



**MEETING MINUTES
OF THE
September 18, 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 Anna Velasquez and Aida Cantic

Staff Present: Planning and Economic Development Manager Doug Hammel

I. Call to Order/Roll Call

Chairman Heller noted a quorum of four members and called the meeting to order at 7:06 p.m.

II. Pledge of Allegiance

III. Approval of Ju17 17, 2024, ZBA Meeting Minutes

Motion: Commissioner Dervisevic made a motion to accept the minutes as presented.

The motion was seconded by Commissioner Youkhanna.

Aye: Chairman Heller and Commissioners Hussain, Youkhanna and Dervisevic

Nay: None

Abstain: None

Motion Approved: 4-0

IV. Case #ZB-08-24: 7100 North Kedvale Avenue – Variation to Reduce the Required Rear Yard Setback for an Attached Accessory Structure

Planning and Economic Development Manager Doug Hammel presented information regarding the case. The petitioner is looking for relief to reduce the required rear yard setback for the construction of a pergola attached to the west side of the home.

This property is located at the corner of Kedvale and Estes, due to the orientation of the property the front of the property is considered the side facing Kedvale, the proposed pergola to the west of the main building is in the rear yard of the property.

Per Village code there is a minimum 30-foot setback required in the rear yard. Without the pergola the home meets this requirement, however, the attached pergola extends 16 feet from the home, so the proposed rear setback has been reduced to 14 feet. As a mitigating factor, there is an alley directly to the west of the property between the subject property and the adjacent neighbor to the west.

Mr. Hammel also noted that the pergola was already installed without a permit but that the ZBA is not under any obligation to recommend approval of the requested relief based on the structure already being installed. The Petitioner will be held to whatever determination is made regarding the requested Variation. If approved, the structure will be subject to all relevant building regulations. If not approved the structure would need to be removed

Mr. Hammel spoke about the challenges that some corner side lots must meet regarding zoning regulations throughout the village. He also spoke about how the subject property has existing natural screening that should block some of the visibility of the proposed pergola.

Mr. Hammel noted the zoning variation standards that the ZBA should consider when reviewing this case. He also noted a few recent similar cases that were reviewed by the ZBA.

Public comment was received from a neighbor at 7109 N Kedvale stating that they supported the requested relief.

The Petitioner seeks approval of a Zoning Variation from Section 4.11 to reduce the required rear yard setback for an attached accessory structure from 30 feet to 14 feet

Petitioner:
Ioan Tom Bura

Mr. Bura addressed the ZBA to speak about why looking for this variation. He noted when he bought the property there was water damage along the west wall. He also installed the pergola to make better use of the back yard while shielding it from the elements more effectively.

Commissioner Hussain noted that if you take the alley into account that the setback from the nearest neighbor is still 30 feet. He also noted that accessory structures like this tend to be an enhancement for property owners and offer better utilization of the back yard space.

There was a question from the public who asked if a permit was required prior to construction. She also asked the impact similar lots that have garages in the rear.

There was discussion about any potential impacts to the house to the west from performing a similar renovation. Mr. Hammel noted that for the home to the west there is a garage adjacent to the alley so it is unlikely that they would look to build an accessory structure off the garage going towards the alley.

The commissioners took a moment to review the Variation Standards before moving forward with a vote.

Motion: Commissioner Hussain made a motion to recommend approval of the variation as presented by staff, noting the fact that the alley provided additional separation from the property to the west and his opinion that the proposed improvement serves as an amenity to the rear yard rather than a more robust addition to the home.

The motion was seconded by Commissioner Youkhanna.

Aye: Chairman Heller and Commissioners Hussain, Youkhanna and Dervisevic

Nay: None

Abstain: None

Motion Approved: 4-0

This item will go to the Village Board on October 1, 2024.

V. Case # ZB-09-24: 7125 North Kilbourn Avenue – Special Fence for Natural Screening in the Public Right-of-Way and a Variation Related to a Required Setback from the Public Sidewalk

Planning and Economic Development Manager Doug Hammel introduced information for the case, along with correcting the address misprint in meeting packet to clarify 7125 North Kilbourn Avenue as the address of the subject property.

The property is in the R-3 zoning district. Immediately to the West of the property is the Barclay Condominium building and immediately North of it is the multi-story bank with its parking lot across the street from the subject property, with relative proximity to District 1860. Mr. Hammel discusses how these surroundings create a few challenges for the petitioner's application.

Mr. Hammel introduces the proposed improvement. The petitioner seeks to install additional natural screening along the west lot line. Mr. Hammel clarified that despite the property's primary entrance being on Kilbourn Avenue, the front lot line is on Fitch. This corner side yard and lot line are the areas of discussion. A row of tall hedges and trees along the sidewalk, in the public right away on the west lot line of the property provide some screening but not the preferred amount of the petitioner.

Mr. Hammel notes that the petitioner installed a 6ft tall solid fence along the west lot line in the public right-of-way. He clarified that the petitioner is seeking to remove this fence and reinforce the current natural screening with more bushes and trees.

Mr. Hammel discusses two required approvals. Per village zoning provisions (section 3.13(8)) the current landscape does not require approval, however, new natural screenings in the public right-of-way does (special fence approval). A zoning variation is also required as setback always must not be less than 3 feet from sidewalks and 5 feet from the curb. The current natural screening is adjacent

to the street and the petitioner is seeking to install new natural screening in the same location. Mr. Hammel clarified that this would not meet the setback requirements.

Considerations for the property were discussed. The Petitioner built the non-compliant fence to provide security and privacy, hoping the new natural screening will provide the same benefit. Petitioner seeks leniency from code enforcement to allow the fence to remain while this case is approved. The three non-single family home developments have increased traffic and visibility on Kilbourn Avenue, increasing the need for more privacy measures, as stated by the petitioner. More context given by the petitioner included an increase in street parking along Kilbourn (supported by staff observations) and public safety risks as cars parked on their property have been broken into.

Mr. Hammel showed variation and special fence standards listed in the code stating that the ZBA shall not recommend to the Board of Trustees a special fence permit unless the listed findings are presented at the hearing;

- i. The special fence will serve the public convenience at the location of the subject fence; or that the establishment, maintenance or operation of the special fence will not be detrimental to or endanger the visibility, public safety, comfort or general welfare
- ii. The special fence will be in harmony and scale with the architecture of the building in this development and with other fences in the neighborhood
- iii. The special fence will not be injurious to the use and enjoyment of other property in the immediate vicinity of the subject property for the purpose already permitted; nor substantially diminish and impair the visibility of adjacent property
- iv. The nature, location, and size of the special fence will not impede, substantially hinder, or discourage the installation of fences on adjacent property in accordance with the Fence Ordinance
- v. The special fence shall in all other respects conform to the regulations of this Section 3.13 except as modified as provided herein

In addition to previously listed required findings for recommendation, Mr. Hammel introduced nuanced fence variation standards and how these standards can be used to guide the board's decision as well but are not required to be met at the hearing. Mr. Hammel added that fence variations in the public right-of-way are not permitted unless contemplated through the lens of natural screening.

There was one prior similar request (7356 North Lockwood Avenue) in 2022 where the petitioners requested a special fence approval for the installation of natural screening in a public right-of-way along Pratt Avenue. The special fence permit was approved as long as petitioners remained compliant with required setbacks.

Mr. Hammel introduced public comments from four residents of Barclay condo building. The collective concerns are as follows:

- i. The sidewalk on the east side of Kilbourn is narrow, making it difficult to navigate under ideal circumstances
- ii. The subject property currently allows its landscaping to encroach into the sidewalk, requiring pedestrians to go into the street

- iii. Traffic and parking on Kilbourn Avenue have increased since the opening of businesses in District 1860, and this should be expected to get worse as the businesses and residences become more occupied and active

Mr. Hammel opened the floor for questions from the Board. Commissioner Hussain asked a question to understand the process for an individual if the legal non-conforming natural screening dies. Mr. Hammel clarifies that an individual can replace up to 50% of the “fence”, but there are no specific provisions covering natural screening in the public right-of-way. Commissioner Hussain asked about the benefit of the provision for three feet from the sidewalk setback and five feet from the curb setback. Mr. Hammel discussed the potential of natural screening to encroach on public areas due to growth and the setback allows for the greenery to not be trimmed as often. Chairman Heller asked a question regarding the authority of the ZBA to provide a variation for the public right-of-way. Mr. Hammel clarified that the provision exists in the zoning ordinance and the board has the discretion to provide the variation. He also provided insight into discussions at the Village Board level regarding permitted obstructions in the public right-of-way. Mr. Hammel asked the Board to make their recommendation based on whether the request is appropriate and meets the standards. Commissioner Hussain asked for clarification about an image provided by the petitioner in the packet. Clarification given.

Petitioner seeks approval of the following relative to Section 3.13(8)a.vi of the Zoning Ordinance:

- i. A Special Fence to allow the installation of natural screening in the public right-of-way along Kilbourn Avenue and adjacent to the rear yard of the subject property
- ii. A Variation to waive the required three-foot setback from a public sidewalk and five-foot setback from the curb of a street that would otherwise be applicable to the proposed natural screening

Petitioner:
Salman Khan

Mr. Khan addressed the ZBA to explain why he is seeking a variation. He discussed the privacy issue and his willingness to remove the non-permitted fence; however, without the fence, there is a space due to the trimming of the once standing landscaping which he deems as unsafe. Mr. Khan provided insight into recent struggles he and his property are facing, such as increased car and foot traffic, parking, trash buildup, and cars being broken into. He claimed his neighbor is also experiencing the same problems yet has more natural screening. Mr. Khan provided more pictures of his property and surroundings during his testimony.

Commissioner Youkhanna noted that the petitioner already has shrubbery blocking the sidewalk and asked for clarification regarding who is responsible for the maintenance of landscaping adjacent to the street. Mr. Hammel clarified that it is the responsibility of the homeowner. Commissioner Youkhanna also sought clarification about the words “natural screening” in this case, to further understand the details of the petitioner’s plan. Mr. Hammel stated that there are no limitations on what can be planted for natural screening as it is at the homeowner’s discretion. Mr. Khan also clarified he is not seeking to encroach on the sidewalk, just to reinforce the already existing landscaping. Commissioner Dervisevic sought more information about the petitioners’ options. Mr. Hammel utilized the petitioner’s plat of survey to explain two options:

flush with the façade of the home or he can encroach into the corner side yard with the five feet setback from the lot line if landscape screening is provided on private property.

Commissioner Dervisevic asked petitioner why he is seeking to build outside of the current landscaping, which requires permission, instead of inside his property line, where setback would be met. Mr. Khan clarified that before he built the solid fence, there was natural screening present and that to build the fence he removed it. He is seeking permission to install the natural screening back in its original position, which was already existing in the public right-of-way. Mr. Hammel provided information about the current position of hedges adjacent to the sidewalk and with the assumption the variance is given, the new natural screening would also be adjacent to the sidewalk, not within setback standards. Commissioner Hussain sought information regarding the petitioner's feelings about installing the natural screening three feet from the sidewalk within his property line instead of having to meet both setback regulations. Before petitioner responded to the initial question, Commissioner Youkhanna asked a question for clarification about the natural screening the petitioner "removed". Petitioner clarified no greenery was uprooted or removed, just trimmed. Commissioner Hussain then asked about the opinion to grant special approval for natural screening but not in the same place that the non-permitted fence is currently in. He further discussed that building the natural screening three feet from the sidewalk would offer privacy, allow for more space in the petitioner's yard than is available with the current fence, and remove one necessary variation.

Mr. Khan responded still inquiring about a two-foot setback to replace the natural screening that was already there and provide screening for privacy. He believed with the screening closer to the sidewalk, there will be more depth and coverage. Commissioner Hussain clarified with the petitioner that building at three feet would provide another row of coverage behind the already existing hedges, then recommending that the petitioner create two new rows starting at the three feet setback, replacing the old and providing another layer. He also introduced the problem that community residents would be unable to use the public sidewalk due to encroachment resulting in them having to walk in the street. Mr. Hammel suggested that the board set a clear expectation in their motion regarding whether the petitioner must rebuild within the existing landscaping or if the petitioner has permission to remove current landscaping to start new.

Commissioner Hussain sought clarification from Mr. Khan to specify which setback he is seeking the special variation, curb or sidewalk. Mr. Khan stated he is seeking a five-foot setback from the sidewalk which contradicts his original appeal, creating some confusion. Mr. Hammel intervened to get everyone on the same page and restated that the five-foot setback from the curb would put the natural screening at two feet from the sidewalk but three-foot setback from the sidewalk would require the natural screening to be three feet. The Board asked Mr. Khan to specify exactly how many feet away from the sidewalk he wants to plant, and he responded with the same location as his current fence, which is setback about six to eight feet from the sidewalk.

Mr. Hammel and Commissioner Hussain discussed that the fence may not be setback eight feet, but closer to a setback of four feet from the sidewalk. Mr. Hammel stated that if the natural screening is built in the place of the current fence, that it would meet setback requirements and there would be no need for a variance. Chairman Heller still wanted to understand how the natural screening would be built in the tree line and if old landscaping would be removed. Mr. Khan stated that he does not

want to remove the old, just create a new line. The Board discussed that the removal of old greenery would make the most sense.

Chairman Heller asked if any members of the public wish to address the board. One resident living in a single-family home in the vicinity of the subject property raised concerns about his responsibility of cutting down trees and the potential impacts of this process.

Commissioner Hussain asked Mr. Khan if he would be opposed to a recommendation that the special fence variation is permitted if the current landscaping is removed. Mr. Khan stated he does not support this recommendation. Chairman Heller asked why the original greenery was removed to make the fence. Mr. Khan stated to make space for the fence. Mr. Hammel showed the Board what the natural screening looked like before the fence. Chairman Heller proposed to the petitioner to table his request to have time to meet with landscapers or other sources to determine cost of the project before a decision is made. Mr. Khan was stated his desire to maintain privacy and does not want to remove his fence without permission to build natural screening within his desired area. Chairman Heller and Mr. Hammel discussed that the petitioner has the right to build natural screening on his own property following the provisions in the zoning ordinance that had been previously discussed. The Board asked Mr. Khan if he would like a continuation until next meeting, and Mr. Khan agreed.

Motion: Commissioner Youkhanna made a motion that this case be continued to the next scheduled meeting on Monday, October 14, 2024.

The motion was seconded by Commissioner Hussain.

Aye: Chairman Heller and Commissioners Hussain, Youkhanna and Dervisevic

Nay: None

Abstain: None

Motion Approved: 4-0

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.

VI. Next Meeting

The next meeting of the Zoning Board of Appeals is scheduled for October 14th, 2024.

VII. Adjournment

Motion to adjourn was made by Chairman Heller

The motion was seconded by Commissioner Hussain.

Aye: Chairman Heller and Commissioners Hussain, Youkhanna and Dervisevic

Nay: None

Abstain: None

Motion Approved: 4-0

The meeting was adjourned at 8:54pm.

Respectfully submitted,

Marcos Classen

Community Development Coordinator