



**VILLAGE OF SHOREWOOD
BOARD OF APPEALS MINUTES**

May 10, 2016

1. Call to Order

Mr. Schmeckpeper called the meeting to order at 5:30 p.m.

2. Roll Call

Members present: Jeff Schmeckpeper, Kathy Nusslock, and Lance Mueller. A quorum was noted present.

Others present: Village Attorney Bill Dineen, Planning and Development Director Ericka Lang, and Village Clerk Tanya O'Malley.

3. Statement of Public Notice

Planning and Development Director Lang stated that the meeting had been posted and noticed according to law.

4. Approval of Minutes of April 12, 2016

Ms. Nusslock moved, seconded by Mr. Mueller to approve the Board of Appeals minutes of April 12, 2016. Motion carried 3 – 0.

5. Attorney to Review the Standards by which the Board of Appeals must Abide

Attorney Dineen indicated that the second case was appealing the order of the Planning Director and that the authority of the Board was to determine if the decision was made in error. The other two cases were seeking special exceptions. The Board has the authority to grant special exceptions under 535-34E after considering “(a) The effect the granting of the exception will have on the appearance and character of applicant's property, adjacent properties and neighboring properties, (b) The effect the granting of the exception will have on the value of applicant's property, adjacent properties and neighboring properties, (c) Whether the granting of the exception will serve the public interest in improving and preserving the value of the property, (d) Such other matters as the Board of Appeals deems relevant and material.

Mr. Schmeckpeper outlined the procedures for the meeting.

6. Appeal of denial of application for construction of driveway and parking slab at residential property 1627-29 E Menlo Blvd

Planning and Development Director Ericka Lang was sworn. Her Department had received a building permit application for reconstruction of a driveway and rear parking slab from Bianca Costanzo who owns the duplex at 1627-29 E. Menlo Blvd. The permit was denied because the property is located in the R-6 Zoning District; Village code section 535-9-F (4) Site Restrictions states: “Driveway shall not be constructed unless they lead to a garage” and Village code section 535-47 A. (4) (b) Schedule of requirements states: “ Two-family dwellings: one space in an approved garage per dwelling unit” requiring a Two-family dwelling to have a two car garage and allows up to a two-car parking slab. The lot is legally nonconforming. Residential lots in the R-6 district must be a minimum of 40 feet in width per 535-19F(3). The lot is 35.939 feet wide. The property is unique due to the grade change, which results in an eight foot drop down from the existing parking slab. The code requires a two-car garage, which equates to a garage that is a minimum of 20' x 20'. This width does not allow for any storage. If a garage would be erected in the existing slab location, it would leave 14.9 feet to enter and exit the garage, making it difficult. In answer to a question, Ms. Lang indicated that it was not impossible to construct a functional two car garage.

Mr. Schmeckpeper asked for clarification as to whether the Board was considering a variance or a special exception.

Mr. Dineen indicated that this was a non-conforming lot and that he felt the Board should be considering a special exception.

Mr. Schmeckpeper indicated that the applicant had requested a variance from the Zoning Code requiring a garage. He asked if the Board were to grant the variance, would the applicant then need to seek a special exception.

Mr. Dineen advised that the Board should review the case under the standards for both special exceptions and variances. After hearing all evidence, the Board could then decide which was most appropriate.

Ms. Lang stated that driveways, parking slabs, and patios are structures and the application was denied because of 535-9F(4), which required a garage.

Ms. Bianca Costanzo, 1627-29 E Menlo Boulevard was sworn. The lot was only 35.9 feet wide and was non-conforming. The driveway was only 10 feet across and there would be a sharp corner to get into the left hand side of the garage. There would need to be a lot of maneuvering, as well as potential damage, to get a car in a garage. In answer to a question, Ms. Costanzo indicated that a two car garage would not be usable to its full potential. A second car would be near to impossible to get in the garage, especially if it were a larger vehicle. The property had been without a garage for at least 40 years.

Ms. Nusslock stated that the existing use is as a driveway without a garage and that the application was not an expansion or enlargement of a non-conforming structure but rather a repair of a non-conforming structure. With the existing, it is apparent that the concrete is cracked and not visually appealing and there are limitations with space. There are no other garages in the area and the requested change would not impact property values. The project meets the qualifications for a special exception. Requiring the property owner to build a two car garage, given the narrow width and elevation issues, would result in practical difficulty and unnecessary hardship. The project would uphold the spirit of the Code and meets the qualifications for a variance.

Mr. Schmeckpeper indicated that he believed the Board should grant a special exception and a variance that would run with the land.

Ms. Nusslock moved to grant the variance and special exception under these circumstances. Mr. Mueller seconded.

Roll Call Vote:

Lance Mueller –Aye

Kathy Nusslock – Aye

Jeff Schmeckpeper - Aye

7. **Appeal of notice to remove prohibited window signs at commercial property 4496 N Oakland Ave**
Planning and Development Director Ericka Lang was sworn. A Board of Appeals application was received from business owner Keith Marquardt, appealing the Village of Shorewood enforcement order to remove prohibited signs hung in three of the windows from the Kensington Liquor business at 4496 N. Oakland Avenue. The business is located at the southeast corner of Oakland Ave and Kensington Blvd. There are four windows along Oakland and one large one along Kensington. Within three of the Oakland windows the business has displayed three large internally illuminated box sign in each pane. The sign type is a box sign that is internally illuminated and is prohibited per sign code 445-20 F “Illuminated signs. Internally illuminated box signs and standard channel letter signs are prohibited.” The size of the signs is also in violation of sign code 445-11 that says window signs cannot occupy more than 10% of a single window pane and no more than 25% of the entire window area. The prohibited signs occupy greater than 50% of a single window pane and the total area that all window signs far exceed the 25% limit. This Code was developed to make the district more inviting and to allow pedestrians to see into businesses.

Mr. Schmeckpeper stated that the appeal asks for a special exception as well as a determination on the staff interpretation of the Code and asked the Attorney about the Board's authority.

Mr. Dineen indicated that there is not an option for the Board of Appeals to grant a special exception in the Sign Code as it is under the authority of the Design Review Board. In this matter, the Board of Appeals only has the authority to determine if the Code was properly interpreted.

Ms. Nusslock indicated that section 445-11A appeared to only apply to professionally painted or vinyl decal signs.

Ms. Lang stated that signs are measured from the outer edges squared. The 10% restriction may not apply but the 25% restriction did apply.

Keith Marquardt, 4496 N Oakland Ave, was sworn and in response to a question, stated that he understood the focus of the discussion in that the Board would be limited to determine if the Planning Department property applied the code. The signs were put up to help prevent the products from spoiling due to sun exposure. Blinds had been considered but they would need to be closed from approximately 12:30 p.m. – 7:30 p.m. every day and the store would look like it was closed. Additionally, the signs help protect the store in that they will not break and prevent the entire window from breaking if someone tries to break in. In response to a question, he indicated that signs were internally illuminated and occupied 25% or more of the windows. The Attorney questioned the applicant on the intent of the appeal. Mr. Marquardt indicated that he wanted to Board to allow the existing signs.

Mr. Schmeckpeper indicated that he understood why the signs made sense but that he saw no basis to find that the Village improperly interpreted or applied the Code.

Mr. Marquardt indicated that other businesses in Shorewood use more than 25% of the windows, including Metro Market.

Mr. Dineen advised the Board that the applicant had not met the burden for a special exception. Section 445-23 of the Code allows for consideration of special exceptions to the Sign Code but give the Design Review Board the authority to grant such special exceptions. If the Design Review Board did not grant the special exception, then the applicant could appeal that decision to the Board of Appeals. At this point, the Board of Appeals only had the power to determine if the Village properly applied the Code.

Mr. Schmeckpeper moved to deny the appeal and find that the Village properly applied the Code. Mr. Mueller seconded.

Roll Call Vote:

Kathy Nusslock – Aye

Lance Mueller – Aye

Jeff Schmeckpeper – Aye

8. Appeal of denial to construct a building addition within the zoning side yard setback at residential property 1900 E Beverly

Planning and Development Director Ericka Lang was sworn. The Village received a Board of Appeals application on April 20, 2016 from property owners Patrick Schroder and Holly Kaster, appealing the denial of a building application to put an addition onto the side of the single family house at 1900 E. Beverly Rd. The bay area of the proposed addition would be in the zoning side yard setback. The property is located in the R-6 Zoning District; Village code section 535-19 F. (5) states: Setback: (c) Side: [2] Street side: 25% of the width of the lot but not less than 10 feet, provided that the buildable width of the lot shall be not less than 20 feet. The house currently does not meet the setback requirement as the survey indicates 8.21' at the SW corner and 7.6' at the NW corner. The proposed alteration to the 1st floor encroaches into the street side yard setback an additional 2' 11 ¼" (including roof overhang) lessening the setback to 4.6'. Therefore, the proposed addition and alteration is not permitted.

Daniel Merkel, consultant for the project, was sworn and indicated that the proposed addition for the kitchen will stick out 2 feet into setback. They wanted to add functionality to the kitchen without decreasing functionality in other rooms. There would be trees planted on either side of the bay to shield it. The addition would fit with the character of other homes in the area. In response to a question, Mr. Merkel indicated that due to financial reasons and a potential impact on the neighbor, they were unable to expand on the other side of the house. There would be a slight encroachment on the second floor.

Ms. Nusslock stated that the application indicated that this was a request to appeal the staff interpretation of the Code and asked for clarification as to what standards to consider.

Mr. Dineen stated that based on his review, this was a non-conforming structure and the Board should consider the standards for a special exception.

Mr. Schmeckpeper stated that it was clearly a non-conforming structure and the project was an expansion of that non-conforming structure and that it should be viewed as a request for a special exception.

Mr. Merkel stated that the footprint of the space would encroach 2 feet and the overhand would encroach another 1 foot. The encroachment would not touch the ground.

Ms. Lang stated that she had not received any calls or e-mails from any of the neighbors.

Patrick Schroeder, 1900 E Beverly Rd, stated that there had been a positive e-mail from one of the neighbors read into the record at the Design Review Board meeting.

Mr. Schmeckpeper stated that granting a special exception would improve the applicant's property, would increase the property values, and would not have an adverse impact in anyway.

Mr. Schmeckpeper moved to grant a special exception to allow the additional encroachment in the side yard setback. Mr. Mueller seconded.

Roll Call Vote:

Lance Mueller –Aye

Kathy Nusslock – Aye

Jeff Schmeckpeper - Aye

9. Adjournment

Mr. Mueller moved, seconded by Ms. Nusslock to adjourn at 6:40 p.m. Motion carried 3-0.

Respectfully submitted,

Tanya O'Malley, WCPC
Village Clerk/Treasurer