ordinance governs the sizes of buildings that can be placed upon any lot. The minimum setback requirements, which are dependent upon the height of any proposed structure, will dictate the “buildable envelope” for each property. If the petitioner proposes any construction on these lots, the next step would be to submit plans for construction permitting.

Ms. Browne further explained that construction permitting is an administrative function of the Village, and unless there were some type of deficiency or variation being requested in order for the proposal to be approved, there would be no further public hearing process beyond this rezoning request. She explained to Mr. Nehls that he can contact the Code Services Department if he wants to know what the minimum construction requirements or permit application requirements are.

Mr. Nehls wanted to know whether the neighbors will be informed when those documents are submitted to the Village, and Ms. Browne said they would not. Approval of proposed construction plans is an administrative function; plans are submitted by the applicant, distributed to the necessary departments, reviewed, and if changes are necessary in order to meet the Ordinance requirements, the applicant is notified, and the permit is either approved or denied.

Mr. Domijan stated that there would be another meeting before the Village Council regarding this rezoning where the residents can express their concerns.

There being no further discussion, Chairman Lukas closed the opportunity for further public comment.

Board Deliberation:

Mr. Baker asked if houses could be built meeting the R-1 requirements. Ms. Browne said that R-1 is a more restrictive zoning classification as compared to R-4 in terms of lot area and width. In the R-1 District, the minimum lot area is

20,000 square feet and the minimum lot width is 100 feet. However, lawfully nonconforming lots have the same ability to utilize the “75% rule” within the R-1 District as in the R-4 District in that if they are within 75% of the minimum lot area and width requirements, they could be utilized for a permitted use. In this case, if these parcels were to remain zoned R-1, they would be able to be utilized with Lots 10 and 11 being one zoning lot, and Lots 12 and 13 as another zoning lot.

Mr. Benes said he sees nothing unusual in the request, although he understands the concerns expressed by the neighbors regarding the impacts on drainage.

Mr. Sleeter said he is comfortable with the request to rezone the property to R-4 and would be in favor of making a positive recommendation. With regard to the flooding, what is being requested is a less dense zoning than what the Village envisioned in its Future Land Use Plan.

Mr. Domijan said while it is consistent with the surrounding zoning, he is uncomfortable with how Lot 13 is being split up. It is not clear to him that there is control as to what that parcel will become. While it is tied into Lot 14, there would be part of it zoned R-1 and part of it zoned R-4. Ms. Browne interjected, stating again that Lot 13 is not being divided, and that the portion owned by the petitioner cannot be utilized by itself.

Mr. Domijan said he understood that but asked whether it was true that Lot 13 will be split with two zones on the one parcel. Ms. Browne explained that Lot 13 has already been divided. It was originally a parcel which, at some point was divided with someone purchasing the westerly portion, and someone purchasing the easterly portion. It no longer exists as it was originally divided as part of the original subdivision of the area which includes Lots 10, 11, 12, etc. The fact that it is called “part of Lot 13” is simply a legal description of that particular parcel of land. Lot 13 no longer exists in its original configuration, and it is not being split in terms of its zoning.

Mr. Baker asked if that would mean it would be like Lot 13a and Lot 13b. Ms. Browne said essentially, yes, that is one way you could describe it. She then used the overhead projection of the surrounding area to show how the lots in the area were originally divided, and how people have purchased parts of other lots all throughout the area.

Mr. Domijan said he misunderstood that the lot was being divided, and wanted to be sure that they were not applying two zoning designations to one lot.

Mr. Sleeter moved that in Case MC-5-03, the Board recommend that the Village Council approve the requested rezoning from Village R-1, single Family Residence to Village R-4, Single Family Residence as requested by the petitioner.

Mr. Domijan seconded the Motion.

**AYES: Mr. Sleeter, Mr. Domijan, Mr. Baker, Mr. Benes,
Chairman Pro Tem Lukas**

NAYS: None

Chairman Pro Tem Lukas declared the motion passed unanimously.

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V-2-03 A petition seeking a variation to reduce the minimum side yard required for an addition to a residence without an attached garage for property located on the east side of Lane Place, approximately 232 feet south of Maple Avenue, commonly known as 5317 Lane Place, Downers Grove, IL (PIN 09-08-313-008); Tom & Cindy Walthour, 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, May 28, 2003 in the Council Chambers of the Village Hall, 801 Burlington Avenue, Downers Grove, Illinois, on a petition seeking a variation to reduce the minimum side yard required for an addition to a residence without an attached garage. The property is located on the east side of Lane Place, approximately 232 feet south of Maple Avenue, commonly known as 5317 Lane Place, Downers Grove, IL (PIN 09-08-313-008). The property is legally described as follows:

Lots 10 and 11 in Block 1 in the resubdivision of Blocks 1 and 2 in Meadowcroft's Subdivision of Lot 38 of the Assessor's Subdivision of Section 8, Township 38 North, Range 11, East of the Third Principal Meridian, according to the plat of said resubdivision recorded May 24, 1891 as Document 45462, in DuPage County, Illinois (PIN 09-08-313-008)

Individuals with a disability requiring a reasonable accommodation in order to participate in any meeting should contact the Community Relations Department (630) 434-5550 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, May 9, 2003.

Petitioner's Presentation:

Mr. Mike Davenport, architect for the owners, stated that the owners are proposing to build a one-story addition off the back of the existing residence at 6317 Lane Place. It is an existing non-conforming residence in that one setback has to be 10 feet wide for a residence with a detached garage. This requirement is intended to allow for access from the street to the garage in the rear. In this situation, however, there is a public alleyway behind the property which allows access to an existing garage. The owners are looking to extend the existing residence with an addition in line with the existing walls of the residence. They are requesting a setback of 7.85 feet in lieu of the 10 foot requirement in order to continue the existing line of the residence.

Mr. Benes asked if the proposed two-car garage would satisfy the 5 foot side and rear setbacks, and Mr. Davenport said it would.

There being no further questions, Chairman Lukas asked Ms. Browne to present the staff findings.

Staff Presentation:

Ms. Browne said the petitioners are seeking approval of a variation from the side yard setback requirement for an addition which they desire to construct onto the rear of their single family residence located at 5317 Lane Place. The variation is being sought to allow the expansion of a residential structure which has a lawful nonconformity with respect to the minimum side yard requirement for residences without attached garages.

Ms. Brown stated that the subject property is zoned R-4, Single Family Residence. Pursuant to Section 28-1111(d) (which incorporates Section 28-1111(a)(1) by reference), the minimum required side yard in the R-4 District within which the property is located is 5 feet; however, residences without attached garages must maintain one side yard of at least 10 feet. The intent of this requirement is to allow a driveway of adequate width to be located along one side of the residential structure, as Section 28-1300(c)(1) of the Ordinance requires detached accessory structures to be located within the side or rear yards.

Ms. Browne described the subject property as having a width of 50 feet as measured from north to south along Lane Place, a depth ranging between 156.64 feet as measured on the northerly property line and 151.84 feet as measured on the southerly property line, and has an area of approximately 7,712 square feet.

Ms. Browne noted that the property is improved with a single-story single family residence with a detached garage. The existing residential structure is 36.65 feet in width as measured along its northerly rear wall, and 28.65 feet in depth as measured along its northerly side wall. The residence has a front setback of 28.75 feet as measured at its southwesterly corner. The southerly side yard of the residence ranges between 5.1 and 5.25 feet, and the northerly side yard is 7.85 feet.

She informed the Board that, although the residence does not contain an attached garage, it was constructed prior to the adoption of the current form of the Zoning Ordinance in April of 1965 and is, therefore, lawfully nonconforming with respect to the requirement of having one side yard of no less than 10 feet in width.

Ms. Browne further noted that although the residence does not currently satisfy the minimum side yard requirements for residences without attached garages, the petitioners' residence does not utilize either of its side yards for driveway access to the detached garage in the rear yard. The residence is served by a public alley right-of-way along its easterly property line. This alley is improved for typical alley thoroughfare purposes and provides access to the rear yards of residences fronting on the east side of Lane Place, including the subject property, as well as to the rear yards of residences on the south side of Maple Avenue.

Referring to the proposed site plan, Ms. Browne said it is the desire of the petitioners to construct a single story addition to their residence and to replace the existing detached garage with a new detached garage. The addition to the residence is proposed to accommodate a family room, a master bedroom with a walk-in closet as well as a pantry and a relocated stairway leading to the basement.

Ms. Browne said the addition, as proposed, would measure 36.65 feet in width and 23 feet in depth, with an area of approximately 843 square feet. The addition would extend the full width of the rear wall of the residence and is proposed to have a southerly side yard of 5.5 feet as measured at its

southeasterly corner and a northerly side yard of 7.85 feet as measured at its northeasterly corner.

Because neither side yard of the addition will satisfy the minimum side yard requirement of ten feet for residences without attached garages, Ms. Browne explained the petitioners are requesting a variation to reduce the minimum required side yard to 7.85 feet, which represents a 2.15 foot or a 21.5% reduction. Even though the existing residence is lawfully nonconforming with respect to this ten foot side yard requirement, Section 28-1201(c) of the Zoning Ordinance requires that any new construction, additions or expansions of a nonconforming structure must conform to the applicable requirements of the Zoning Ordinance. Therefore, in order to construct the addition that extends the full width of the residence, a setback variation must be sought.

Ms. Browne said the petitioners are seeking approval of this variation request under Section 28-1802(b) of the Zoning Ordinance which authorizes the Board to “permit any yard of less dimension than required by the applicable regulations not to exceed a fifty percent (50%) reduction.” As part of their support documentation, the petitioners have presented a detailed outline of their proposal to construct the addition and their request for a variation.

Ms. Browne indicated that the provisions of Section 28-1803(a) of the Zoning Ordinance provide that “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.
- (3) The variation, if granted, will not alter the essential character of the locality.”

Mr. Baker asked if they could still build the addition without a variance, and Ms. Browne said they could if the addition were moved in to meet the 10 foot setback requirement.

Mr. Benes asked whether the alley is part of the residence or is it a public alley. Ms. Browne said it is a dedicated public right-of-way. Mr. Walthour, owner of the property, said they have only lived there about a year; however, it is paved and appears to be owned by the Village. It is used by residents off Lane Place and somewhat off of Main Street as well.

Ms. Moss, 5336 Lane Place, commented said that it is a public alleyway that is not plowed.

Mr. Davenport informed the Board that the petitioner has made application for construction permits and has received stormwater management approval for the project. Topographical work has been prepared for the site and has been approved by the Village.

Mr. Benes asked Mr. Davenport if they were to design the addition maintaining the ten foot setback, would it incur a financial impact in terms of construction cost. Mr. Davenport said it would as it would involve a change of the roof line and it would decrease the amount of buildable area. The cost per square foot of the addition would increase.

Mr. Sleeter asked whether flooding was a problem in that area, because when he drove through the area this week, the street was full of water curb to curb. Mr. Davenport responded that the topographic work did come back with comments, and they were subject to more stringent review because the work was done when the Village was still under probation by the County. He said they have taken great pains to insure there are no problems.

Ms. Moss commented that the reason the street floods is because the drain is usually plugged.

There being no further questions from the Board and none from the public, Chairman Lukas closed the opportunity for further public comment.

Board's Deliberation:

Mr. Sleeter said it is clear to him that this request meets the standard conditions required to approve a variance.

Mr. Benes said that looking at the surrounding buildings, this will not be out of place. The owner's plight is due to unique circumstances that were not his doing when the property was subdivided and developed. He said that the owners have had to come in for an expensive variation to put the addition onto

their house. He would say the plans they are talking about, if made according to the Code, would probably not yield a reasonable return. He believes that the variation as requested is in order.

Mr. Domijan agreed that the addition would not change the look of the street and the surrounding area. The relocation of the garage would be an improvement and he thinks the plan is a good one.

Mr. Baker said he has no objections to it.

Chairman Pro-tem Lukas said he also has no contrary opinion, and entertained a Motion.

Mr. Benes moved that in Case V-2-03, the Zoning Board of Appeals approve the requested variation to reduce the northerly side yard setback to 7.85 feet in lieu of the minimum requirement of 10 feet for residences without an attached garage. This variation is being granted for the purpose of constructing an addition to an existing residence in accordance with the site plan and elevation plans submitted by the petitioner. Mr. Domijan seconded the Motion.

**AYES: Mr. Benes, Mr. Domijan, Mr. Baker, Mr. Sleeter,
Chairman Pro-tem Lukas**

NAYS: None

Chairman Pro-tem Lukas declared the Motion passed unanimously.

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Ms. Browne said that she is not sure if there will be a meeting for June, and is waiting to hear from one potential petitioner.

There being no further business, Chairman Lukas adjourned the meeting at 8:36 PM.

Respectfully submitted,

Tonie Harrington
Recording Secretary

