



1200 Wilmette Avenue
Wilmette, Illinois 60091-0040

MEETING MINUTES

ZONING BOARD OF APPEALS

WEDNESDAY, JANUARY 17, 2018

7:30 P.M.

COUNCIL CHAMBERS

Members Present: Chairman Patrick Duffy
Mike Boyer
John Kolleng
Michael Robke
Reinhard Schneider
Bob Surman

Members Absent: Christopher Tritsis

Staff Present: Lisa Roberts, Assistant Director of Community Development

I. Call to Order

Acting Chairman Bob Surman called the meeting to order at 7:30 p.m.

II. 2017-Z-64 1109 Central Avenue

See the complete case minutes attached to this document.

III. 2018-Z-02 3730 Lake Avenue

See the complete case minutes attached to this document.

IV. Approval of the December 6, 2017 Meeting Minutes

Mr. Kolleng moved to approve the December 6, 2017 meeting minutes.

Mr. Schneider seconded the motion and the voice vote was all ayes and no nays. Motion carried.

V. Approval of the December 20, 2017 Meeting Minutes

Mr. Kolleng moved to approve the December 20, 2017 meeting minutes.

Mr. Boyer seconded the motion and the voice vote was all ayes and no nays. Motion carried.

VI. Public Comment

There was no public comment.

VII. Adjournment

The meeting was adjourned at 8:53 p.m.

Respectfully submitted,

Lisa Roberts
Assistant Director of Community Development

3.0 TESTIMONY, COMMENTS AND ARGUMENTS ON BEHALF OF THE APPLICANT

3.1 Persons appearing for the applicant

3.11 Ms. Yajuan Liu, applicant
1109 Central Avenue

3.2 Summary of presentations

3.21 Ms. Roberts said that this is a request for a special use for a personal services establishment (reflexology services). The Village Board will hear this case on February 13, 2018.

3.22 The applicant said they are opening a reflexology spa.

3.23 Chairman Duffy asked about reflexology.

The applicant explained what reflexology was. It helps with stress reduction, low energy, and having a better life.

3.24 Chairman Duffy asked about the number of employees.

The applicant said that she is trying to get new staff from China who have better skills and management background. They currently have 10 employees. She is opening two sites in the village – one being discussed tonight and one on Lake Avenue. After the business opens they will probably interview more staff.

3.25 Chairman Duffy said that he asked about the number of employees as it relates to parking in the area. In an email the applicant said she was allotted three spaces.

The applicant said that they have three spaces behind the building and 2 to 3 cars will park there. Employees will carpool to the site.

3.26 Chairman Duffy said that there is a public lot behind memorial park.

3.27 Mr. Schneider asked about the current use of the space.

The applicant said it used to be an eye doctor's office. It has been empty for about two years.

3.28 Mr. Surman asked if 10 employees would be for two locations.

The applicant said that 10 employees would be for two locations.

3.29 Mr. Surman asked if employees would park behind the building.

The applicant said that most employees do not drive, but there will be carpools. She doesn't need more than three spaces for the employees.

She said that she could prepare more information if this was requested by the board.

3.30 There was no one in the audience to speak on this case.

5.0 VIEWS EXPRESSED BY MEMBERS OF THE ZONING BOARD OF APPEALS

5.1 Mr. Boyer said this business will be a good fit in the downtown area and there are no parking concerns. The board looks as if there is a lot of parking needed due to the number of employees or if a customer stays for a long time. This type of business would allow additional shopping opportunities for other businesses. Standards of review are met and he can support the request.

5.2 Mr. Robke agreed with the above and can support the request.

5.3 The board had no additional comments.

6.0 DECISION

6.1 Mr. Boyer moved to recommend granting a request for a special use for a personal services establishment (reflexology services) at 1109 Central Avenue in accordance with the plans submitted. The use shall run with the use.

6.11 Mr. Robke seconded the motion and the vote was as follows:

Chairman Patrick Duffy	Yes
Mike Boyer	Yes
John Kolleng	Yes
Michael Robke	Yes
Reinhard Schneider	Yes
Bob Surman	Yes
Christopher Tritsis	Not Present

Motion carried.

6.2 Mr. Boyer moves to authorize the chairman to prepare the report and recommendation for the Zoning Board of Appeals for case number 2017-Z-64.

6.21 Mr. Surman seconded the motion and the voice vote was all ayes and no nays.

Motion carried.

7.0 FINDINGS OF FACT UPON WHICH DECISION WAS BASED

The Zoning Board of Appeals finds that the request meets the special use standards of Section 5.3.E of the Zoning Ordinance. The proposed use in the specific location will be consistent with the goals and policies of the Comprehensive Plan. The establishment and operation of the proposed use will not be detrimental to or endanger the public health, safety and welfare. The proposed use in the specific location will not be injurious to the use or enjoyment of nor impede the normal and orderly development of surrounding properties. The proposed use will not substantially diminish property values. Adequate utilities, road access, and other facilities already will be provided upon completion of the building. Adequate measures will be taken to provide ingress and egress in a manner that minimizes traffic congestion. A number of parking spaces are provided on-site; there are also public off-site parking space adjacent to the property as well as street parking. The proposed use in the specific location will be consistent with the community character. The proposed use will not adversely affect a known archaeological, historical or cultural site. No other standards of Article 12 apply.

8.0 RECOMMENDATION

The Zoning Board of Appeals recommends granting a request for a special use for a personal services establishment (reflexology services) at 1109 Central Avenue in accordance with the plans submitted. The use shall run with the use.

3.0 TESTIMONY, COMMENTS AND ARGUMENTS ON BEHALF OF THE APPLICANT

3.1 Persons appearing for the applicant

3.11 Ms. Mina Boruta, applicant
3730 Lake Avenue

3.12 Mr. Steve Boruta, applicant
3730 Lake Avenue

3.2 Summary of presentations

3.21 Ms. Roberts said that this is a request for a 7.11' side yard air conditioner condenser setback variation to permit the retention of an air conditioner and a 3.0' side yard setback variation and a 3.0' separation variation to permit the retention of a grill island and pergola. The Village Board will hear this case on February 13, 2018.

3.22 Ms. Boruta said they have lived in the home for over 6 years. Before they moved in, the home was vacant for quite some time. The existing patio was caving in, which was unsafe. They purchased the home 'as is.' There was an ugly chain link fence in the rear. They wanted to improve the backyard.

The current AC unit is on the west side of the home. It has been there for five years. She explained that the old unit broke and that the installers suggested putting the unit on the west side of the home. She agreed without knowing about the 10' side yard requirement. The unit is very quiet. It is located below their kitchen window. They live on Lake Avenue, which is very busy, and that sound would drown out any potential AC noise. They have a 6' along the property line which would deflect any potential noise. The neighbor to the west has never complained about noise.

They are also requesting the 3' side yard setback variation and 3' separation to allow them to retain the current grill island that has been there for five years. They are also asking that they be allowed to continue installing a pergola over the grill island as shown in the picture.

The grill island was done at the same time as the paver patio. An inspector came out two times and the grill never came up as being an issue. Both neighbors to the east and west never had a complaint.

The past summer they were replacing a rotting pergola that they had over the sliding glass doors. They then thought to add one over the grill. They did not get a permit. They did not think that they needed a permit. It was their mistake to not perform their due diligence. They are asking the board to approve the variation requests. If they have to move them, it will be a significant financial hardship. They got a proposal of what the cost would be. The estimated cost is close to \$9,000 with a

maximum total cost not to exceed \$12,500 to break down the grill island and move it 3' and try to relocate the ac unit.

There are four similar cases that were granted by the board. She knows that every case is different and unique. But these were cases where the board had granted the retention of an existing ac unit or structure. She reviewed all of the cases. She talked about board approval on cases based on financial hardship. She hopes that the board will allow them to retain the ac unit and the grill in their current locations.

- 3.23 Mr. Boyer said he looked at the back of the house and asked the applicant to describe what is inside the two windows and below the two windows.

Mr. Boruta said that behind the two double hung windows is the dining room. The slider to the right is the kitchen. The slider to the left is the living room. Below is a basement.

- 3.24 Mr. Boyer asked where the mechanical room was located.

Mr. Boruta said it is where the ac unit is located on the west side of the house under the kitchen. The mechanical is under the laundry room.

- 3.25 Chairman Duffy asked where the prior AC unit was located.

Mr. Boruta said that it was in the back underneath the double hung window, right in the middle.

- 3.26 Mr. Surman asked where the units were in the basement. Were they where they are now or were they moved?

Mr. Boruta said they were where they are now.

- 3.27 Mr. Boyer said that the mechanicals in the electrical panel is over on the side of the house near the laundry room where the ac is now. The original line set went all the way through the basement to the mechanical room. The dining room is in the middle of the double hungs.

Mr. Boruta said that the original AC system was 25 years old. All piping was redone when they bought the new AC unit.

- 3.28 Mr. Surman referenced an email with a photograph. The existing patio is being replaced, but in the email, there is a shaded portion. Was that permitted as well?

Ms. Roberts said she did not believe that portion was permitted.

Mr. Boruta said that was done at the same time. They did get the permit for that.

3.29 Mr. Surman said he was a little confused. He guesses that the permit was for the other shape.

3.30 Chairman Duffy said that it says the permit is to replace existing. Anything submitted for the permit did not have the addition on it.

Ms. Boruta said that they came out, saw the inspection and they got the permit during that time. The square footage of the patio is the same and the shape is different.

3.31 Chairman Duffy clarified that the square footage was the same.

Mr. Boruta described the previous layout. The plat of survey is not accurate.

3.32 Mr. Schneider asked to see the two pages that Mr. Boruta is discussing.

Mr. Boruta showed the original plat that they got when they bought the home from the bank. It read 12 x 12 for the patio and there was a tree in the middle that is now shown. He described the shape of the new patio. But the square footage did not change.

3.33 Chairman Duffy said that the permit indicates replace existing, but there is no drawing of what they proposed. There is a little bump out where the grill was to go.

3.34 Mr. Surman said he thinks that the bump out was just showing clearance to walk.

3.35 Chairman Duffy said they did not follow the plan because the grill island is bumped out facing the other way. The grill is now equal with the sidewalk down the side of the house. The grill island was an addition to what they applied for.

Ms. Boruta said everything was done at the same time.

3.36 Chairman Duffy said he asked if the grill island was an addition to what they applied for.

Ms. Boruta said she didn't know. She explained the permit process and assumed they were able to make all changes.

3.37 Mr. Boyer said that it is conforming as exists in lot coverage and impervious surface.

Ms. Roberts said that it was allowed to be replaced as existing because it was considered to be maintenance and they do not check to see if it is over on coverage.

Mr. Boruta said it is conforming for lot coverage and square footage.

- 3.38 Mr. Boyer asked about the impervious surface.
- 3.39 Chairman Duffy said there is no calculation for impervious surface.
- Ms. Roberts said that the rear yard for zoning purposes is the last 30'. It is hard to read the plat, but her guess would be that what is shown on the plan would be conforming for the rear yard.
- 3.40 Mr. Boyer said no one is sure if what is existing is actually conforming.
- 3.41 Mr. Surman said that beyond the pergola near the grill can they have a grill that close to the lot line.
- Ms. Roberts said that it needs to meet the minimum side yard setback, which is 6'.
- 3.42 Mr. Surman asked if it was a portable grill.
- Ms. Roberts said that is not regulated.
- 3.43 Mr. Kolleng asked why this case was before the Board.
- Ms. Boruta said it was her understanding that her neighbor called the Village and is not pleased about the pergola.
- 3.44 Chairman Duffy said that in a lot of the work done, there are permits. Some they did not pull permits for. They are aware of the process now. If someone comes and says they want a permanent structure for the grill, when they apply for the patio, shouldn't that be part of the application?
- Ms. Roberts said that it is usually written on the application drawings. There is nothing in the electronic file for the permit.
- 3.45 Chairman Duffy said he knows that the inspector came out and didn't say anything. But in an application, it is supposed to be there so that the village knows what is being built.
- Ms. Roberts said that there is a note on the application as well as a note on the inspection that there was a code enforcement officer involved. She has no note that the grill island was observed.
- 3.46 Mr. Surman asked if the grill island had a gas line that runs to it. Is there plumbing?
- Mr. Boruta said there is no plumbing but had a gas line.
- 3.47 Mr. Schneider said that the paved patio was 3' from the property line. Does it need to be 6' from the property line?

Ms. Roberts said that a patio can be 3' from the property line. 3' is the minimum. If the grill island wasn't there they could have a patio.

3.48 Mr. Surman asked how close the pergola could be.

Ms. Roberts said that is like an accessory structure and has to meet the 6' side yard setback requirement.

3.49 Mr. Schneider asked about a fixed grill with a portable umbrella.

Ms. Roberts said that the umbrella would not be a problem because it is portable.

3.50 Mr. Kolleng asked if the pergola was finished.

Mr. Boruta said that it is not finished.

3.51 Chairman Duffy asked when they took the photo they submitted.

Ms. Boruta said it was taken the other day before the snow.

3.52 Chairman Duffy noted that one side is all mulch except by the gate. How far behind the garage do the pavers run?

Mr. Boruta said they run about 5' to 6'. Two trash cans sit there.

3.53 Mr. Schneider asked about the move of the AC unit from the north to the side.

Ms. Boruta said that Northern Heating said they could move it and she didn't know about a setback. She didn't know that a permit was needed.

Mr. Boruta said that when the fence was replaced they were told to get a permit. He is referring to the back fence that originally was chain link.

3.54 Mr. Kolleng clarified that the fence behind the grill was the applicant's fence. Could that fence be 6' stockade?

Ms. Roberts said that it could be a 6' high stockade fence.

3.55 There was discussion about fences on the property.

3.56 Mr. Surman asked about the contractor building the pergola.

Mr. Boruta said who was building the pergola and he pulled a permit afterwards. He lives in Wisconsin.

3.57 Chairman Duffy asked if the paver company was located in Highland Park.

Mr. Boruta provided the name of the company who did the grill, the front walk and the front porch.

(After section 4.0)

3.58 Chairman Duffy asked if any board member had additional questions for the applicant from what was brought up by the neighbor. In general, the applicant has the chance to respond to neighbor's questions or comments, but most of them were addressed.

3.59 Mr. Robke said that the term, hardship, has been mentioned. He said that they should go back to a time when none of these improvements existed and they came to the board with their proposal. What is the hardship?

Mr. Boruta said that the hardship is that the old unit was under the dining room window. They spend a lot of time on their patio. They did not want the units on the patio for that reason. It is more efficient on the side.

3.60 Chairman Duffy clarified that the sliding door by the grill goes to the kitchen. It is not convenient to have the grill at the far end of the patio. But that is not a hardship and it is a convenience.

3.61 Mr. Robke noted that the board has not seen convenience as a hardship.

3.62 Mr. Surman asked if they planned to do more work on the house.

Mr. Boruta said there were no additional plans for future work.

4.0 INTERESTED PARTIES

4.1 Persons speaking on the application

4.11 Ms. Barbara Pearlman
3736 Lake Avenue

4.2 Summary of presentations

4.21 Ms. Pearlman lives directly west of the applicants. She has compiled a compendium of information and research on this project. It is important to support her objections to the request. She was on vacation for over a month and returned to Chicago on December 27, 2017. She got her held mail on December 28th and received her notification. She quickly responded because the original meeting for the case was on January 3, 2018 and the case was rescheduled.

Her first letter was he said/she said. She had not seen any information about the application or the application itself. She wanted to get information to the Board however. She went to village hall and researched 18 cases that were referred to for

this case. She went through every drawing submitted for every permit pulled over a period of 5 to 6 years for this subject property. Things looked strange to her.

There were two setback violations done without permits that were there for five years. She has a second home in the city. She bought a house on the Wilmette golf course, but never moved in. She remained in the city. She loves the village. She has wonderful neighbors. She would come out to her Wilmette home on weekends. She was somewhat unaware of what on at the applicants' home. In the winter she could see what was going on. She has a hesitation in confronting a neighbor about violation of a law.

Mr. Boyer asked the neighbor to describe the impact on her.

The neighbor continued and said that in her original letter, she got off track in citing all different things going on on the property without permits. That was done to demonstrate there is a history of permit violations on the property.

Regarding tonight, she noticed the air conditioner problem and the build out of the grill island.

She is a former member of the International Interior Design Association for many years. She is a design professional who has worked with engineers, architects, cities and municipalities for years. She looked out her window in August 2017 and saw the pergola being built. She called the village and asked if a permit was pulled. Ted Blumenthal quickly came out to find out what is going on. It impacts her because there is a situation for a variation request without proper documentation for the pergola. A permit was never pulled. It was pulled after Mr. Blumenthal came out and saw what was going on. There was no permit for any of the work. There was a permit for flat work, but it did not include new flat work that the pergola was set on or that other things were set on. This is a continuing concern – no documentation, no permits pulled. She wants to know why a resident should have items grandfathered in as a result of not following the rules and regulations of the zoning ordinance.

The board should be able to review a case in advance of it being built to ensure that it conforms.

Chairman Duffy asked how this negatively impacts the neighbor or is it not negatively impacting her. Is the air conditioner or the pergola a hindrance to her?

The neighbor said that these are not hindrances to her. It is a potential noise problem.

Mr. Kolleng asked if the unit was an issue over the past five years.

The neighbor replied no.

Mr. Kolleng asked if the grill was a visual issue.

The neighbor said no.

Mr. Kolleng asked if the pergola under construction creates an issue for her.

The neighbor said it is only partially built so she has no idea. She agreed that the height is already there. It is not creating an issue.

Chairman Duffy said that in general, the board has granted side yard setback requests for AC units if it does not impact the neighbor. If someone already located it there without a permit and then comes to the board, the board asks themselves if they would have granted this if they had come to the board originally. In some situations, some board members have said no, and others have said yes. The Village Board could read the minutes and review the case and could have objected or approved the request. One of the first questions he has about the AC unit is whether the board would have approved the request if the applicants had come in before building something. There was a case by the lake where the board asked for more noise baffling. And they agreed to do this. His concern was similar to hers about the patio. Did they follow the application? His concern was about the hired contractor who did this. Does the neighbor object to the existing AC unit or the existing island for the grill?

The neighbor objects to it only in the sense that she was not given a chance to appear before the board to express an objection.

Chairman Duffy asked her if she would oppose it as it currently is built?

The neighbor said she would have brought up her concerns about the possibility of noise.

Chairman Duffy asked if they had done proper permitting for the pergola and had to ask permission to install the pergola in its existing condition, does she object to the pergola? Will it impact light or air to her yard? Will it impact her views? Any negative impact?

The neighbor said that she sees no negative impact from the pergola and she stated that it would not in her list of six standards for variation.

Chairman Duffy complimented the neighbor on the extent of her work so that she could make her presentation to the board.

The neighbor referenced the 1334 Wilmette Avenue property that was cited tonight as an example. There was neighbor support for that proposal. The site plan was unusual. There was no objection to the proposal. That case was for a front yard setback. It was a replacement where a former AC unit was located.

Chairman Duffy said that the neighbor brought up a point in her letter about people misconstruing hardship. Hardship is not about how much money something costs but is about the uniqueness of the property and the application of the rules to the property. In the Wilmette Avenue case, the way that the lot was shaped and where the home was sited on the lot made it almost the only location for the AC units. In a way, the board had to grant the request. But in tonight's case, there is not a hardship for anything. But in the way that the board looks at AC units as well as the grill island, if the applicant had come through proper channels, the board would have asked certain questions. He is not sure he would have allowed the grill island to go where it is right now. But is it negatively impacting something or someone? The board appears to say that there is no negative impact on the neighbor's property.

Mr. Schneider asked about the decibel level required at the property line for an AC unit.

Ms. Roberts said that there is no limit for a residential air conditioner.

Mr. Schneider clarified that there is only a distance requirement.

Mr. Schneider asked what would be an acceptable decibel level.

Ms. Roberts said she does not have this exact information.

There was discussion about noise from an AC.

Mr. Schneider said that the newer technology AC units are fairly quiet.

Chairman Duffy said they are a little quieter than the older style.

Mr. Schneider said that at the property line, he does not think that an AC unit would exceed 70 decibels, which is acceptable for a generator.

Mr. Robke said that the generator is an emergency generator and an AC unit runs all summer. He does not think that 70 decibels are the appropriate standard. He does not think that these units put out anywhere near the 70 figure.

The neighbor asked about incentive to this owner or any resident of the village be to not conform to code and to continue building without permits.

5.0 TESTIMONY, COMMENTS AND ARGUMENTS ON BEHALF OF THE APPLICANT

- 5.1 Mr. Boyer said he looks at the case in many ways. He looks at the physical nature of where the house is located on the lot, the lot size which is 60' x 150', and this is a large lot. The house does not have siting issues. There is no side drive or rear

alley. Everything conforms and is normal. There is not a lot of practical difficulty for several requests. He said he takes the AC separately from the grill and pergola. The AC is okay with because of the new AC efficiency. The original location of the AC was not ideal. The new units have been there for six years without any complaints. If the applicant had come to the board five years ago, he would be amenable to granting the request.

Regarding the grill island and pergola, it is hard for the board to see this after the fact. If they come with a proposal to put in a grill island and pergola, the board looks at reducing the variance request(s). In the discussion, the board might have asked them if they would agree to move the grill 3' in and then they would not need the variance request. He is on the fence on this case and wants to hear colleagues' comments.

- 5.2 Mr. Kolleng said he agrees with Mr. Boyer about the AC. Many ACs in the village are between homes. He would not have had an issue with this five years ago. There have been no noise complaints. He can support the AC location.

Regarding the grill island and pergola, the application was for the patio and did not mention a grill island. This is not the first time that a resident was before the board and a permit was pulled but something different was built or more was built. He agrees with Mr. Boyer in that if they came today and said they wanted to build what is built, the board would ask them to move the location closer if not within the setback. But it's been there for five years and it is expensive to move it. If the grill wasn't there, they could have a portable grill of the same size. The neighbor has not voiced any concerns. He does not have an issue with it.

Regarding the pergola portion, it is mostly air. If the posts negatively impact the neighbor, then it should be moved to a conforming location. But he didn't hear that. It will look fine. He does not have an issue. He can also go the other way if everyone else thinks it is a bad idea.

- 5.3 Mr. Schneider said they did things that contravene the zoning code. The contractor, whoever is at fault, but it was done. There is a reason to put AC units 10' from the property line. If 10' is not right, then it should be changed. But 10' is a requirement. The board has made a number of exceptions for various reasons. Regarding the grill island, it was done, but should not have been done without a permit. The board should not make them fix it. That doesn't make sense. He recommends that the board of trustees consider a sanction when they review this case. A situation like this should get a sanction and just because something is in place, that doesn't mean it is right. They did not get the permits needed.
- 5.4 Mr. Robke said he is in the minority on the AC unit. If the AC was so quiet and not a problem, then it would not have to be moved from the porch. Most of the time when the board approves an AC unit in the side yard setback is that it is a replacement unit. Now the variance is being triggered due a maintenance issue. And

that is looked upon differently. He does not think that the grill or the pergola would have been approved if they had come in prior to doing the work. He cannot support this. There is no hardship in this case. A point of frustration for him as a board member is that there is another step with the village board. They will probably approve the requests regardless of the steps that the board takes. Although he thinks that the applicants did things in good faith, he cannot support the request and is not within the board's jurisdiction.

- 5.5 Mr. Surman agrees with Mr. Robke especially about the AC unit. Even with new homes the board requires them to be in the back of the house. The Michigan Avenue home was discussed, but there was agreement that a hardship existed in that case. One case on Michigan Avenue had to do with a generator and one had to do with an AC unit. Sometimes AC units are on the side, and he does not have as much an issue with that request.

Regarding the grill, he agrees with Mr. Kolleng. They could put a grill on wheels and move it. He does not have a problem with the grill.

But he has a problem with the pergola. It seems like a lot of cases coming to the board have to do with people building without a permit and then ask for forgiveness. If someone did that to the property next door to him, it might block his view. How will it be maintained over the years? There is that requirement, so it is not within eye shot of the neighbor. He is not sure if there should be sanctions. He does think that the pergola should be eliminated and cut it off at the base and allow forgiveness for the rest. It will be a future issue if the board approves accessory structures that were not permitted.

- 5.6 Mr. Robke said that everyone seems to focus on the fact that if it was a movable grill it could be put there. If it was a movable grill they could remove it from the area if there was a problem. The issue, for him, is that there is no hardship. Based on his experience, approval could be granted by the Village Board.
- 5.7 Mr. Surman said if they are getting a permit to do work on a patio, he would think they would realize they would need a permit to build something that is above the ground.
- 5.8 Chairman Duffy said he expressed some of his thoughts during the presentation. If they had come to the board with this as one project, but it was not – the ac went bad and after that they replaced the patio – the board would have seen that placing the AC on the side to get it closer to the utility room makes sense. He would be in favor of that if they had come to the board asking for a variance. But he would not be in favor of a permanent structure being in the side yard setback. The board would have asked for a relocation. It is now done. The way that he looks at the grill is that he cannot approve it and will let the village board decide what to do with this situation. He agrees with Mr. Schneider is that there is too much asking for forgiveness.

- 5.9 Mr. Boyer said it may or may not be a homeowner issue but could be a contractor issue or maybe not. The board has looked at the homeowner as asking for forgiveness. The contractors might hold more of a burden.
- 5.10 Chairman Duffy asked Ms. Roberts about responsibility. It is the homeowner's responsibility when they apply for a permit whether the contractor does it for them or not. The burden falls to the homeowner. His question to Ms. Roberts was whether there is a list of contractors who are building without a permit and then coming to ask for one. There is no official list of this.
- 5.11 Mr. Boyer said that there should be a list.
- Ms. Roberts said that code enforcement officers and building inspectors have experience in the field and observe trends. It is not a function of the contractor's license to document code violations and failure to obtain permits.
- 5.12 Chairman Duffy said that it is the homeowner's responsibility to get the permit and to adhere to the zoning code and ask for relief from the code when appropriate.
- 5.13 Mr. Boyer thinks that the contractor should bear some responsibility.
- 5.14 Chairman Duffy agreed, but that is not the way that it works. The homeowner has to make sure the contractor is going the right job.
- He is with Mr. Schneider that there is something that falls to the homeowner. If they want to take it up with their contractor that is up to the homeowner. If the homeowner asks for a permit, they need to follow the plans in the permit and not go outside the scope of the plans to make it better or more convenient. But he does not know that the board will do that.
- 5.15 Mr. Kolleng said that not condoning lack of permits, but it has been there for five years without any complaints on visual or noise issues. That says something. Regarding the pergola, they could run a 6' stockade fence although it would not be as high as the pergola, but that is more daunting.
- 5.16 Chairman Duffy said if the purpose of the pergola is to cover the grill.
- 5.17 Mr. Surman said the pergola is just open slats. It is an aesthetic for the grill.
- 5.18 Chairman Duffy said that code calls the space under a pergola can trigger FAR and it is a permanent structure. There is no hardship shown.
- 5.19 Mr. Schneider said he has a bright yellow umbrella on his Weber grill that he puts up when it rains. No one has complained about this.
- 5.20 Chairman Duffy said that the board is there to enforce the code.

- 5.21 Mr. Schneider has an issue about how they classify pergolas to being with. It is a visual element. It does not provide protection. A red umbrella would be more obtrusive than a vine-covered pergola.
- 5.22 Chairman Duffy agrees, but the pergola falls under the zoning code. He will not support tonight's proposal because he cannot be okay with all elements of the application. He will leave it to the board to decide. He would want the board to do something for people who do not go through the permitting process or who do not follow their plans.
- 5.23 Mr. Surman said that the board is an advisory board. The Village Board needs to make the decision and resolve the issues in the future.
- 5.24 Chairman Duffy said that the board's role is to interpret zoning code and apply it to applications. Sometimes there are gray areas and sometimes not and then the board has to vote against something. As Mr. Surman said, it is the village board's decision as to how things turn out.
- 5.25 Mr. Schneider said that the village board can impose conditions or consequences, but they have not forced applicants to undo something. If the board votes against tonight's proposal, the village board will need a super majority to overturn the board's decision. The village board can impose any penalty that they choose.
- 5.26 Chairman Duffy said that the Village Board does not have to impose anything.
- 5.27 Mr. Schneider asked if the Village Board could impose sanctions.
- 5.28 Mr. Robke asked what the hardship was.
- 5.29 Mr. Surman said that board members have to look at their interpretation of the code.
- Ms. Roberts said that procedurally someone could make a motion with adding the recommendation that a penalty be imposed or a permit surcharge or something. She is not sure how much direction the Village Board would need or want.
- 5.30 Chairman Duffy said that a permit surcharge is an interesting suggestion.
- 5.31 Mr. Robke said they have that in the City of Chicago. It could be double the permit fee.
- Ms. Roberts said that the village has something like this. It is unusual to implement this for work that is five years old. But the village regularly imposes surcharges.
- 5.32 Mr. Robke said it is not uncommon to have very long runs on AC systems. They are frequently placed on roofs. There is not much of a technical limitation. It should not be an issue as the board looks at these moving forward.

- 5.33 Chairman Duffy said if the AC unit is out of the backyard then the backyard can be more usable.
- 5.34 Mr. Robke said that there is less noise when someone is sitting in the back yard, but on the side, is more noise for the neighbor.

6.0 DECISION

6.1 Mr. Boyer moved to recommend granting a request for a 7.11’ side yard air conditioner condenser setback variation to permit the retention of an air conditioner and a 3.0’ side yard setback variation and a 3.0’ separation variation to permit the retention of a grill island and pergola at 3730 Lake Avenue in accordance with the plans submitted.

6.11 Mr. Kolleng seconded the motion and the vote was as follows:

Chairman Patrick Duffy	No
Mike Boyer	No
John Kolleng	Yes
Michael Robke	No
Reinhard Schneider	No
Bob Surman	No
Christopher Tritsis	Not Present

Motion carried.

6.2 Mr. Surman moved to authorize the Chairman to prepare the report and recommendation for the Zoning Board of Appeals for case number 2018-Z-02.

6.21 Mr. Boyer seconded the motion and the voice vote was all ayes and no nays.

Motion carried.

7.0 FINDINGS OF FACT UPON WHICH DECISION WAS BASED

A majority of the Zoning Board of Appeals finds that the request does not meet the variation standards of Section 5.4.F of the Zoning Ordinance. Specifically, there are no conditions of the property that are creating a hardship. There is nothing unique about that property that is different from other properties in the neighborhood. There is no hardship of the property that is preventing the owners from making reasonable use. If the applicant had sought relief to relocate the air conditioner prior to moving it, it is likely that the Board would have supported that request. The siting of the grill island and the pergola would likely not have been supported if requested prior to installation. There is no reason that the grill island and pergola would need to be as close to the side lot line as they are.

A minority of the Zoning Board of Appeals finds that the request meets the variation standards of Section 5.4.F of the Zoning Ordinance. It is likely that the request for the air conditioner would have been supported had relief been sought originally. Newer units are quieter, there is a 6' solid fence to screen it from the neighbor to the west, and the old location was in the center of the backyard living space. A portable grill is not regulated so a grill could be operated in the current location of 3' from the west lot line. To relocate the grill and the air conditioner at this point will be prohibitively expensive. The pergola is a largely open structure. The grill island does not and the pergola will not negatively impact the view of the neighbor to the west. The neighbor testified that none of these elements are a nuisance to her.

8.0 RECOMMENDATION

The Zoning Board of Appeals recommends denying a request for a 7.11' side yard air conditioner condenser setback variation to permit the retention of an air conditioner and a 3.0' side yard setback variation and a 3.0' separation variation to permit the retention of a grill island and pergola at 3730 Lake Avenue in accordance with the plans submitted.