

APPEALS & REVIEW BOARD

Oak Lawn Municipal Center – Village Hall Auditorium
9446 Raymond Avenue Oak Lawn IL 60453
Tuesday, January 25, 2022 at 7:00 p.m.
Regular Meeting Minutes #2022-1

I. ROLL CALL: Meeting called to order at 7:00 p.m.

A.) Chairman: Jay Lurquin

B.) Members: Joe Cwiklinski (*ABS*) Chuck Miller
Matt Dillon Pat Pulver
Kai Grant Bill Vail (*ABS*)
Jay Lurquin

C.) Staff: Donald E. McKenna, Building & Zoning Administrator
Deanne Adasiak, Recording Secretary
Kim Roche, Officer Manager-Executive Administration
Kevin Casey, Village Counsel

Also present: Trustee Paul Mallo, 3rd District

II. PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was led by Chairman Lurquin.

III. APPROVAL OF PRIOR MEETING MINUTES:

A.) Regular Meeting #2021-05 – November 23, 2021:

A motion was made by Commissioner Lurquin to approve the Meeting Minutes #2021-5 – November 23, 2021. The motion was seconded by Commissioner Pulver.

Roll call: Dillon, yes; Grant, yes; Lurquin, yes; Miller, abstain; Pulver, yes.

Motion to approve carries: 4-0-1.

The Oath was administered by Chairman Lurquin.

IV. NEW BUSINESS

A.) Pet. #A-2021-11-Request for a 2.0' Rear Yard Variation & 8.2% Structural Lot Coverage Variation @ 9550 Campbell Avenue, Alma, Inc., Petitioner

Ms. Alejandra Benitez, 7921 S. Newcastle, Burbank, Illinois

Mr. Guadalupe Gutierrez, 7921 S. Newcastle, Burbank, Illinois

The petitioner explained her request for a variation to build a new two-car detached garage. According to the petitioner, the proposed garage will be pushed back to the rear of the lot line. Chairman Lurquin asked whether or not there was an existing structure on that area of the property. The petitioner

responded that the existing garage had been demolished before she purchased the property. Commissioner Lurquin asked whether the garage pad was still on the property. Mr. Gutierrez responded yes. He also mentioned that the pad needs to be repaired because it is damaged. Commissioner Lurquin asked whether the new structure would affect any underground piping or utilities. The petitioner replied no. Mr. McKenna reminded the Commissioners that there is not an easement at the rear of the property rather it is a setback from the property line.

Chairman Lurquin pointed out that with a new garage built so close to the alley, it would be “tight”. He commented that larger vehicles, such as refuse trucks, would have difficulty accessing or turning in the alley. The petitioner mentioned another property on the opposite end of the block with the same garage placement. She said she feels this will work and that large vehicles, such as refuse trucks, will not have any issues. Commissioner Pulver stated that if a truck needed to access the alley, it could back in if needed.

Commissioner Pulver asked the petitioner if there are plans to expand the concrete. He also asked the petitioner if they planned to remove the concrete around the perimeter and replace it with permeable pavers. He pointed out that there is a great deal of concrete. Chairman Lurquin commented that the blue shaded area on the plat rendering shows permeable pavers and asked if that factored into the impervious surface calculations. Mr. McKenna explained the two-lot coverage requirement. He stated that the structural requirement is the square footage of the building on the property as well as the lot's square footage. The other coverage requirement, he said, is for all impervious surfaces, including the house and any concrete or asphalt. Mr. McKenna stated that the petitioners will meet the 50% impervious surface requirement by removing the concrete on the property's north side.

Commissioner Grant asked about the additional 2' rear yard variation. Mr. McKenna clarified that the 2' refers to the original setback. He stated that this is a 2' encroachment on the required rear setback of 5'. He said the proposed garage will be 3' off the lot line.

Commissioner Dillon asked if there is a door on the south side of the garage along the alley. Mr. Gutierrez responded yes. Commissioner Dillon asked if there is an apron leading into the garage. Mr. Gutierrez responded yes.

Commissioner Lurquin asked about the garage's height. The petitioner replied that she was unsure. Mr. Gutierrez, said the garage is approximately 10'. The petitioner agreed, estimating the garage height at 9' to 10'. Due to the pitch of the roof, Mr. McKenna believes the garage is closer to 12' in height.

A motion was made by Commissioner Pulver to approve Pet. #A-2021-11-Request for a 2.0' Rear Yard Variation & 8.2% Structural Lot Coverage Variation @ 9550 Campbell Avenue, Alma, Inc., Petitioner. The motion was seconded by Commissioner Grant.

Roll call: Dillon, yes; Grant, yes; Lurquin, yes; Miller, yes; Pulver, yes.

Motion to approve passes: 5-0.

B.) Pet. #A-2021-11-Request for a 2.0' Rear Yard Variation & 8.2% Structural Lot Coverage Variation @ 9550 Campbell Avenue, Alma, Inc., Petitioner

Village Attorney Kevin Casey, Peterson, Johnson & Murray, 200 W. Adams, Chicago, Illinois

Mr. McKenna introduced Kevin Casey, Village Attorney. Mr. McKenna explained that Mr. Casey will give new and existing members an introduction and overview of the Appeals Board, explaining the jurisdiction and authority in order to define the scope and parameters of this Board.

Mr. Casey explained that he was appointed as an Oak Lawn Village Attorney in 2006. In terms of Boards and Commissions, he stated that he regularly serves on the Zoning and Planning Commission. Mr. Casey said he was asked to provide a rough FAQ sheet in terms of this Board's role. Mr. Casey said this is a unique board as it has a very defined role in hearing and deciding appeals of zoning title, general building regulations, and related regulations and ordinances. He mentioned that up until recently "the buck stopped here" and the Appeals Board had full jurisdiction and authority to grant an appeal. Mr. Casey said that has subsequently changed. He stated that the decisions of this Board are incorporated into an Ordinance, however, now all the variances granted will be submitted to the Village Board of Trustees for ultimate review. He indicated that the Village Board of Trustees will either approve or deny the ordinance. He reminded the Members that their role is not diminished by the fact that the appeals that are granted here must be heard by the Board of Trustees.

Mr. Casey said he wants to highlight specific information including questions that have come up recently. Mr. Casey pointed out that the FAQ document that he provided was taken from the State statute. Mr. Casey explained why the Appeals Board was initially formed and why everything did not go directly to the Village Trustees. According to Mr. Casey, a municipality is required by state statute to have an Appeals Board. He stated that this group gathers facts and evidence.

Mr. Casey referenced an example of Don denying a permit in not allowing a resident to go 2' into a setback. He said as a result, the resident must now meet certain criteria in order to obtain the variance. Mr. Casey explained to the Board that their role on the Appeals Board is to hear the petitioner's burden of proof. He said an adverse decision is made at the administrative level and that the resident has 45 days to appeal it. Don, according to Mr. Casey, does an excellent job as the gatekeeper. He stated that once the decision is made to bring the case before the Appeals Board, the person who made the decision denying the request should communicate everything this Board needs to know about why that decision was made and then why it is being appealed. He said this is usually communicated in the form of the Board packet.

Mr. Casey brought up the petition that was heard today. He said he feels the petitioners did not provide much information. Mr. Casey stated that he did not have a copy of the actual petition packet, but he is confident that the packet contained far more information than what was verbalized. That, he said, happens all the time. Mr. Casey stated that if a petitioner's explanation of what constitutes a hardship is not spelled out in the application or actual appeal, or is not verbalized to the Board, the petitioner has failed to meet their burden of proof.

Mr. Casey stated that we can think that a 2' setback does not really hurt anyone or we may like the fact that the resident is improving their garage structure and therefore may make a decision to grant the Appeal. Mr. Casey stated that this is all well and good, but is it a hardship for the petitioner? Mr. Casey mentioned that this Board should always keep in mind when deciding on an Appeal what constitutes a hardship. He explained that the petitioner must prove all three of these factors in order to succeed: 1) the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zone; and 2) the plight of the owner is due to unique circumstances; and 3) the variation, if granted, will not alter the essential character of the locality. Mr. Casey reiterated that a variation may then be permitted only if the evidence supports each of these three conditions. According to Mr. Casey, most of the appeals that come before this Board are usually property specific and do not involve a Village-wide issue.

Mr. Casey said in the petition discussion there was a question asked of the petitioner about the garage's height. Mr. Casey stated that it was a great question to ask because you do not want the "Taj Mahal" of all garages to be built there because it would be out of place with the character of the block. Mr. Casey reiterated that the petitioner must demonstrate all three factors in order to establish a particular hardship or difficulty for their property. He stated that this is the standard by which this Board should evaluate each appeal.

Mr. Casey pointed out that this is a 7-person Board, but it is only a 5-person Board tonight. He indicated that if two people voted to deny the petition tonight, it would fail. He said you must have a total of four (4) people. He stated that even if there is a quorum, if there are only four members, every single member must vote in favor or the petition will fail. Mr. Casey stated that there is nothing preventing someone from coming in more than once. Commissioner Lurquin asked as Chairman if he should not make a motion on a petition. Mr. Casey responded "technically no, but there is nothing prohibiting the Chairman from making a motion".

Mr. Casey explained that the Board of Trustees will review this Board's factual findings. Mr. Casey said the Meeting Minutes will be reviewed; Mr. Casey provided an example of an appeal of a decision made by this Board. He said that the appeal must be postponed until the Board approves the meeting minutes. He explained that the Meeting Minutes are evidence. He pointed out that is why we have the Oath, which attests to the facts and representations made by the petitioners. He reiterated that the Ordinance can be accepted or rejected by the Board of Trustees. He said the Board of Trustees could also make the decision to have the appeal referred back to this Board for further discussion.

Mr. Casey stated that if someone appeals this Board's decision, the Village Board of Trustees will be the final arbiter. He said we recently witnessed this when someone appealed a decision. Trustee Mallo reminded this Board of the process before reaching the Appeals Board; he said Don has already denied the permit request; he commented that the only reason the petitioners come here is because they do not accept that rejection and Don has offered them the opportunity to appeal to the Board.

Trustee Mallo reminded the Board that they have individual Trustees to speak with and he encouraged them to do so and receive feedback. Trustee Mallo said the burden of proof is to see the why. He said the petitioners could have built their 2-car garage within the 5' setback, and he questioned why they needed the extra 2'. Trustee Mallo wondered if it was because they want a larger yard. He expressed that this is the only reason he could think of for them wanting to encroach on the setback. The difference today, according to Trustee Mallo, is that this will not all be on the Appeals Board; there is now a second layer in going to the Board of Trustees.

Trustee Mallo mentioned a recent fence petition. He stated that Trustee Stalker had to make a difficult decision but he lacked a lot of information. He mentioned that there was no one present to oppose the fence in the case of that petition. He said that it is the responsibility of the resident to make an appearance. He said the resident that opposed the fence and did not attend the meeting had to go through a process to overturn the decision made by this Board. Trustee Mallo said that this Board heard the petitioner about the fence, who gave his reasons, and this Board granted it. He reminded the Board that the burden of proof must be present. He recalled that the petitioner wanted extra space so that he could build a pool in their backyard. Is that a hardship, he asked? Mr. McKenna mentioned that even if no one is objecting the petition, the petitioner still has to prove the hardship.

Trustee Mallo brought up the petition heard today. He mentioned that there could be a problem with garbage trucks. He said when the petitioners put up their garage and fence all of the neighbors may have to move their garbage cans to the front of their houses because refuse trucks may not be able to access that alley. He pointed out that the neighbors who received certified letters had the opportunity

to come here to support or oppose the petition. Trustee Mallo said he will ask the petitioners why they are unable to build their garage within the Code setback.

Mr. Casey suggested for the Commissioners to ask themselves if this is a matter of convenience, and if the answer is yes, it is not a hardship. Mr. McKenna added that common sense is a good thing. He said if it is only a convenience, we must deny it. Mr. McKenna commented that he frequently tells residents who wish to appear before this Board that the answer is "No" until they prove otherwise. He stated that it is not the Board's responsibility to defend the petitioner's response; rather, it is the petitioner's responsibility to demonstrate *why* the petition should be granted. Mr. Casey said the best question to ask is "why." "How come you're doing it this way?" He said he believes that if the petitioner was asked "why" tonight, they would not have an answer. He said the petitioner should explain why this is the only plan that will work for this piece of property. Mr. Casey said he recognizes that we want residents to invest in their property, but that convenience and cost-effectiveness are not always the best options. Trustee Mallo referred to the petitioner's documentation on the hardship, and the response they provided was "the structure of lot coverage variation requirement."

Mr. McKenna stated that the petitioner was asked good questions about the turning radius, etc., but that if you look at it, this petitioner can put up a fence all the way to the lot line and we have nothing to say about it; he stated that none of that is the issue; the issue is the setback, not whether or not someone will hit a garage or fence; the issue is what is the hardship. He expressed that the petitioner wants a bigger yard and he feels that if a resident wants more space, they should have bought a bigger lot. Mr. McKenna also emphasized that it is not a matter of a resident being here to complain. He mentioned the neighbor who was present tonight did not offer any feedback. According to Trustee Mallo he feels that it should be part of a procedural component. He said the Chairperson should ask "Who are you" and "What are you here for" and "Are you here to support or oppose the petition". All of the petitioner's neighbors were notified, according to Trustee Mallo. Mr. McKenna clarified Trustee Mallo's comments, saying that in this case, only the adjacent neighbors are notified. He said for a Public Hearing, such as a parking variation, a specific mile radius notification is required.

Trustee Mallo pointed out that this property is being renovated; He said that this is a rehab to resell scenario. He commented that the petitioner will not be moving into this property. He expressed that they are going to build it, then flip it and sell it. He pointed out that the buyer will acquire this property and will have nothing to do with the matter. Commissioner Lurquin remarked that the buyers will be responsible for the issues that may arise as a result of this. Mr. McKenna pointed out that if the petitioner constructs a fence, no variation is required. Mr. McKenna added that he informed the petitioners that their fence could be damaged. Mr. McKenna reminded the Commissioners that a petitioner's plea of "we can't make money" or "it will cost us too much money," are not examples of a hardship.

Mr. McKenna expressed that he tries not to give an opinion on whether a petition is a good or bad idea. He explained that he tries to lead with facts; he also pointed out that his opinion can frequently be shown in the phrasing of his Board memo. The Board, according to Trustee Mallo, appreciates staff's opinions. Trustee Mallo added, "But we know staff's opinion because this request was initially denied."

Commissioner Lurquin asked if it is appropriate to discuss redesign suggestions such as for fence placement. Village Counsel suggested adding conditions if needed. Mr. McKenna reminded the Commissioners that a variation is for the life of the property, not the petitioner's life. He said that if a setback is granted and say for example this petitioner's garage is removed, then the subsequent resident has the right to build a new garage in the same location.

Village Counsel recapped the state statutes including addressing the number of Board Members required for an absolute majority, as well as other subject matters.

The Commissioners and staff briefly discussed paper packets versus electronic packets.

Chairman Lurquin expressed his appreciation for the information provided this evening. He stated that his first question to a petitioner moving forward will be "What is your hardship?"

V. OTHER BUSINESS BY:

A.) Chairman: *None.*

B.) Members: *None.*

C.) Staff: *None.*

VI. ADJOURNMENT:

A motion to adjourn was made by Commissioner Miller and seconded by Commissioner Pulver.

Voice Vote: All in favor, Aye.

The meeting adjourned at 7:58 p.m.