

**MINUTES
ZONING BOARD OF APPEALS
REGULAR MEETING
Wednesday, September 17, 2016, 4:00 P.M.
Council Chambers, City Hall
109 East Olive Street, Bloomington, Illinois**

Members present: Chairman Briggs, Mr. Brown, Mr. Bullington, Mr. Butts, Ms. Meek, Mr. Kearney, Mr. Simeone

Members absent: None

Also present: Mr. Tom Dabareiner, Community Development Director
Mr. George Boyle, Assistant Corporation Counsel
Ms. Katie Simpson, City Planner

Mr. Dabareiner opened the meeting at 4:02 p.m. and called the roll. With six members in attendance (Mr. Kearney arrived at 4:03), a quorum was present.

PUBLIC COMMENT: None

The Board reviewed the minutes from July 20, 2016. Ms. Meek offered two corrections. A motion to approve the minutes with corrections was made by Mr. Kearney; seconded by Ms. Meek, and was **approved** by a 7-0 vote as follows: Mr. Kearney—yes; Ms. Meek—yes; Mr. Brown—yes; Mr. Bullington—yes; Mr. Butts—yes; Mr. Simeone—yes; Chairman Briggs—yes.

Chairman Briggs confirmed today's case had been published and explained the meeting procedures. City staff introduced themselves. Mr. Dabareiner stated all items were properly published.

REGULAR AGENDA:

Chairman Briggs explained that the second case on the agenda needed to be heard first due to availability of staff.

Z-30-16 Consideration, review and approval of a variance application submitted by Frederick and Jean Koppersmith for a variance request to allow an accessory structure to be four (4) feet away from the principal structure in lieu of the required ten (10) feet separation for the property located at 1015 ½ E Front Street.

Chairman Briggs introduced the case. Fredrick Koppersmith, 5 Hidden Lake Court, Bloomington, owner of the property at 1015-½ E. Front Street, was sworn in. Mr. Koppersmith stated he had removed an upper level porch and the new porch was larger than shown on the plans. He stated he was not aware there was a problem until the City's building inspector arrived, who noted the garage was too close. Mr. Koppersmith stated it does not look that bad and photos are in the ZBA packet. He stated that the timber footings were rotting and he had them replaced with concrete footings, which made the porch closer to the garage. Chairman Briggs asked if this

caused the porch to be bigger; Mr. Kuppersmith confirmed it did. Chairman Briggs asked if he had a building permit; Mr. Kuppersmith indicated he did, but that he got it October 2015 but did not finish the work. In early 2016, Mr. Kuppersmith stated that he wanted to make the porch bigger than shown on the plans originally submitted. In a conversation with the inspector, Mr. Kuppersmith felt he had permission from the inspector to proceed, but when the inspection occurred the porch was too large. Ms. Meek asked if the dimension between the garage and old porch changed from the existing porch and the new porch; Mr. Kuppersmith stated it did not change.

Renee Russin-Brewer, 1015 E. Front Street, was sworn in. She asked if the garage was going to move. Chairman Briggs stated that the garage may need to move but not onto her property.

Ms. Simpson presented the staff report. She stated staff recommends against the variance. She showed a photo of the property and noted it is a nonconforming lot. She showed an aerial photo and described the surrounding uses. Ms. Simpson stated that the October 2015 permit was to replace the stairway and porch, but the work actually completed was larger than approved in the permit. She showed some photos, noting that the new roofline on the porch results in an expansion of the principle structure and an expansion of the nonconformity. Ms. Simpson stated the petitioner has alternatives to correct the problem, such as removing the addition, moving the garage or thatching the garage with an appropriate firewall. Staff discussed the standards for approving a variation and concluded the standards were not met.

Mr. Bullington clarified that the house can exist in its current form with the garage and the old porch, as long as it is not made larger because the house is nonconforming; Ms. Simpson stated that the porch was enlarged which brought it closer to the garage. Mr. Bullington asked if enlarging the front portion of the house would have required this approval; Ms. Simpson confirmed we would. Mr. Bullington asked if the rationale behind this is that the City does not wish to see expansion or continuation of nonconforming structures; Mr. Simpson responded in the affirmative.

Mr. Simeone asked how the original permit was approved for the add-on; Ms. Simpson stated that the porch and stairs are allowed structures, but once the porch was enclosed it became larger an expanded the nonconforming house, bringing it too close to the garage. Ms. Simpson added that the zoning code requires that variances be obtained prior to construction, rather than retroactively.

Mr. Butts asked if the addition encompassed both upper and lower levels of the house; Ms. Simpson stated that the lower level porch was not enclosed by the addition, but the upper level porch was enclosed. Mr. Dabareiner add that by enclosing the porch on the upper level, the petitioner added a room which changed the status of the porch into a room. Mr. Dabareiner added a staff concern that approval of this variance after the fact would result in future cases coming before the ZBA where someone intentionally builds outside of the approved plans then comes to ask for forgiveness.

Mr. Butts asked if moving the garage actually corrects the situation because the distance from its corner would remain less than ten feet from the new porch; Ms. Simpson concurred with this finding. Chairman Briggs asked if there was sufficient room to move the garage; Ms. Simpson stated there may not be enough room.

Ms. Meek asked whether the four foot dimension is from the garage to the lower porch or the upper level; Ms. Simpson stated both. Mr. Simeone asked if the building permit was issued in error because the distance does not seem to have changed; Ms. Meek responded that the difference is the expansion due to the new roof. Chairman Briggs stated that difference is the roof and the enclosing of the porch into a livable space that triggered the need for this discussion.

Mr. Koppersmith stated the new porch roofline extends about two feet farther than the prior version, which was screened in. Chairman Briggs asked if it had been livable space; Mr. Koppersmith stated it had not been livable space. Mr. Koppersmith stated he enclosed the space; in response to a question, he added he extended heating and air conditioning into the new room.

Mr. Kearney asked about the need for the 10-foot distance requirement and the fire code reasons, and whether that was the case before the expansion too; Ms. Simpson confirmed that the distance is a fire code concern now and before.

Chairman Briggs repeated that the status of the porch was changed to livable space which requires the need for variance. He asked if the original permit was intended only to replace what had been there; Mr. Koppersmith stated that he wanted it bigger but those new plans were not submitted. Chairman Briggs summarized that the original design was approved but it appears to have been enclosed without a permit.

Mr. Simeone stated he understands the City's position but is concerned that the neighbor does not want the garage moved so an exception might be needed.

The petition was **denied** by a 2-5 vote as follows: Brown—no; Mr. Bullington—no; Mr. Butts—no; Mr. Kearney—no; Ms. Meek—yes; Mr. Mr. Simeone—yes; Chairman Briggs—no.

Chairman Briggs advised the petitioner to work with the staff on options.

Z-27-16 Consideration, review and approval of a variance application submitted by Scott Hunter for a variance request to allow a rear setback of twenty six (26) feet in lieu of the required thirty (30) feet setback in the R-1B District for the property located at 1924 Garling Drive.

Chairman Briggs introduced the case. Mr. Scott Hunter, 1924 Garling Drive, was sworn in. Mr. Hunter stated he would like to spend more time in the back yard so would like to enclose the patio and the size he wanted requires the encroachment into the backyard.

Mr. Bullington asked what physical characteristics are in place which prevents compliance with the code; Mr. Hunter stated his preferred location for the patio needs the variance. Mr. Hunter noted he does not want it located elsewhere in relation to the house. Mr. Bullington asked if the property was flat and relatively square; Mr. Hunter said yes. Chairman Briggs asked if he could make it narrower and meet the setback; Mr. Hunter stated the patio exists and he wanted to build atop it. Ms. Meek asked about access to the house and its relationship to the enclosure; Mr. Hunter stated a person will step outside the house first, then into the enclosure. Chairman Briggs asked what would be lost in the four feet needed to meet the code; Mr. Hunter stated that the layout he wants with a dining area requires the additional area.

Ms. Simpson presented the City staff report and stated staff recommends against approval of the variance. She presented an aerial photo and described the surrounding area. She stated the petitioner proposes an enclosure that would encroach about four feet into the rear yard. She stated there are options available to the petitioner to meet the code, such as building atop the existing patio. She stated there are no physical hardships forcing use of the encroached area. She added that a house to the north may have obtained variance for their porch.

Mr. Simeone asked about staff's recommendation to oppose when two of the standards are met; Ms. Simpson stated the code requires all five standards be met. Mr. Kearney stated that this is not the City's consistent position, especially when it comes to Special Uses.

Chairman Briggs asked about the applicable building code and what might be built in the future without a permit. Mr. Dabareiner stated Code Enforcement is successful in obtaining compliance when building occurs without a permit; he reviewed the basic concerns with the case and stated he did not want to assume there would be a future violation. Mr. Bullington asked if the standards were the same used if the petitioner were expanding the kitchen or a bedroom this distance; Mr. Dabareiner stated yes.

Mr. Hunter added that there is a shed on the existing patio which would conflict with expanding the enclosure. Chairman Briggs and Mr. Kearney described a different layout which might work.

The petition was **denied** by a 1-6 vote, as follows: Brown—no; Mr. Bullington—no; Mr. Butts—no; Mr. Kearney—no; Ms. Meek—no; Mr. Simeone—yes; Chairman Briggs—no.

Chairman Briggs introduced case Z-31-16, but the petitioner had not yet arrived. He stated he would move this case to the end. Mr. Brown indicated he had to leave.

Z-32-16 Consideration, review and approval of a variance application submitted by Jennifer and Thomas Coon for a variance request to re-establish two adjacent, nonconforming lots of record under common ownership for residential purposes for the property located at 1203 S. Livingston Street.

Chairman Briggs introduced the case and clarified that one of the variances sought did not get published so the Board would only be considering the lot split into two nonconforming lots. He added that the five foot variance would be considered next time. Ms. Jennifer Coon, 1203 S. Livingston, was sworn in. Ms. Coon stated that the five foot variance is important to the discussion of the lot split. Ms. Coon stated that in 2013, the neighboring house at 1205 S. Livingston burned down, but the garage remained, and the Coons eventually purchased the lot. She stated they own 1205 outright but the property at 1203 has a mortgage, although the two parcels had been combined into one. She noted it is difficult reviewing the lot split without discussing the other variance because it affects where the adjacent lot line can be located, but shifting the line one foot could affect them financially with their mortgage. Ms. Coon presented a letter for the record from a neighbor, which was marked Exhibit A.

Mr. Bullington asked if the ZBA would be hearing the case on the other variance next month; staff stated yes. He then motioned to postpone discussion of this case until the two issues can be heard together; seconded by Mr. Simeone. Mr. Kearney asked if the two topics can be considered

separately or if they are dependent; Ms. Simpson stated they are related. Mr. Dabareiner stated that approving a lot split alone would re-create the problem that originally forced the lot combination because the new lot would have an accessory structure on it without a principle structure, which is not allowed. Chairman Briggs stated that this case is complicated so the postponement will allow discussion of both requests, noting that the petitioner needs to return anyway. The **motion to postpone consideration was approved** by a 6-0, as follows: Mr. Bullington—yes; Mr. Simeone—yes; Mr. Butts—yes; Mr. Kearney—yes; Ms. Meek—yes; Mr. Chairman Briggs—yes.

Z-33-16 Consideration, review and approval of a variance application submitted by Peter and Mary Ellen Falstad for a variance request to allow a rear setback of twenty six (26) feet in lieu of the required thirty (30) feet in the R-1B District for the property located at 2014 Withers Ln.

Chairman Briggs introduced the case and corrected the case number. Mr. Peter Falstad, 2014 Withers Lane, was sworn in. Mr. Falstad stated he wishes to build a four-season room but the lot is triangular in shape and a portion of the proposed new structure would encroach into the setback. Mr. Bullington asked if the physical hardship is the unusual triangular shape of the lot; Mr. Falstad stated yes and added that a different location would force access to be through their bedroom.

Ms. Simpson provided the City staff report and recommended in favor of the variance given the triangular lot. She showed photos of the house and an aerial, with the zoning and surrounding uses. She reviewed standards, noting that the vast majority of the neighborhood's lots can build a similar structure because they have rectangular lots, which is not the case for the petitioner.

Chairman Briggs noted that given the lot's shape and its location on the cul-de-sac forces the house to sit back farther than if it were a rectangular shape. Mr. Simeone noted the located of an easement in the rear of the yard which further inhibits use of the backyard.

Mr. Falstad added the four season room would be built upon a crawl space, not the patio. The petitioner's request for a variance was **approved** by a 6-0, as follows: Mr. Bullington—yes; Mr. Butts—yes; Mr. Kearney—yes; Ms. Meek—yes; Mr. Simeone—yes; Mr. Chairman Briggs—yes.

Z-31-16 Consideration, review and approval of a variance application submitted by Jennifer Vericella Prado/RJV Construction for a variance request to allow a six (6) foot fence in the front yard of a corner lot in lieu of the permitted four (4) foot fence requirement for the property located at 1102 Elmwood Rd.

Chairman Briggs introduced the case. Mr. Bob Vericella, 1116 E. Monroe, and Mr. Marcello Prado, 1102 Elmwood Road, were sworn in. Mr. Prado stated he and his wife purchased the property a few months ago with an existing four-foot high solid fence, but they request 6-feet for privacy.

Ms. Karen Fleming, 1104 Elmood Road, was sworn in. Ms. Fleming asked if the new fence will be in the same footprint as the existing fence.

Ms. Elizabeth Fox Anvick, 20 Walker Drive, was sworn in. She stated her concern that the fence may block the sight triangle needed.

Ms. Simpson presented the City staff report and recommended against the variance, as proposed. She showed an aerial of the property and discussed the surrounding uses. She indicated the location of an alley behind the rear of the petitioner's property. She noted, being a corner lot, there are two front yards which require four-foot high fence maximums. She stated other four-foot tall fences exist in the front yards of neighboring properties. Ms. Simpson stated that the property slopes significantly from front to rear, experiencing a four foot drop. She reviewed the standards, concluding that the grade difference might be considered a physical hardship but others with the same slope maintain a four-foot fence in their front yards. She recommended against the variance as requested but proposed an alternative design which would allow the fence to step up in height as the grade declines towards the rear of the property up to six feet in height.

Mr. Bullington, Mr. Kearney and Chairman Briggs sought clarification of the alternative, from where the fence would be limited to four feet in height to where it might extend to six feet in height. Ms. Meek clarified that the fence begins at the northwest corner of the house. Mr. Vericella confirmed the fence location to the best of his recollection. There was discussion about the diagram the petitioner had submitted versus the actual location of the fence. Mr. Dabareiner asked that any motion in favor include that the six foot height should begin north of the structure of the house. Mr. Butts' marked up a plan showing his understanding of where six feet would be allowed versus the four foot height. Board members and the petitioner reviewed the drawing.

Chairman Briggs summarized that the new fence would be located in the same footprint of the existing fence and the six foot height would extend the length along the sidewalk beginning at the point west of the northwest corner of the house nearest the sidewalk.

Mr. Simeone asked staff about the sight triangle; Ms. Simpson noted that 15 feet of distance extends from the termination of the fence at the alley to the street. She stated this provides adequate sight distance.

Ms. Fox-Anvick continued asking about the sight distance. Mr. Simeone expressed his disagreement with City staff's analysis. Mr. Butts stated there will be no significant difference for drivers leaving the alley from a sight distance perspective.

The petitioner's request was amended by Mr. Bullington to link Exhibit A to consideration of a motion to approve a variance; seconded by Mr. Butts. This motion to add Exhibit A was **approved** by a 6-0, as follows: Mr. Bullington—yes; Mr. Butts—yes; Mr. Kearney—yes; Ms. Meek—yes; Simeone—yes; Mr. Chairman Briggs—yes.

This motion to approve the variance as shown in Exhibit A was **approved** by a 4-2, as follows: Mr. Bullington—yes; Mr. Butts—yes; Mr. Kearney—no; Ms. Meek—yes; Mr. Simeone—no; Mr. Chairman Briggs—yes.

OLD BUSINESS:

There was a brief discussion about the status of text amendments to the zoning ordinance.

NEW BUSINESS:

Mr. Butts was welcomed to the Zoning Board.

Chairman Briggs mentioned the upcoming reception for board members and commissioners to be held at 5:00PM at the BCPA on Tuesday, October 11, 2016.

ADJOURNMENT: 5:50PM

Respectfully,

Tom Dabareiner AICP