



1200 Wilmette Avenue  
Wilmette, Illinois 60091-0040

**MEETING MINUTES**

**ZONING BOARD OF APPEALS**

**WEDNESDAY, APRIL 4, 2018**

**7:30 P.M.**

**COUNCIL CHAMBERS**

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

**Members Absent:** None

**Staff Present:** Lisa Roberts, Assistant Director of Community Development

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**I. Call to Order**

Chairman Patrick Duffy called the meeting to order at 7:30 p.m.

**II. 2018-Z-13 517 Ridge Road**

See the complete case minutes attached to this document.

**III. 2018-Z-12 1057 Linden Avenue**

See the complete case minutes attached to this document.

**IV. 2018-Z-02 3730 Lake Avenue**

See the complete case minutes attached to this document.

**V. 2018-Z-14 1200 Cleveland Street**

See the complete case minutes attached to this document.

**VI. Public Comment**

There was no public comment.

**VII. Adjournment**

The meeting was adjourned at 9:40 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. Peggy O’Halloran, applicant’s mother

**3.2 Summary of presentations**

3.21 Ms. Roberts said that this is a request for a 7.44’ side yard adjoining a street setback variation to permit the modification of a non-conforming wall with a new door opening in a side yard adjoining a street. The Village Board will hear this case on April 24, 2018.

3.22 Ms. O’Halloran said her daughter is requesting French doors that lead to the patio. The dimensions of the opening are in the packet. There is a unit on the street that has these French doors.

3.23 Mr. Schneider clarified the location of the French door opening.

3.24 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. Surman said this is a minimal request. He can support the request.

5.2 Mr. Boyer said that the request will not impose any issue on the neighbors. All standards of review are met. He can support the request.

5.3 Chairman Duffy agreed that standards of review were met. The arbor vitae provide a screen from the street. The impact is negligible. He can support the request.

**6.0 DECISION**

6.1 Mr. Surman moved to recommend granting a request for a 7.44’ side yard adjoining a street setback variation to permit the modification of a non-conforming wall with a new door opening in a side yard adjoining a street at 517 Ridge Road in accordance with the plans as submitted.

6.11 Mr. Boyer 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

Motion carried.

6.2 Mr. Schneider moved to authorize the Chairman to prepare the report and recommendation for the Zoning Board of Appeals for case number 2018-Z-13.

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**

The Zoning Board of Appeals finds that the request meets the variation standards of Section 5.4.F of the Zoning Ordinance. The particular physical conditions of the property, the unusual width of the right-of-way and consequently the lot size and siting of the unit on the lot, impose upon the owner a practical difficulty. The plight of the owner was not created by the owner and is due to the unique circumstances of the lot. The difficulty is peculiar to the property in question. The difficulty prevents the owner from making reasonable use of the property with a modest alteration to allow access to a patio. The proposed variation will not impair an adequate supply of light and air to adjacent property or otherwise injure other property or its use. The variation, if granted, will not alter the essential character of the neighborhood. The property is largely screened from Ridge Road by extensive landscaping and similar door openings are on other townhouse units on the street, therefore this proposal will have little to no impact on the character of the neighborhood.

**8.0 RECOMMENDATION**

The Zoning Board of Appeals recommends granting a request for a 7.44' side yard adjoining a street setback variation to permit the modification of a non-conforming wall with a new door opening in a side yard adjoining a street at 517 Ridge Road in accordance with the plans as submitted.

### **3.0 TESTIMONY, COMMENTS AND ARGUMENTS ON BEHALF OF THE APPLICANT**

#### **3.1 Persons appearing for the applicant**

3.11 Mr. Robert Frankel, applicant

#### **3.2 Summary of presentations**

3.21 Ms. Roberts said that this is request for an 11.0' side yard adjoining a street parking space setback variation, a 2.0' side yard parking space setback variation, and a 345.47 square foot (28.62%) side yard adjoining a street impervious surface coverage variation to permit a parking pad on the legal non-conforming structure on the legal non-conforming structure. The Village Board will hear this case on April 24, 2018.

3.22 The applicant is asking to add a 10' concrete parking pad next to the house. There is an existing curb cut. The parking pad will start on the parkway. He does not need additional curb cut work. There is a 3' setback from the adjoining property. There is a 16' long parking pad and an additional 5.5' of space between the pad and the sidewalk. The purpose of setting it back is to not block the sidewalk when one parks.

3.23 Chairman Duffy asked how close to the fence they got with the parking pad. He clarified that the pad width is 10'.

The applicant said it is about 3'.

3.24 Chairman Duffy said that in the applicant's last presentation, he noted that the garage was small and challenging for some cars. Did he consider removing the current garage and asking for a new two-car garage? He knows that the applicant would need to ask for other variances.

The applicant said that a two-car garage is a possibility down the road, but he wants the parking pad installed immediately.

3.25 Mr. Surman asked if street parking was allowed in the area.

The applicant said one cannot park on Poplar from 8 to 10 a.m. and at night and on Linden there is no parking 8 to 10 a.m.

3.26 Mr. Boyer asked how the applicant about how the driveway that goes across the back corner of the lot and its history?

The applicant did not know the history of this, but the driveway is used for the neighbor's garage access.

- 3.27 Chairman Duffy noted that there is an impervious surface partially caused by the driveway of the neighbor, but they are adding impervious surface for a parking pad, but they are getting a car off the street. What is the hardship?

The applicant talked about two hardships. There is a non-functional situation. The lot is small and triangular. Because of the curb cut, in the winter one often cannot go into the garage with a big vehicle. Most houses have the option to park two cars and it is a hardship to not be able to do that.

- 3.28 Chairman Duffy said what the board is looking for is not a situation that is an inconvenience, but rather a uniqueness to the property or the siting of the house on the property that causes someone to have to be into the setbacks.

The applicant said that hardships include size and shape of the lot. No additional parking spot can go anywhere on the site.

- 3.29 Mr. Boyer asked if the intersection had a lot of traffic.

The applicant said that there is a lot of traffic at Poplar and Linden during rush hour.

- 3.30 Mr. Boyer asked about traffic backups. Cars would queue on Linden waiting for the signal to change at Green Bay Road.

The applicant said he did not know.

- 3.31 Mr. Surman asked how long the applicant lived in the house.

The applicant bought the property three months ago. This is a rental property.

- 3.32 Mr. Robke asked the size of the house.

The applicant said it is 1400 square feet with three bedrooms. He said that often a car gets parked on the apron which blocks the sidewalk because of tight parking in the area.

(After Section 4.0)

- 3.33 Mr. Robke asked about the distance from the property line to the back of the parking pad.

The applicant said that it is 21.5'.

- 3.34 Chairman said it looks like more than 16' on the drawing.

Ms. Roberts said they figured this at 20'.

- 3.35 Mr. Schneider referenced 1.4 and there was continued discussion about the above-referenced distance.

The applicant said that there is about 20' to the property line and 21.5' to the curb.

- 3.36 Mr. Surman said he does not know why there is not an accurate drawing showing the dimensions. After review, it appeared as if the dimensions on the survey were not accurate. Without accurate dimensions, he cannot support the proposal.

Ms. Roberts left the meeting to retrieve a document.

- 3.37 Mr. Schneider referenced 1.3. The garage is 20.74'. They are going 1' to 2' beyond the garage.

- 3.38 Mr. Surman said that there is a dimension of 4.37'.

- 3.39 After discussion, it was determined that the drawing and the survey were different from one another.

- 3.40 Chairman Duffy said that the applicant is over the property line with the parking pad.

- 3.41 Mr. Robke is trying to understand the scale of the dimensions. He wants to know how a car fits relative to the property line and to the sidewalk. How far beyond the garage are they proposing to extend the pad?

- 3.42 Mr. Surman said it was 51.37'.

- 3.43 Chairman Duffy said that 1.3 contains dimensions.

- 3.44 Ms. Roberts drew the pad onto the survey using the width of the garage as 10'.

- 3.45 Chairman Duffy said that 20' puts it right at the edge of the sidewalk.

- 3.46 Mr. Robke said it puts it on the sidewalk.

- 3.47 Chairman Duffy said that the dimension to the east is not accurate.

- 3.48 Mr. Robke said he would like to know the accurate dimensions.

#### **4.0 INTERESTED PARTIES**

##### **4.1 Persons speaking on the application**

- 4.11 Ms. Marie Jones  
1058 Linden Avenue

4.12 Ms. Jane George  
1055 Linden Avenue

#### **4.2 Summary of presentations**

4.21 Ms. Jones lives across the street and has lived there for 31 years. This area is zoned R2 and it stretches one block on the north side and two blocks on the south side. Over the past 30 years property owners have invested in their properties in improvements and upgrades. She talked about various renovations and upgrades in the area. Almost every property was improved by the owners. 1057 and 1062 are on odd lots. She is concerned about impervious surface coverage. In this case, the uniqueness of the property argues in favor of allowing the variances. It will allow the owner to have the kind of convenience of two parking places that others in the neighborhood have. It is important that the owner maintains it well. She does not know if the neighbor to the east will speak and they are more impacted by the request. She can support the request.

She sees the intersection all the time. The back up on Poplar is more serious coming south. There is sometimes a backup on Poplar coming north, but not frequently.

Mr. Boyer asked if there are times in residential areas where there are traffic back ups more than other residential intersections in the village.

Ms. Jones said it is a busier intersection than many in the village. Most of the time the intersection is free flowing.

Chairman Duffy asked if there are many cars parked on Linden or Poplar? He said there is no overnight parking on those streets.

Ms. Jones said there is an 8 to 10 a.m. restriction on Linden.

The applicant said there is no overnight parking on Linden.

Chairman Duffy said he did not see a sign about this.

The applicant said that there is a sign.

Ms. Jones said that when someone wants to park overnight, they go down to 11<sup>th</sup> Street.

4.22 Ms. George lives to the east of the applicant's property. She has lived there for 14 years. The parking situation for the applicant is problematic. She would not want to park on Linden because there is a lot of traffic. She has spoken with the applicant about the property. She not know what more impervious surface will do. The applicant did not think that there would be an issue related to water flow. She does not want her property to be flooded. It is a tricky piece of property and residence.

She is not in favor of new two-car garage. She said improvements at other homes have negatively impacted her. A two-car garage would block her air flow and backyard enjoyment.

Mr. Schneider asked if the driveway existed when she moved in.

Ms. George said that it existed when she moved in. There has always been a driveway there. They did replace the garage a while ago. They did not change the driveway.

Mr. Robke asked if there was a recorded easement for the driveway.

Ms. George said that there is.

## **5.0 VIEWS EXPRESSED BY MEMBERS OF THE ZONING BOARD OF APPEALS**

- 5.1 Mr. Schneider said that to him, this is not a difficult case. The parking on adjoining streets is restricted. The way the lot is configured, without a variation, all they could build is a storage structure. The proposal does not impact the neighbors in a negative way. It fronts Poplar Drive. It takes a car off the street. He strongly recommended that the Board support this request.
- 5.2 Mr. Kolleng said this is an odd shaped lot. There is a lack of parking on the street. The impervious surface coverage variations are somewhat of an issue. The applicant recently bought the property and he knew the status of the property when he bought it. He is renting out the property. But on balance, he can support the request.
- 5.3 Mr. Robke said he is troubled by putting a car 1' to 2' from the property line and calling it a parking space and a solution to what is a parking problem and a difficult site. The goal is not to have cars parked on property, but in garages. He wants to hear what his colleagues have to say about the case.
- 5.4 Mr. Surman said that he is on the fence. He understands the parking issue and the oddness of the site. His concern is whether the car will block the sidewalk? A standard parking space is 9' x 18' and the applicant is showing 16' on the property. Visually, the pad is at the edge of the sidewalk.
- 5.5 Mr. Boyer said when the applicant first came before the Board, this request was withdrawn so there was not a large discussion about hardship. The applicant did a reasonable job of describing some of the hardships. As a board, there is understanding about issues of the lot and the siting of the house. He initially was on the fence. He does share some of the concern about not having the accurate dimensions. On balance, he can support the request. The house is sited at a busy corner. He talked about the business of the streets. There are several difficulties for the lot. There are parking restrictions and other parking issues. The applicant should

be given some relief from the zoning codes. He said he has a slight concern about the dimensions and where the car can fit, but if any lot needs some relief for parking, this is one of the lots.

- 5.6 Mr. Robke said he agrees with the relief issue but is not convinced that the proposed solution is the best one and/or the one that the board wants to approve. How close to the sidewalk will cars be parked? He would rather see a proper garage addition rather than the proposed pad.
- 5.7 Mr. Boyer said even if there was a garage, then there is an issue of backing out of a garage without being able to see people on the sidewalk. That issue does not happen with a parking pad.
- 5.8 There was discussion about whether site lines are diminished with a parking pad.
- 5.9 Mr. Surman said if one is pulling back from the parking pad, they can look out of their window.
- 5.10 After discussion, Chairman Duffy noted that one side is safe, and the other side is not safe when pulling out.
- 5.11 Mr. Schneider said that a garage would require more variances.
- 5.12 Chairman Duffy said they would encroach on the east property line with a garage. The existing garage looks like a cube and it would be a challenge to fit certain cars in there. If they put a two-car garage there it would be a tight fit.
- 5.13 Mr. Schneider said that a 20' x 22' garage wouldn't work. They would be against the property line.
- 5.14 Mr. Robke said that by not having two enclosed spaces, the applicant is not fixing his problem.
- 5.15 Chairman Duffy referenced the drawing and said this one question was how much distance between the existing driveway of the neighbor and proposed parking pad. On the drawing it seems fine, but on the survey, it looks to be not as great a distance. He did not look at this situation when he went to the site. He thinks that the second-best solution for the site.
- 5.16 Mr. Kolleng said that a neighbor had an objection to a garage.
- 5.17 Chairman Duffy said that he was on the fence but will probably support it because it is a reasonable solution.

**6.0 DECISION**

6.1 Mr. Schneider moved to recommend granting a request for an 11.0’ side yard adjoining a street parking space setback variation, a 2.0’ side yard parking space setback variation, and a 345.47 square foot (28.62%) side yard adjoining a street impervious surface coverage variation to permit a parking pad on the legal non-conforming structure at 1057 Linden Avenue in accordance with the plans submitted.

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

Chairman Patrick Duffy	Yes
Mike Boyer	Yes
John Kolleng	Yes
Michael Robke	No
Reinhard Schneider	Yes
Bob Surman	No

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-12.

6.21 Mr. Kolleng 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 meets the variation standards of Section 5.4.F of the Zoning Ordinance. The particular physical conditions of the property, the irregular shape, small lot size, small attached garage, and necessary driveway access for the neighbor, impose upon the owner a particular hardship. There is no conforming location for a parking space on the property. A two-car garage would require substantial variations and is likely to be objected to by the immediate neighbor. The plight of the owner was not created by the owner and is due to the unique circumstances of the lot. The hardship is peculiar to the property in question and not generally shared by others. The hardship prevents the owner from making reasonable use of the property with a second off-street parking space. As a flat surface, the proposed variations will not impair an adequate supply of light and air to adjacent property. The proposed variations will not injure other property for example with water runoff. The variation, if granted, will not alter the essential character of the neighborhood, which includes off-street parking.

A minority 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. The applicant has created his

own plight by recently purchasing the property knowing that there is only a one-car garage existing and by proposing the parking pad as he has. Having a second off-street parking space will allow the applicant to rent the property for more money, which in itself is not a hardship. The proposed parking pad may be injurious to the neighbors or in general if a car is parked blocking the sidewalk. The proximity to the sidewalk is a safety concern when the car is backing out. The minority is not convinced that this is the best solution to the applicant's parking shortage.

## **8.0 RECOMMENDATION**

The Zoning Board of Appeals recommends granting a request for an 11.0' side yard adjoining a street parking space setback variation, a 2.0' side yard parking space setback variation, and a 345.47 square foot (28.62%) side yard adjoining a street impervious surface coverage variation to permit a parking pad on the legal non-conforming structure on the legal non-conforming structure at 1057 Linden Avenue in accordance with the plans submitted.

### **3.0 TESTIMONY, COMMENTS AND ARGUMENTS ON BEHALF OF THE APPLICANT**

#### **3.1 Persons speaking for the applicant**

3.11 Ms. Nina 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 revised request a 3.0' side yard setback variation and a 3.0' separation variation to permit the retention of a grill island. The Village Board will hear this case on April 24, 2018.

3.22 Ms. Boruta said that they had some revisions from the initial request. At the Village Board meeting, there was a lot of discussion around the air conditioner and the retention of the grill island. They decided not to move forward with the completion of the pergola over the grill and the AC. Trustee Plunkett and other trustees said that since they were revising the plan, they could return to the Zoning Board to seek a recommendation. They decided to move the AC unit to a conforming location, which is the rear yard. She will work with village staff on permits.

The grill island has been there for almost six years. It is 3' from the property line. They know that they could move it 5.98' and still keep it 3' from the property line and it would conform. There is a lot of expense in doing that and they still would be within 3' of the property line. They are asking the board to approve the request as submitted.

There had been questions about permits. An inspector was out there and they did not know that it was not conforming. There is no record of anything.

3.23 Chairman Duffy clarified that the hardship is that if the island was 5' further back, they would be in the rear yard and not have to deal with the side yard setback. They would still be 3' from the property line.

3.24 Mr. Boyer asked Ms. Roberts if the above was accurate.

Ms. Roberts said that it was accurate.

3.25 Mr. Boyer asked about the pergola over the grill island.

Ms. Boruta said they already cut it down.

- 3.26 Mr. Boyer asked about the black 4' fence and whose fence was it.  
Ms. Boruta said that is their fence.
- 3.27 Chairman Duffy said that between the two houses is a 6' stockade fence.  
Mr. Boruta said they also have a backyard fence.
- 3.28 Mr. Robke reviewed the original request, as well as the new request.
- 3.29 Chairman Duffy asked the height of the grill island. It is above the fence height.  
There was discussion about the height of the island.
- 3.30 Mr. Surman said that from the back of the island to the fence is 3'. If they didn't have the countertop, they could put the grill against the fence if the grill was movable.
- 3.31 Mr. Kolleng asked the cost to do the back patio.  
Ms. Boruta said she did not know.
- 3.32 Mr. Boyer said if they were trying to pull a 'fast one' and were trying to put in the grill without a permit, would they have done that when they were doing other work with inspectors coming out or waited until other work was done.  
Ms. Boruta said that is not what they did.
- 3.33 Chairman Duffy said they had to run a gas line under the patio.
- (After Section 4.0)
- 3.34 Mr. Surman asked what type of fence they could put between the properties that is conforming.  
Ms. Roberts said they could put up a fence up to 6.5' high.
- 3.35 Chairman Duffy noted that the fence would be more impactful than it is today.
- 3.36 Chairman Duffy said that Ms. Pearlman said that functionally she is not opposed to having the grill island. If it was 5' further to the north towards the rear of the lot, it would be in a permitted location. The Village Board has the say on penalties and the ZBA interprets the code. It is in the best interest of the board to look at the application as if the grill island was not in place.
- 3.37 Mr. Kolleng does not agree with the last comment.

- 3.38 Chairman Duffy said that this is some of the direction that he is receiving from staff and corporation counsel. There are often gray areas and the board does not always agree.
- 3.39 Mr. Robke asked about hardship. If the board's job is to pretend that the grill island was not there, would they approve this request? The hardship of spending \$6,000 to move the grill does not meet the definition of hardship in his opinion. What drives the location where the grill is now located?

Mr. Bortua said that their lot is unique. They front on Lake Avenue, which is a busy street. The back of their yard is on the golf course. In that situation the lot is unique. If they move the grill further back, they could put up the grill and pergola and both would be conforming. But it takes away the view, which is one of the reasons why they originally bought the house. Closer to the house provides a wider view. 6' out cuts down the view for the applicants and for the neighbor. They got a permit, but the permit did not include what they thought it included. There is the plat of survey and the permit but no drawing. He said that the village shares the burden of the situation. Someone at the village helped them and questions that should have been asked were not asked and they would not necessarily be in this situation.

- 3.40 Mr. Boyer asked how 3' from the lot line came about.
- 3.41 Chairman Duffy said that the flat work is there, and they put the grill on the edge of the flat work. In reading the application for the permit, there is nothing about having a grill island.

Mr. Boruta said that there is no drawing and there is only a plat of survey. The plat is from when they bought the house. The shape of the patio is different from the plat so why wasn't that a red flag for the inspector. There are things that fell through the cracks. They made some mistakes and the inspector missed some details. They are now before the board. He has the receipt from ABT where he bought the grill. It proves he bought the grill in 2012, but this doesn't prove anything. He is happy to submit the receipt.

- 3.42 Mr. Kolleng asked if the grill was functional in 2012.

Mr. Boruta said that it was functional in 2012.

Ms. Boruta said they do not have a portable grill on the side. That is a smoker on the side of the house. She knows that Trustee Plunkett said that the Village Board sometimes has sympathy for cases based on mistakes.

## 4.0 PERSONS SPEAKING ON THE APPLICATION

### 4.1 Persons speaking on the application

4.11 Ms. Barbara Pearlman  
3736 Lake Avenue

### 4.2 Summary of presentations

4.21 Ms. Pearlman said she lives next to the applicant. She noted that this case has gotten a lot of attention. There was an article in the Wilmette Beacon about the situation. There is nothing to fall back on if one does not have a permit. There are consequences. She referenced the applicant's letter to the board dated March 8, 2018. She read parts of the letter: *the property owners propose to have her agree to their keeping the illegal grill island*. There was a catch. She was to agree to this for their not installing an accessory structure in their rear yard within 6' of their west property line. She does not agree to the proposal and urged them and all residents to build in a conforming manner on their property if it is legal and meets village code. The grill island does not meet those standards and was built for convenience. There are no hardships. It is not conforming to the ordinance. She does not want it grandfathered in.

During the Village Board meeting, Corporation Counsel Stein said that in his opinion, *page 10 minutes of that board meeting – that a neighbor's agreement is not what our zoning ordinance would allow as subsequent homeowners may not agree*. He also stated *that there are no statues of limitations on a municipal ordinance for a violation like this*. After going before two boards in which, the applicants testified, is there anyone who still believes that the grill island was built in 2012? Six years is the sticking point. She talked an unsuccessful attempt to stack this build on an existing build that was cited. A board member stated that the applicants built illegally, and they got caught. She talked about a permit for pavers. She talked about their expanding impervious surface without expansions or modifications, no change in size/location/configuration. If a grading permit was obtained, the grill island would have been eliminated.

During both board meetings, the applicants stated that when inspectors came out they didn't say anything about the grill island and final inspection. In their most recent letter to the board, the applicants said that the inspectors still didn't say anything or make a note about the grill island.

Chairman Duffy said that she (Ms. Pearlman) stood in front of the board and he asked her if she was in support of keeping the grill island and she said yes. But then she went before the Village Board and said that she was no longer in support of the grill island. He asked if she was telling the board that she is no longer in support of it.

Ms. Pearlman does not think she ever said she would support the grill island.

Chairman Duffy said he asked her specifically if she would support the proposal and she said that she was okay with the grill island. If they didn't install the pergola and could keep the grill island the neighbor said she would support this. Trustee Sullivan brought this up at the board meeting that she flip flopped on her opinion of the grill island.

Ms. Pearlman said that based on comments made by trustees and based on the fact that she is trying to protect her property and that the grill island is 3' from the property line, it does meet the ordinance so for herself and future owners, she has every right to not support the proposal.

Chairman Duffy said that no one is denying her the right of not supporting the proposal. He was trying to clarify what she said at the last hearing. Did she then change her opinion and now she is at the meeting reading a statement? She is trying to 'dance around' a lot. What the board wants to know is does the grill island negatively impact her right now.

Ms. Pearlman said that it negatively impacts her because it is against village ordinance.

Chairman Duffy clarified that because it is against village ordinance it bothers her, not because of its existence and use. Does it bother her if they grill?

Ms. Pearlman said it does not bother her, but it is 3' from her property line. She could reach out and touch it. There is a reason for the ordinance.

Chairman Duffy asked about 5' further back into the back yard.

Ms. Pearlman said that would conform.

Chairman Duffy said it would be no further away from her property line. The only reason she is against it is because it is breaking a rule.

Ms. Pearlman said that she objects to it because it does not fit into the village's zoning ordinance.

Mr. Boyer said that she is saying that it does impact her directly. She is concerned that it does not fit into the code.

Chairman Duffy clarified that the function does not bother it, but it does not fit into the zoning code.

Ms. Pearlman said that was correct and that was her argument. She continued and said that the property owner had portable grills in 2011, 2012, 2013, and 2014.

Mr. Boyer said that portable grills are not against any rules.

Chairman Duffy asked how that had bearing on tonight's case.

Ms. Pearlman said that those grills were put on the side of the house when they built the island in 2015. This is not a 5 or 6-year-old build.

Chairman Duffy said he wanted to focus on tonight's case, which is their request for a variance. To bring up that they used two portable grills in the past is not relevant to tonight's request.

Ms. Pearlman said she was trying to point out that this request is not a 5 or 6-year-old request. It is maybe 18 months since the time they were turned in in 2017. This has been going on for eight months. If they built in 2015 and they were turned in in 2017, it is 18 months and not 5 or 6 years. If it was there for six years, why would we ask them to move it now?

Mr. Kolleng said that is what is in front of the Zoning Board. The neighbor is saying that it was not built in 2012.

Ms. Pearlman said it was not built in 2012 and she said that she was not going to make this a he said/she said. She said all of the testimony will speak for itself.

Mr. Robke said there are two separate issues. Everyone is upset when something is built without a permit. The board is here to comment on the validity for a request from the zoning ordinance. In the board of trustee minutes, there is a separate issue of enforcement and building without permits and what to do about that. The discussion should focus on the merits of the zoning case and the situation that may or not exist from building without a permit.

Chairman Duffy said it is not the purview of the board to penalize someone for not pulling permits. That is up to the village board. The board looks at an interpretation of the zoning code as it applies to the request. He asked the neighbor if she had more to add to her objection?

Ms. Pearlman said she does not see how the request conforms to the zoning ordinance and not to the standards for variation. She brought pictures that speak to the voracity of the comments made under oath by the applicants at the last hearing.

Chairman Duffy clarified that the neighbor took pictures of the side of the applicant's house and the walk. How does that have bearing on tonight's case?

Ms. Pearlman said that Chairman Duffy had asked them specifically about what was going on at their house, what were they building. After the situation was turned in in 2017, they built a brick walkway behind the garage. This was recently done. It is in the back of their house where they keep the garbage containers. It was built without a permit. When the applicants were asked how long the walk was, they said

that it was 5 to 6'. It was also mentioned that each tile was 1' square. It is an 18.5' long walkway that is 5' wide. They clearly told the board that the length was 5 to 6'.

Chairman Duffy said that Ms. Pearlman is submitting pictures to show the applicants were not truthful in their statements at the last hearing.

Ms. Pearlman said that Mr. Surman asked who the contractor was for their permit. The applicants said it was someone from Wisconsin.

Chairman Duffy confirmed that this happened.

Ms. Pearlman gave the contractor's name and said he lives in Palatine.

Mr. Boyer said some of the concerns are more under the purview of the Village Board.

Ms. Pearlman said she has one last comment regarding statements and the high cost of taking down the grill island. It would cost \$8,900 to \$12,000 to remove it. The question tonight was how much the permit for all the original flat work was. It was \$7,900. This information is on the permit. She suggested that the applicant try to unstack the bricks and take out the grill. Then move the grill over and stack up the bricks again. A question was asked, was there water? Is there a gas line? She said that there was no permit for a gas line. A gas line would have to be extended. She talked about the cost of the project to relocate the grill, which seemed incredibly high.

Mr. Surman pointed out that several of these issues are to be addressed by the trustees who make the decisions. The ZBA interprets the zoning code.

Mr. Boyer said that zoning codes and ordinances are there as a balance between private property rights and restrictions to protect the public. Tonight's case is about a grill that is 3' outside of compliance. Ms. Pearlman said she really doesn't have a problem with the grill other than it is not following the rules. The board listens to neighbors and this can sway decisions. He understands that there is a lot of history between Ms. Pearlman and the neighbors. The board wants to know how the proposal impacts the neighbor and she said it does not functionally impact her.

Ms. Pearlman said that the village procedures in place are really working. The applicants eliminated two of the variance requests. There is only one variance left and it makes the board's job much easier. Her hope is that the applicants would voluntarily opt to do the right thing and bring their illegally built grill island into compliance by moving it. Failing that, she urged the board to uphold the standards of review and deny the request. The request is based on convenience. Convenience is not a hardship. She had a cordial relationship with the neighbors until this grill island request came about. There is no history.

**5.0 VIEWS EXPRESSED BY MEMBERS OF THE ZONING BOARD OF APPEALS**

5.1 Mr. Robke said he cannot support this because it is not within the board's purview to support it as there is no hardship other than a financial hardship, which is excluded from the definition of hardship. He hopes that the Village Board recognizes the errors that were made. The applicants recognized and acknowledged them. They withdrew parts of the request from the initial hearing including the air conditioner units.

5.2 Mr. Boyer said this is an interesting case. If this case came to the board before it was built, the board would have asked the applicants to make it conform. But there are so many things within code that could cause the neighbor to have less light, less air, less visibility to the golf course such as a shed, a greenhouse, a 6.5' solid fence between the properties. There are many more things that could negatively impact the neighbor that are within code. He believes the applicants that it was an error. He believes that inspectors were on the property. It is not logical that they would be building without a permit while inspectors are there. He does not believe that the applicants are pulling a fast one and that is a situation of human error.

How is this impacting the neighbors? The neighbor who would be most impacted said that the grill island does not functionally impact them. They are opposed because the grill island is against code. The board is here to balance private property rights with public policy and public safety. In this case, the grill island does not impact anyone. He knows that the grill island is out of compliance. In this case, it would make no sense to make the applicants move the grill by 6' and to leave it 3' from the property line to get it to conform.

He said that applying the strict letter of the codes to this case, as the board sees it at this time, is the hardship. It makes no sense for them to move the grill. If they were asking for something out of code that would really impact the neighbor, he would vote against it. But that is not the situation in this case. He will support the request.

5.3 Mr. Schneider said that the board has approved similar cases, with maybe more severe variances. The board has left the decision up to the village board. People make honest mistakes and agrees with Mr. Boyer that this was human error. It is up to the Village Board about whether a penalty should be enacted. In most cases the board does not recommend doing a tear down and replacement. In this case, the board can decide to enact a penalty on whoever, but he is not favor of forcing the applicants to tear down with what is there. He can support the request.

5.4 Mr. Boyer said that to make it compliant they need to move it 2'.

5.5 Chairman Duffy said they have to move it out of the setback.

5.6 Mr. Kolleng said that this is a small request compared to others that the board has

approved. In reviewing this as new, is not reasonable. The applicant said they would not apply for it if they were doing it today. It was a different board six years ago. The board has to look at this as a built structure. If the board wants to exact a penalty or ask them to move it, that's fine. But he agrees with Messrs. Boyer and Schneider analysis of this. The grill island is not bothering anyone, and it's been there a long time. He believes the applicants. He can support this.

- 5.7 Mr. Surman agrees with Messrs. Kolleng, Boyer, and Schneider. The board looks at light/air and how it impacts the neighbor and adjoining spaces. He agrees that this was an honest mistake. The request is small. Light and vent are not impacted. If the island was moved it would impact the neighbor more with smoke or odors. He can support this request.
- 5.8 Chairman Duffy said that the biggest thing he looks at when there is a variance that impacts a neighbor and the neighbor says they are okay with the request. He asked the neighbor if the island was functionally bothering her or is this impacting her in a negative way. She said that there was no negative impact, but the rules are broken and that is why she complained. He can support this, and standards of review are met.
- 5.9 Mr. Surman said that there are some cases that come before the board when they might find that the third floor is built out and clearances were different than they said. They've lived in it. That is much more of a critical issue. Tonight's case is a minor issue.
- 5.10 Chairman Duffy said that every case is unique.
- 5.11 Mr. Robke agrees that every case is unique but what is consistent is the criteria used to evaluate cases. He personally has no objection to them keeping the grill, but he sees no hardship. As a board they are going down a slippery slope by not considering this standard of review.
- 5.12 Mr. Surman if the applicants came before the board like it was the first time and they said they would keep the pergola and air conditioning, that would have made a difference to him. The pergola is a visual impact and the AC is a noise impact.

## **6.0 DECISION**

- 6.1 Mr. Robke moved to recommend granting a revised request a 3.0' side yard setback variation and a 3.0' separation variation to permit the retention of a grill island at 3730 Lake Avenue in accordance with the plans submitted.
- 6.11 Mr. Boyer seconded the motion and the vote was as follows:

Chairman Patrick Duffy	Yes
Mike Boyer	Yes

John Kolleng	Yes
Michael Robke	No
Reinhard Schneider	Yes
Bob Surman	Yes

Motion carried.

6.2 Mr. Schneider authorized 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 meets the variation standards of Section 5.4.F of the Zoning Ordinance. While the owners created their own plight by installing the grill island without express approval with a permit, this was a genuine mistake. The difficulty faced by the applicants includes the cost to relocate the grill to a conforming location. To relocate the grill be prohibitively expensive. A portable grill is not regulated so a grill could be operated in the current location of 3' from the west lot line. The proposed variations will not impair an adequate supply of light and air or otherwise injure adjoining properties. As located, the grill island has less of a visual impact on adjoining property than it would in a conforming location. The variations, if granted, will not alter the essential character of the neighborhood.

A minority 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 is no condition of the property that is imposing a practical difficulty or particular hardship. The owners created their own plight by installing the grill island without a permit. If the applicants had made this request prior to installing the grill island, the Zoning Board would likely not have recommended approval. While relocating the grill island will be expensive, this is a situation created by the applicants and not a hardship for recommending approval.

## **8.0 RECOMMENDATION**

The Zoning Board of Appeals recommends granting a revised request a 3.0' side yard setback variation and a 3.0' separation variation to permit the retention of a grill island at 3730 Lake Avenue in accordance with the plans submitted.

### **3.0 TESTIMONY, COMMENTS AND ARGUMENTS ON BEHALF OF THE APPLICANT**

#### **3.1 Persons appearing for the applicant**

3.11 Ms. Meg Maris, applicant

#### **3.2 Summary of presentations**

3.21 Ms. Roberts said that this is a request for an 8.6' rear yard setback variation to permit the construction of a one-story attached garage addition. The Village Board will hear this case on April 24, 2018.

3.22 The applicant said she believes a hardship exists. She knows that the village has a different way of defining hardship. She said they are looking to remove the current garage and turn it into living space inside the home. Then she wants to add a three-car front-facing garage, so she can park in the garage. She cannot currently park in the garage because it is side-facing. This is an inconvenience and not a hardship. It is annoying.

Her property is legally 2518 Thornwood. The front door used to face Thornwood. Now it faces Cleveland and they changed the address to 1200 Cleveland. They are a corner lot, there is ambiguity between front, side and rear yards. She said that the house was built without the 8' alley way. That is a great part of the house. The house was not built to the best of its ability.

She asked the board to consider them adding the three-car garage. They have a growing family. She has lived on the street her entire life. Her parents are across the street.

3.23 Chairman Duffy asked why the applicant could not park in the current garage.

The applicant said that her husband can park there but she cannot make the turn with his car in it.

3.24 Mr. Schneider asked it was correct to say that the variation request is due to the third slot in the garage.

The applicant said that this was correct.

3.25 Mr. Surman referenced 1.4. Which are the variance requests?

3.26 Chairman Duffy referenced page 2 in which it says that the required rear yard setback is 26.6'. They are requesting 18'.

The applicant said they don't use that area as a rear yard and they use it as a side yard.

- 3.27 Chairman Duffy said that if that is called the side yard, then the house is the back yard.

The applicant said that they have no back yard. She showed where her children play. She said that the rear yard is an eyesore and looks awful. She wants to improve the look.

- 3.28 Chairman Duffy asked what would go in the three-car garage.

The applicant said that her Christmas lights will go in the garage in the upper part.

- 3.29 Mr. Surman said he didn't see a second-floor plan.

The applicant said there is no second-floor plan. The height is 6'9" for the second floor. She does a lot of building in town. She would not do anything to harm her reputation for building in the village. She has built here for 15 years.

- 3.30 Mr. Surman said that one thing that caught his eye is that they are 5'7" in front of the existing house. Any new homes that are built must have the front door out in front of the garage by 5'.

The applicant asked when that rule was adapted.

Ms. Roberts said it was adopted in 2014.

- 3.31 Mr. Surman said the three-car garage would be the main façade closest to the street and diminish the importance of the front door.

Ms. Roberts said that the front door requirement does not apply in this case because it is not a new home.

- 3.32 Mr. Surman said it might not apply, but it did catch his eye. The new addition is going to be several feet higher than the existing house.

- 3.33 Mr. Boyer said he reviewed the codes and there is not much language on attached garages facing a side yard adjoining a street. It is either front-loaded garages or detached garages. The code is almost silent on this type of situation. He is not sure that the spirit of the code is considered in this design.

- 3.34 Chairman Duffy said the larger issue is the rear yard setback than the side yard adjoining a street setback.

- 3.35 Mr. Surman said that there are no properties that have that small of an area in a rear yard.

Ms. Roberts said there are similar requests in the packets.

- 3.36 Mr. Surman said if someone is asking for a PUD, they are asking for a larger square footage and are giving back something. When one is asking for a variance, they need to be consistent with the code. He referenced 1.11, the dominating element on that elevation is the new garage addition.

- 3.37 Mr. Schneider talked about what is the hardship.

The applicant said that the dominating feature appears to be the garage because it is the only thing on the drawing shown in detail. Other details are not drawn in.

- 3.38 Mr. Surman said that the overhead doors are more like commercial doors.

The applicant said they would not be commercial doors. They wanted the first stall to have a taller door. They have a boat on the trailer. That is why everything is so tall. The double door is higher for aesthetics. She is happy working with the ARC on design. She takes pride in her buildings. The second floor of the garage is storage.

She has letters from neighbors in support of the case. She submitted them to the board.

(After Section 4.0)

- 3.39 The applicant created a list of other three car garages in the area. They include 1212 Princeton – detached, three cars; 2338 Elmwood – newer home with a three-car garage; 2711 Blackhawk; some on Mohawk; 2333 Iroquois and additional homes. She knows that three car garages are not the norm but there are some homes that do have them.

- 3.40 Chairman Duffy asked where the hardship is to grant the variance to be in the rear yard setback. Why can't they use the existing garage or part of the existing garage to accomplish the goal?

The applicant asked how she could do this. It would change the synergy of the home. The construction would not work with the current garage.

- 3.41 Chairman Duffy that they structurally could follow the rear of the house or through the middle of the garage and cutting the garage in half and creating one space. They could put a two-car garage next to it.

The applicant said they would lose space that they are trying to gain on the inside. She is asking for a variance. The hardship for them is the way that the house was

built. They could build the largest two-car garage that they could. They cannot see the neighbors in spring and summer due to an abundance of shrubbery. Right now, the side yard area is a disaster, but she assured the board that they would have shrubbery and it would be done right. She wants to stay on her street instead of having a McMansion house. She could get both by increasing her home's interior living and garage spaces and stay on the street.

- 3.42 Mr. Boyer said he is sensing that the board is looking for hardship and is looking at the garage size. The applicant knows that the ask is big. It would be great, but it is a big ask. If she doesn't get the variance, is the reduction within the setback that they need? It would leave them with a 772 square foot space.

The applicant said that how the house is now, and the house symmetrically is perfect. It is a balanced house. By making the current garage into the new garage space would throw off the design of the house. It would have a negative impact. She would prefer not to do it if it cannot be done right. If they tore the house down, the house that could replace would be significant – it would be big and bulky on their large lot. The vacated alley was designated after the home was built. The hardship is the design and flow of the house wasn't met to the best of its ability.

- 3.43 Mr. Boyer said that the board must look for certain things like hardship.

The applicant said that the hardship is the timing of the vacated alley. They are trying to make their property more usable and functional. They have a lot of impervious space currently. The driveway is all hard surface. They are not asking for additional impervious space. She will push her garage back if needed. She wants to clean up the disastrous area on the side of her house. The Chamberlains moved in last year and there has been conflict – nothing about the Christmas lights. She explained why there was conflict, which had to do with the Chamberlains having workers at 8 p.m.

- 3.44 Chairman Duffy said they can address the disastrous area without doing an addition to the house.

The applicant said she has a boat sitting there with a tarp over it. The disaster is the boat, a wheel barrow, and more. She will work with the village for the 8' that she is requesting. She does not want to disrupt the house's symmetry.

## **4.0 INTERESTED PARTIES**

### **4.1 Persons speaking on the application**

- 4.11 Mr. Peter Cladouhos  
2209 Beechwood Avenue

## 4.2 Summary of presentations

- 4.21 Mr. Cladouhos moved to the village about 3.5 years ago from the east coast. He is attending the meeting because his colleague at work, Patrick Chamberlain, is not able to attend the meeting. They live next door to the north of this property, at 1212 Cleveland Street. He apologizes that he and his wife can't be at the meeting.

The neighbors submitted materials about the case. Mr. Cladouhos read a prepared statement:

“The Chamberlains wish to respectfully object to case number 2018-Z-14, which is requesting a rear yard setback variation of 8.6’ to convert the existing attached two-car garage into living space and construct a three-car attached garage addition to the north side of the home at 1200 Cleveland Street. As detailed in the materials provided and previously submitted by the Chamberlains, their property located at 1212 Cleveland Street is directly adjacent to and to the north of the 1200 Cleveland Street property. They share a 16’ vacated alley with the 1200 Cleveland property, thus giving 8’ to each property owner.” Mr. Cladouhos indicated Exhibit 1 of the Chamberlains submittal.

“The proposed addition reduces the rear yard separation and encroaches on the open space between the two homes, extending across the width of the vacated alley and into their yard by 6’.” Mr. Cladouhos referenced the schematic that shows in red what the encroachment is.

“They find such an encroachment to be unacceptable particularly given that there are no mitigating circumstances. And a conforming addition could be accomplished with a minor change to the plan such as constructing a two-car garage instead of a three-car garage or modifying the planned design to reduce the size of the overall addition to stay within the required setback.

“The Chamberlains are very concerned that the variation and resulting addition would negatively affect their property value. It will alter the essential character of the neighborhood as there are no other three-car garages in this area. The planned addition will be inconsistent with the rest of the neighborhood.

“The Chamberlains purchased their home and moved in August 2016. They wanted a home in a desirable neighborhood, convenient to both of their work locations, in a thriving community where they could enjoy the lake and be close to downtown Chicago. They have made a substantial investment in renovating the home and keeping with the character of the surrounding homes and want to protect their investment for the future. Given their concerns, they respectfully and sincerely hope the Zoning Board will deny the request for variation.”

Mr. Kolleng clarified that there is a 6” encroachment onto the neighbor’s property.

Mr. Cladouhos said that if the request is approved, there would be a 6" encroachment onto the Chamberlain's property. In order to meet the setback requirements, the variance has to encroach on the property by 6". He showed the exhibit prepared by the neighbors. Given the fact that they are sharing the easement, 8' and 8'. With the setback requirements, they have to take their 8' section plus the Chamberlain's 8' plus an additional 6".

Chairman Duffy said they are taking the proposed 8.6' and adding it to the property line, to show what the setback would need to be if it was in compliance.

Mr. Schneider clarified that the alley was vacated and half went to the Chamberlains and half went to the applicant.

Mr. Cladouhos said that was correct.

## **5.0 VIEWS EXPRESSED BY MEMBERS OF THE ZONING BOARD OF APPEALS**

- 5.1 Mr. Robke said that hardship is always an issue. In this case, he heard that the hardship is symmetry. The hardship is also that they got some land for tree. The hardship is a growing family. But to him it looks like a big three car garage that is not a three-car garage because some of it is for boat storage. He does not see the hardship and cannot support the request.
- 5.2 Mr. Boyer said as a board, hardship must be found. In this case, it feels like too big of an ask. When he looked at the codes, the codes are silent for this type of situation. On a 10,000 square foot lot they can have a 600-foot detached garage. He talked about lot sizes and sizes of garages. In tonight's case, they can have almost anything but there is a setback limitation. It is not within the spirit of the codes to have a large garage like this sited the way that it is. He doesn't see the hardship to give the 8.6'. He does not believe that hardship has been proven. The design is nice, but as a board he does not see how this request can be approved.
- 5.3 Mr. Surman agreed with the above comments. There is no hardship currently, but an accommodation or request for space. It would be hard to support this because the board must follow the zoning code. There is no hardship.
- 5.4 Mr. Kolleng said this is a strange lot because of its corner location and how the yards are perceived. There is no other that run with the request like FAR or impervious surface. It is out of the norm. The board approves two car garages, but three car garages are not approved. He is on the fence on the case.
- 5.5 Mr. Schneider agrees with some of the comments made. He does not see the hardship. The applicant could store the boat somewhere else. He can not support the request.

5.6 Chairman Duffy said his initial response was that he could support the side yard adjoining a street setback but not the rear yard setback. There must be a way to do this by maybe not taking the current garage as part of the house. Throwing the three-car garage against the back of the house creates a small courtyard. How functional is that? There must be a better way to make this work. He sees no hardship and cannot support the request for the rear yard setback.

**6.0 DECISION**

6.1 Mr. Robke moved to recommend granting a request for an 8.6’ rear yard setback variation to permit the construction of a one-story attached garage addition at 1200 Cleveland in accordance with the plans submitted.

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

Chairman Patrick Duffy	No
Mike Boyer	No
John Kolleng	No
Michael Robke	No
Reinhard Schneider	No
Bob Surman	No

Motion failed.

6.2 Mr. Kolleng moved to authorize the Chairman to prepare the report and recommendation for the Zoning Board of Appeals for case number 2018-Z-14.

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 does not meet the variation standards of Section 5.4.F of the Zoning Ordinance. There are no conditions of the property that impose upon the owner a practical difficulty or peculiar hardship. The house is located closer to the front lot line than permitted, resulting in a more area in the rear yard than would otherwise be permitted. There is no hardship preventing the owners from making reasonable use of the property. The applicants are creating their own plight with the design of the proposed addition. There are other things the applicants could do that would be conforming. There was neighbor testimony that the proposed addition being located closer to the lot line than permitted would injure the use and enjoyment of their property. The variation, if granted, would alter the essential character of the neighborhood, which generally does not include 3-car garages.

**8.0 RECOMMENDATION**

The Zoning Board of Appeals recommends denying a request for an 8.6' rear yard setback variation to permit the construction of a one-story attached garage addition at 1200 Cleveland in accordance with the plans submitted.