



**MEETING MINUTES
OF THE
February 21, 2024
ZONING BOARD OF APPEALS

LINCOLNWOOD VILLAGE HALL
Gerald C. Turry Village Board Room**

Zoning Board of Appeals Members Present: Chairman Bruce Heller, Commissioners Martin Youkhanna, Rizwan Hussain, and Meldina Dervisevic

Absent: Commissioners Aida Cantic and Anna Velasquez

Staff Present: Doug Hammel, Planning and Economic Development Manager and Village Trustee Chris Martel

I. Call to Order/Roll Call

Chairman Heller noted a quorum of four members and called the meeting to order at 7:03 p.m.

II. Pledge of Allegiance

III. Approval of August 16, 2023 and October 25, 2023 ZBA Meeting Minutes

Motion: Commissioner Youkhanna made a motion to accept the minutes.

The motion was seconded by Commissioner Hussain.

Aye: Chairman Heller and Commissioners Dervisevic, Hussain, and Youkhanna

Nay: None

Abstain: None

Motion Approved: 4-0

IV. Case #ZB-01-24: 6446 North Spaulding Avenue – Zoning Variation Related to the Setback of an Attached Accessory Structure

Planning and Economic Development Manager Doug Hammel introduced the case, explaining that the subject property is in the R-4 Residential district and is an attached single-family dwelling unit part of a townhouse development of six total units.

It was stated that the petitioner did install a pergola at the subject property prior to receiving a permit. Once notified, they have acted in good faith to seek approval and compliance. Mr. Hammel

explained that the Zoning Board of Appeals was only responsible for deliberating on the approval of the zoning relief necessary to accommodate the pergola. Characteristics like anchoring of the structure to the ground, structural design, roof design, drainage, etc. would be subject to other applicable codes. He also stated that the Village is under no obligation to approve the Variation simply because the structure is already installed.

Mr. Hammel described the structure of the pergola and provided photographs.

He outlined that Section 3.08(6) states, *“A building intended for an accessory use, when attached to or a part of the principal building, shall be deemed a part of the principal building with regard to all setback and other requirements hereunder....”* Therefore, because the pergola is attached to the home, staff deemed the pergola an accessory structure that would be subject to Section 4.12 of the Zoning Ordinance. Section 4.12 establishes minimum setbacks for properties in the R-4 residential zoning district:

- Front: 25’
- Interior side: 10’ for space between building, 0’ for wall attached to adjacent dwelling unit
- Rear: 30’

Mr. Hammel noted that the code does not distinguish between attached or detached single-family development for front and rear yard setbacks.

The unique configuration of the subject property was discussed. The property does not front a public street making it difficult to determine the front and rear lot lines. Therefore, staff determined that the south lot line would be considered the front lot line because it fronts on a sidewalk that generally serves as public access to the subject property. The north lot line would then be considered the rear lot line, and the east and west lot lines would be considered side lot lines.

Mr. Hammel explained that that pergola is 2.6’ from the rear (north) lot line, but the required setback for an accessory structure in the rear yard is 30’. Therefore, the petitioner would need approval of a Zoning Variation from Section 4.12 to reduce the required rear yard setback for the accessory structure from 30’ to 2.6’.

Mr. Hammel explained that the subject property is significantly smaller than most properties in the Village, yet it is subject to the same requirements. The current distance between the primary structure and the rear lot line is approximately 16’. He noted that the pergola would be compliant with all other zoning regulations other than the rear setback. The pergola also would not impact building coverage or Floor Area Ratio calculations because it would not be an enclosed living space. Impervious surface calculations would also not be impacted because there is an existing hard surface under the pergola.

Building and stormwater compliance regulations would be applied if the Variation were to be approved and a plan review takes place as part of the permit process.

Mr. Hammel highlighted landscape screening already located on the property. A row of tall hedges run along the north lot line separating the subject property from the property to the north. There is approximately 45’ from the hedge row to the house located directly north of the subject property.

No public comment was received before the hearing.

Mr. Hammel stated that there were no prior requests comparable to the situation, but he reviewed quasi-related past requests.

There was some discussion about the staff determination of the front and rear yards. Commissioner Hussain explained an alternative interpretation stating that the alleyway (west lot line) could be considered the rear lot line, instead of the north lot line. This would establish the north and south lot lines as side lot lines, changing the setback requirements.

Mr. Hammel explained that if the lot line interpretation was changed, that would affect the magnitude of the request. If the lot line to the north was deemed a side lot line, the setback requirement would only be 6.75'. Staff chose to present the larger of the two setbacks to ensure that if approved, the pergola was approved with the largest possible magnitude in mind. Staff also chose to treat the property as an individual property when determining the lot lines instead of as a whole with the townhouse, due to separate parcel numbers.

Petitioner – Wamidh Jawad

The petitioner explained his reasoning for the installation of a pergola.

Commissioner Youkhanna asked if the narrow sidewalk path between the pergola and the tall hedges along the north lot line was shared between neighbors. Mr. Hammel clarified that the sidewalk area is part of each parcel, and not a separate public sidewalk for the purpose of the whole townhouse development. The petitioner explained that he allows his neighbors to walk through the area but that the section is private property, and there is minimal foot traffic.

Commissioner Hussain asked if the regulatory considerations would be different or more favorable to the petitioner if the pergola was separate and not attached to the primary structure. Mr. Hammel explained that it would reduce the required setback from the lot line to three feet, but it would also trigger a required setback of 15 feet from the primary structure.

Mr. Hammel asked the petitioner if he had a legal obligation through a homeowner's association (or similar entity) to provide some sort of walkway between the parcels. The petitioner was not aware of a legal requirement.

There was some discussion on additional regulations set by a possible homeowner's association. Mr. Hammel explained that the regulations set by a homeowner's association would not affect the Zoning Board of Appeals decision, because if the pergola did not comply with homeowner's association regulations, that discussion would be between the homeowner's association and the resident, not the Zoning Board of Appeals.

Chairman Heller raised a concern about what precedent an approval of the request would set. He asked the Commissioners how to write the language to ensure that the approval of the request would be specific to the case and would not be applied easily elsewhere. Mr. Hammel explained that

approving a request does not automatically set a precedent and the best way to avoid future issues would be to establish specific findings of fact to demonstrate the unique characteristics of the property.

Commissioner Hussain asked the petitioner if he was opposed to moving the pergola to an area where it would not extend as far into the yard. The petitioner stated that the area the Commissioner proposed was already being used for parking.

Commissioner Hussain stated that he understood the uniqueness of the property and sympathized with the difficulty of making a property come into compliance with zoning regulations that were not in place when the property was built. He stated that he did not understand the idea of granting relief for a setback from 30' to 2.6' when 30' does not exist. He suggested changing the north lot line to act as the side lot line instead of the rear lot line and make the reduction from 6.75' to 2.6' or have the petitioner reduce the size of the pergola.

Mr. Hammel addressed the interpretation as it related to making a motion. He suggested making an approval based on the design of the pergola and allow staff to work with the Village Attorney to determine the right interpretation of the magnitude of the setback. Then that determination would be reflected in the ordinance presented to the Village Board.

Mr. Hammel explained his interpretation of the case as requested by Commissioner Hussain. He stated that the property is unique, and the request is not ordinary.

Commissioner Hussain asked the petitioner if he would be willing to make the pergola smaller to reduce the setback relief needed. The petitioner stated that he would be willing.

There was discussion about the element of hardship related to this request as hardship is one of the variation standards.

Commissioner Hussain asked if the Zoning Board of Appeals was a representation of the Village Board or of the community. Mr. Hammel confirmed that the Zoning Board of Appeals are stewards of the zoning code. The Commissioners should vet the facts of the case and make findings of fact, to then give the Village Board something to react to rather than them having to explore those facts.

The Commissioners reviewed the zoning standards as they applied to the request. Mr. Hammel explained that a request does not have to apply to every zoning standard, but that all standards should be considered before making a final determination.

Chairman Heller suggested switching the pergola length and width to reduce the magnitude of the setback relief. Instead of the pergola being 13.3' x 10.7', it could be 10.7' x 13.3'.

Motion: Commissioner Youkhanna made a motion to accept the proposal as presented due to the uniqueness of the property and no hardship on neighboring properties.

The motion was seconded by Commissioner Dervisevic.

Chairman Heller asked for there to be an addendum for staff and legal to draft this approval so that it would not be used as a precedent. Mr. Hammel stated that he was unsure how that language would be drafted but he was confident that the discussion sufficiently identified the unique characteristics of the property, protecting against the use of this case as a precedent.

Mr. Hussain stated that the existence of the pergola might be persuading the Commissioners to accept the proposal as is, rather than discussing the request as if the pergola was not already built. He stated that by approaching the discussion as if the pergola was not already built, his suggestion would be to have a setback of at least 3’.

Chairman Heller asked if anyone from the public would like to make any comments on this matter. Let the record state that no one came forward.

Aye: Commissioners Youkhanna and Dervisevic

Nay: Chairman Heller and Commissioner Hussain

Abstain: None

Motion Denied: 2-2

Motion: Commissioner Hussain made a motion to approve a Variation to reduce the required setback to 3’.

The motion was seconded by Commissioner Youkhanna.

Aye: Chairman Heller and Commissioners Youkhanna, Hussain and Dervisevic

Nay: None

Abstain: None

Motion Approved: 4-0

This item will go to the Village Board on March 5, 2024.

VI. Public Comment

The public was asked if anyone participating in the meeting would like to address the Zoning Board of Appeals. Let the record state that no one came forward.

VII. Next Meeting

The next meeting of the Zoning Board of Appeals is scheduled for Thursday, March 21, 2024.

VIII. Adjournment

Motion to recommend adjournment was made by Commissioner Youkhanna and seconded by Commissioner Hussain. The meeting adjourned at 8:12 p.m.

Aye: Chairman Heller and Commissioners Youkhanna, Hussain, and Dervisevic

Nay: None

Abstain: None

Motion Approved: 4-0

Respectfully submitted,

Marcos Classen
Community Development Coordinator