



**VILLAGE OF SHOREWOOD  
BOARD OF APPEALS MINUTES**

June 14, 2016

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**1. Call to Order**

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

**2. Roll Call**

Members present: Jeff Schmeckpeper, Mike Paulson, and Lance Mueller. A quorum was noted present.

Others present: Village Attorney Eric Andrews, Building Inspector Justin Burris, and Village Clerk Tanya O'Malley.

**3. Statement of Public Notice**

Village Clerk Tanya O'Malley stated that the meeting had been posted and noticed according to law.

**4. Approval of Minutes of May 10, 2016**

Mr. Mueller moved, seconded by Mr. Paulson to approve the Board of Appeals minutes of May 10, 2016. Motion carried 3 – 0.

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

Attorney Andrews stated both appeals were requesting variances from the setback requirements. Attorney Andrews read Zoning Code Section 535-58, which states, "No variance to the provisions of this chapter shall be granted by the Board unless it finds that all of the following facts and conditions exist and so indicates in the minutes of its proceedings: (a) Exceptional circumstances. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot, parcel or structure that do not apply generally to other properties in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that this chapter should be changed. (b) Absence of detriment. The variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and the spirit of this chapter or the public interest."

Mr. Schmeckpeper outlined the procedures for the meeting.

**6. Appeal of notice to remove an air condenser unit within the zoning side yard setback at residential property 2106 E Lake Bluff**

Building Inspector Justin Burris was sworn. The Village received a Board of Appeals application on May 19, 2016 from property owner Karen Weinberg, appealing the correction notice under the electrical permit to relocate a newly installed AC unit. The unit is currently 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: [1] Interior, minimum three feet.* Per the provided survey, the house is located 2.9 feet from the property boundary at the southwest corner and 2.77 feet at the northwest corner. The AC unit outside edge is measured 2.58 feet from the house and is entirely within the setback. Given the house is not setback three feet from the property boundary, it is a legal nonconforming structure. The neighbor's house to the west is measured 9.58 feet from Ms.

Weinberg's house, measured to the farthest point. Per the provided survey and picture, the neighbor's AC unit is essentially located across from each other. In an e-mail provided at the meeting, the contractor said that the AC unit cannot be located elsewhere on the property.

Karen Weinberg, 2106 E Lake Bluff, was sworn and stated that the concrete was installed at the time the driveway was replaced approximately 8-10 years ago. The location of the AC unit was the only reasonable place to put the unit on the property. The driveway is on the other side and would not allow for passage of a car if it were installed there. The installer did not want to put more than 20-25 feet of piping to the unit and if it were located in the backyard, it would have exceeded this. The unit was installed in the only logical place. In response to a question, Ms. Weinberg indicated that if they wanted the unit to function properly with no exposed electrical or plumbing, it had to be located here.

Mr. Paulson stated that there were exceptional and unusual circumstances given the lot configuration. There was clearly no other practicable location and that created a hardship. There was no detriment as there was no other usage for the space and there were no views obstructed. The placement does not impair the public purposes, as the buildings have been in this location for decades and the unit does not impact the setback between the buildings. The variance should be granted.

Mr. Mueller stated that there was an unnecessary hardship as there was no other place to locate the unit and there was no harm to the public interest, as there is a unit nearby on the neighboring property.

Mr. Schmeckpeper agreed and indicated that the structure was part of the condition of the property, since it was there before the Building Code went into effect.

Mr. Schmeckpeper moved to find that there were unusual and exceptional circumstances, that granting a variance will relieve a practical hardship, that granting a variance will not create a detriment to anyone, and to therefore grant a variance for placement of the condenser unit within the setback. Mr. Mueller seconded.

Roll Call Vote:

Lance Mueller –Aye

Mike Paulson – Aye

Jeff Schmeckpeper - Aye

**7. Appeal of notice to remove pergola structure within the zoning side yard setback at residential property 4504 N Newhall**

Building Inspector Justin Burris was sworn. The Village received a Board of Appeals application on May 12, 2016 from property owner Sarah Burghardt, who is requesting a variance for a gazebo that is located within 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: [1] Interior, minimum three feet. The gazebo is about one foot within the side yard setback. The gazebo is being repaired which is what brought the matter to the attention of the village inspector. The village inspector sent a correction notice on May 4, 2016 to obtain a building permit as there is none on file with the village. It is understood that the gazebo was constructed over 20 years ago and Ms. Burghardt has lived there for 12 years. Per the survey and graphic provided, the side yard width is 12.9 ft, the gazebo is 8 ft in diameter, the gazebo is located 2.5 ft from the house, the gazebo is located about 1 ft within the side yard setback, and there is a small retaining wall

that is part of the gazebo and on the side closest to the neighbors because of the grade change. The neighbor's back yard at 1600 E. Kensington is higher than Ms. Burghardt's.

Mr. Schmeckpeper asked if the property file showed a building permit for the gazebo.

Mr. Burris responded that there was not a permit. The 2004 code compliance did mention that the gazebo existed.

Sarah Burghardt, 4504 N Newhall was sworn and indicated that this had come as a surprise to her because there was no mention of the problem when the home was purchased. The location of the gazebo has not been changed. In the process of replacing one of the beams, they realized that all of the beams should be replaced. She had called the Village and was told that since she was not moving anything, she did not need a permit. The gazebo provides privacy for them and that is very important to them. Ms. Burghardt was concerned what might happen structurally to the homes if the gazebo and concrete were to be removed. The gazebo helps serve as an enclosure to the yard and it would be difficult to change it to a fence.

Donna Ginzer, 4512 N Newhall, was sworn and stated that she had lived two properties to the north for 22 years. The gazebo was there when she had moved in and had already been there for a number of years. She was happy to see her neighbor working to maintain the property. The work was not new construction but merely maintenance and repair.

Ms. Burghardt stated that they had replaced the vertical supports. They have a good relationship with the neighbors and the owners of 1604 Kensington had no problem with the gazebo, as it provided them with some privacy as well.

Mr. Paulson asked if the gazebo was considered a structure and would therefore be considered non-conforming.

Mr. Burris indicated that it was considered a structure.

Mr. Schmeckpeper stated that non-conforming meant that it was there before the Code was enacted and there was no way to know if that was the case. He asked when the home was built

Mr. Burris indicated that he didn't know for sure but would estimate sometime in the 1930s.

Ms. Burghardt indicated that she thought the home was built in 1928. The gazebo was very old and had many layers of paint. The area surrounding the concrete had been settled for many years.

Mr. Schmeckpeper asked there was a way to determine when the roof was installed on the home.

Mr. Burris indicated that there may be a permit in the file.

The Board took a brief recess for Mr. Burris to check the property file

Mr. Burris reported that there was no permit on file for the roof but there was an indication that the garage was built in 1923.

Mr. Schmeckpeper stated that there was a practical hardship with having to rip out the slab of concrete just to gain a foot and that there would be a large price to pay. There is a clear absence

of determent since the gazebo has been there for at least 26 years. He indicated that he was satisfied that there are exceptional circumstances. It appears that the roofs of the house and the gazebo have the same shingles and that the sidewalk jogs around the gazebo. These two things indicate that the gazebo has been there for longer than 26 years. There was no record to determine that the gazebo was non-conforming but it existed for at least 26 years and that was an exceptional enough to not require that the gazebo be moved.

Mr. Paulson and Mr. Mueller agreed.

Mr. Schmeckpeper moved, for the reasons stated, to grant the variance. Mr. Mueller seconded.

Roll Call Vote:

Lance Mueller –Aye

Mike Paulson – Aye

Jeff Schmeckpeper - Aye

**9. Adjournment**

Mr. Mueller moved, seconded by Mr. Paulson to adjourn at 6:10 p.m. Motion carried 3-0.

Respectfully submitted,



Tanya O'Malley, WCPC  
Village Clerk/Treasurer