

**VILLAGE OF FONTANA ON GENEVA LAKE
WALWORTH COUNTY, WISCONSIN**
(Official Minutes)

ZONING BOARD OF APPEALS HEARING

Tuesday, September 15, 2020

Chairperson Peg Pollitt called the Hearing of the Village of Fontana Zoning Board of Appeals to order at 3:30 pm in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

Board of Appeals members present: Roll call vote: Derek D’Auria, Peg Pollitt, Jim Feeney, Curtiss Behrens, Greg Trapani

Board of Appeals member absent: John O’Neill

Also present: Bruce Adreani, Jason Bernard, Barbara Bourjaily, James Duquette, Tom Kolder, Michel Leiser, Bonnie Schaeffer, Nancy Smith, Randall Smith, Stephanie Smith, Dale Thorpe, Wes Webendorfer

Business

Approval of Minutes

Chairperson Pollitt asked the Board to table the minutes from June 23, July 30, and August 18, 2020. Feeney/Trapani 2nd made a MOTION to approve the minutes from October 28, 2019 and January 23, 2020 and table the minutes from June 23, July 30, and August 18, 2020, and the MOTION carried without negative vote.

Public Hearing for Zoning Permit Application Filed by Thomas and Cherie Kolder, 900 Hampstead Court, Barrington, IL 60010 for approval of an addition at 1020 S. Lakeshore Drive, Parcel No. STFV 00084, which was denied by the Village of Fontana Zoning Administrator on July 27, 2020 due to noncompliance of zoning ordinance section 18-92(b)(3)b.5.

Attorney Thorpe reviewed the rules and procedures for the Zoning Board of Appeals Members. The public hearing was opened at 3:46 pm. Attorney Thorpe stated from his understanding the applicant is applying for a west lot line variance. Zoning Administrator Bonnie Schaeffer stated she received the zoning permit application on July 10, 2020 and it was denied on July 27, 2020 due to noncompliance of Village Zoning Ordinance section 18-92(b)(3)b.5. This is a non-conforming structure as it exists closer to the lot line than is required, which means any additions or increases to the structure must meet ordinance requirements. The required side yard setback is ten feet on each side and the proposed addition is three feet and eleven and a half inches from the west side lot line. The fourteen-page September 11, 2020 memo from Schaeffer was labeled as Village Exhibit No. 1. Jason Bernard from Lake Geneva Architects stated he originally designed this house back in 2003 and at that time it was conforming, but since zoning laws have changed it has been grandfathered into a legal conforming status. The house sits offset on the lot and the lot has some interesting conditions as it is only forty feet wide but eight hundred feet long. Bernard stated they looked at three points; unnecessary hardship, unique property conditions and no harm to the public. Bernard explained he had explored many other opportunities with the applicant during the process such as a detached garage and having the house jog over, however nothing seemed to work and felt it would just create more problems with drainage, grading and electrical. Bernard would ask that the Board grant a variance under these special conditions so the applicant can extend the house out and be able

to have the house follow a straight line versus having to offset the addition to meet the setbacks. The handwritten letter in support of the variance from Greg and Debbie Kunes dated August 26, 2020 was labeled as Applicant Exhibit No. 1. The letter in support of the variance from Mr. Mecum dated August 4, 2020 was labeled as Applicant Exhibit No. 2. The letter in support of the variance from Janice Lyon dated September 8, 2020 was labeled as Applicant Exhibit No. 3. Board member Curtiss Behrens questioned what the addition consisted of and Bernard stated it is a two-car garage with a bonus room above that would have living area. The current garage would then be transitioned to living space. Chairperson Pollitt asked where the hardship lies. Bernard explained the hardship is the unique site conditions since the house is already pushed closer to the west lot line. The public hearing was closed at 3:59 pm.

Trapani/D’Auria 2nd made a MOTION to consider approval of the requested variance for the property located at 1020 S. Lakeshore Drive, Fontana, WI, Tax Parcel No. STFV 00084.

The Roll Call vote was as follows:

Feeney – Aye

Pollitt – Nay

D’Auria – Aye

Behrens – Nay

Trapani - Aye

The MOTION passed on a 3-2 vote.

Trapani/Feeney 2nd made a MOTION to authorize the Chairperson to sign written findings consistent with the decision made without a further meeting, and the MOTION carried without negative vote.

Public Hearing for Zoning Permit Application Filed by Randall and Nancy Smith, 1330 Chadwick Court, West Dundee, IL 60018 for approval of a single family residence at 637 Cherry Drive, Parcel No. SCB 00005, which was denied by the Village of Fontana Zoning Administrator on July 13, 2020 due to noncompliance of zoning ordinance sections 18-32 and 18-108(g)(3).

The public hearing was opened at 4:06 pm. Board Member Greg Trapani excused himself at 4:07 pm. Zoning Administrator Bonnie Schaeffer stated she received the original building permit application to tear down the existing home and rebuild and responded with a denial letter on July 13, 2020. The application was denied because it did not meet the fifty-foot minimum shore yard setback for structures, and the proposed plan showed grading within thirty feet of a creek. Attorney James Duquette stated he was representing his clients Randall and Nancy Smith and wanted to take a few moments to highlight the powers granted to the Board of Appeals, in addition to what Attorney Thorpe stated earlier. Duquette handed out updated grading plans for this project which shows no grading within thirty feet of the creek. Attorney Dale Thorpe asked Duquette if they are amending the application to remove a component of the original application. Duquette explained the original application for variance only addressed the fifty foot minimum shore yard setback and on August 12, 2020 an updated letter was submitted asking to amend the original variance application and include an appeal for the second basis for denial regarding grading within thirty feet of a creek and more information would be provided at the hearing. The updated grading plans that were handed out showed no grading within thirty feet of the creek. Thorpe questioned if Duquette is looking to amend exhibit C in the application. Thorpe stated the problem with receiving such a substantial drawing at a hearing is that staff is unable to thoroughly review. Thorpe asked Duquette if he and his clients would be willing to amend the variance application and eliminate the second part of the variance request that pertains to the grading. Duquette stated that he and his clients are agreeable to amending the variance application to eliminate the second part of the variance request. The twenty-eight-page staff memo dated September 11, 2020 was marked as Village Exhibit No. 1. The July 21,

2020 grading plan and the September 15, 2020 revised grading plan were marked as Applicant Exhibit No. 1. Duquette stated his clients should be able to construct a home with a thirty-foot setback from the creek. The creek poses a unique property limitation regarding its location. The creek runs diagonally across the property and greatly reduces the buildable space on the lot. As the creek travels through Club Unique, it is for the most part on community property and when it does run on private property it does not impact the homeowners quite like the Smith's property. The home as it stands today is about nine to ten feet from the creek. Duquette stated his clients are proposing to construct a new residence thirty feet from the creek. The fifty foot setback would result in a small buildable area within the triangular shape seen on Exhibit A. Duquette explained there is no harm to the community at large and he has supplied a number of letters of support and most of those residents are here tonight. Duquette stated the one and only opposition letter before the Board tonight is from the next-door neighbor and the objections relate more to environmental concerns. The opposing neighbors' home stands much closer than thirty feet to the creek. Duquette mentioned there was some concerns with flooding and his clients are proposing to build further away from the creek than the current home sits. Barbara Bourjaily, 640 Cherry Drive, stated she is here tonight in support of her neighbors, the Smiths, and fully supports their variance request. Bourjaily stated we should all want what is best for our community, particularly as our village evolves with the times and changing standards and desires of our property owners. In the case of the Smiths, the support of their neighbors and subdivision members is nearly unanimous and the Bourjaily's enthusiastically support the variance request for the Smith family. Mike Leiser, 632 Middleton Drive, stated he and his wife are in full support of the variance requested. The group of ten letters of support from property owners in Club Unique was marked as Applicant Exhibit No. 2. Attorney Wes Webendorfer stated he is here tonight representing the Fontana Trust, Bruce Adreani and Michael O'Halleran. Webendorfer stated his clients are opposed to the variance requested as it fails to meet the standards required for a variance. The applicants have described a personal hardship as opposed to a hardship that is unique to the property. Webendorfer stated the applicants could build in the oddly shaped area and that would not require a variance. Webendorfer stated Wisconsin is a leader in water quality and feels setbacks are there to protect water quality and environmental concerns. The creek impacts other properties in Club Unique as well as adjacent properties. It was stated that the Village has a comprehensive plan in place, and it addresses environmental concerns. The Fontana Trust/O'Halleran nineteen-page document was marked as Exhibit No. 1. Attorney Webendorfer showed a series of three different videos that displayed flooding that took place in Club Unique with the large rainfall on August 10, 2020. The flash drive containing the videos from Fontana Trust was labeled Exhibit No. 2. Thorpe asked to clarify the connection between the flooding videos shown and the variance requested. Bruce Adreani stated he feels codes are there for a reason and they help slow the water flow and help clean the water. Adreani stated at the last Village Board meeting they approved work upstream to help with the water problems. Board member Jim Feeney stated the variance being presented tonight will not change the water flow as they are moving the house further away from the creek. Adreani stated it will still change the topography and create more impervious surface. Adreani explained he has been a member of the Public Works Committee for twenty years and by allowing everyone to come in and change the setbacks we are opening the flood gate to everyone to apply for a variance and destroy the work that has been done over the years. Attorney Webendorfer explained that Adreani has done a nice job laying out the reasons for setbacks and variances. Webendorfer reiterated variances are not granted for personal hardships. Attorney Duquette stated on behalf of his clients he is asking that the board determine if they meet the requirements to be granted a variance. Duquette explained the Smith home is the only home in Club Unique that is not modernized and if the variance is not granted they are left with a few options to leave the home as it is or rebuild in the same location nine to ten feet from the creek. Duquette

stated he feels the videos have made speculations that the flooding is associated with his client's home when in fact it is coming from farther upstream than his clients. The home is ninety years old and they are looking to update the home and live in it year-round and it would be much easier if it were thirty feet from the creek versus nine to ten feet. The creek greatly reduces the buildable area of the property. The public hearing was closed at 5:27 pm.

D'Auria/Feeney 2nd made a MOTION to consider approval of the requested variance for the property located at 637 Cherry Drive, Fontana, WI, Tax Parcel No. SCB 00005.

The Roll Call vote was as follows:

Feeney – Aye

Pollitt – Aye

D'Auria – Aye

Behrens – Aye

The MOTION passed on a 4-0 vote.

Feeney/D'Auria made a MOTION to authorize the chairperson to sign written findings consistent with the decision made without a further meeting, and the MOTION carried without negative vote.

Adjournment

Pollitt/Feeney 2nd made a MOTION to adjourn the Zoning Board of Appeals hearing at 5:35 pm, and the MOTION carried without negative vote.

Minutes prepared by: Stephanie Smith, Deputy Clerk/Treasurer

Note: These minutes are subject to further editing. Once approved by the Zoning Board of Appeals, the official minutes will be on file at the Village Hall.

Approved: 11/17/2020