

*Village of Barrington
Zoning Board of Appeals
Minutes Summary*

Date: January 23, 2018

Location: Village Board Room
200 South Hough Street
Barrington, Illinois

In Attendance: Richard Ehrle, Commissioner
Jeff Anderson, Commissioner
Mike Ward, Commissioner
Susan Ferry, Commissioner
Joann Lee, Commissioner
Dan Hogan, Vice-Chairperson
Anna Bush, Chairperson

Staff Members: Jennifer Tennant
Natalie Nye

Call to Order

Chairperson Bush called the meeting to order at 7:13 p.m.

Roll call noted the following: Richard Ehrle, present; Mike Ward, present; Jeff Anderson, present; Susan Ferry, present; Joann Lee, present; Vice-Chairperson Hogan, present; Chairperson Anna Markley Bush, present.

There being a quorum, the meeting proceeded.

Chairperson Bush announced the order of proceedings and swore in those wishing to address the Commission.

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New Business

ZBA 18-01: 413 Drury Lane - Public Hearing

Applicant/Owner: Ewa & James Cazares
505 Pond Gate Drive
Barrington Hills, IL 60010

413 Drury Lane (Cazares Residence): The applicant seeks approval of a variation from Chapter 6, Section 6.12 of the Village of Barrington Zoning Ordinance relative to a variation for an increase in the maximum permitted height of a primary structure. The petitioner is additionally requesting approval of a variation from Chapter 6, Section 6.1, Subsection D of the Village of Barrington Zoning Ordinance relative to an exception from the daylight plane requirement. The property is zoned R-6 Single-Family Residential.

Ms. Ruth Schlossberg, attorney for the petitioners, James and Ewa Cazares, said the situation is complex. There were several iterations of plans for this home. On the third try, there were changes to the roof pitch. After the owner got permission to proceed, the owner inadvertently mailed the wrong drawing for the roof. The first he realized that he had sent the wrong plans was when the Village inspected and said the building did not match the permitted plans. There was no adverse impact from this mistake. The home is compliant except for the roof. The home is only tall because of the roof pitch. It is not massive. The back roof was supposed to be built with a 9/12 pitch; it was built with a 7/12 pitch. The back roof you do not see. The front roof has the correct pitch. The owner had corrected the daylight plane, but since the roof pitch is off, the daylight plane now exceeds what is permitted. As soon as Mr. Cazares learned about the problem, he worked with the Village to see what he could do. They explored many different solutions to try to solve this. The owners worked with their architect and the truss builder to see if they could bring the roof down. The pre-made roof was transported in two parts. If the top set of trusses is taken off, it would remove about 1'5". It would still be four inches too tall, which requires a variation. None of the solutions work and they require variations and the costs would be high. This home is not out of line with other homes in the neighborhood. There are no life safety issues created by this. The owners reached out to the neighbors to see if there were any objections or concerns.

Chairperson Bush asked where the homeowners were in the process when they found out it was non-conforming.

Chairperson Bush swore in the homeowners.

Mr. James Cazarez, the homeowner and contractor, said they found out when they had finished framing the house and roughing out the plumbing, heating, electrical, and ventilation. The roof was already on.

Chairperson Bush asked if the Village did not inspect until the roof was on.

Mr. Summers said that is not correct. The Village asks that approved plans be kept on site to avoid this type of issue. The inspector asked why the roof was not the one in the approved

plans. The roof and the roughing in should not have been started until the framing was inspected.

Vice-Chairperson Hogan asked if the first inspection was after the rough framing.

Ms. Nye said the first time the inspector would have seen the roof would be at rough framing.

Vice-Chairperson Hogan said the petitioner said not only was the roof complete but a lot of the interior work had been done, so the reports are not consistent.

Ms. Nye said there could have been some rough plumbing and electrical done at the time of the framing inspection, but there should not have been any dry wall or any finishing.

Commissioner Ward said if the roof is stick framed, the cost would not be so great.

Vice-Chairperson Hogan asked if anyone had taken a photograph, the builder or the inspector.

Mr. Summers said no, they do not generally take photographs at inspections.

Mr. Cazares said he did not know what the problem was until about two weeks after the inspection. The inspector looked at the electrical, plumbing, heating, and framing. The inspector said that the framing was a conditional approval subject to a roof correction. The owner did not know what that meant until he reached out to Ms. Nye about two weeks later. He said it looked like the house was one inch higher. He did not understand pitch.

Chairperson Bush asked if Mr. Cazares was the general contractor.

Mr. Cazares said yes.

Chairperson Bush asked if he had built other houses.

Mr. Cazares said he had built one other house. He had emailed the plans to a company in Wisconsin who makes prefabricated houses. When they were working on the plans, he sent them a PDF that he assumed was the right one. He found out the roof was not built correctly after talking to Ms. Nye.

Vice-Chairperson Hogan asked if he had sent out earlier versions of the plans to prospective construction companies to get a price and did he also send them a second set of plans after it had been okayed by the Commission.

Mr. Cazares said he had send the second and the third revisions.

Mr. Belcher, J & B Architects, said he modeled the Cazares home off some homes he had worked on in Elmhurst. He worked with Ms. Nye on the plans. When the last set of plans went out, they had adjusted the height of the roof slightly, and then sent the drawings back to Mr. Cazares. Mr. Cazares sent the plans to the company in Wisconsin, who built the house in pieces off-site. The house was delivered by truck and built in four days. There is more control when you build it on site with a set of plans. Mr. Belcher when he revised the plans; he named it the same because it was an easy revision. He did not receive any shop drawings and did not hear of any concerns or differences.

Commissioner Anderson wanted to understand how the plans got to the fabricators. Was it one big set of plans for everything; were the roof plans separate from the first floor plans.

Mr. Cazares said there was one set (in PDF) of plans for everything.

Ms. Nye said the building permit required a physical copy. The third set of plans was a physical set.

Commissioner Ward asked what the lead-time was for the manufacturer to build the house off-site.

Ms. Schlossberg said answered three weeks.

Mr. Cazares said it takes two days to build in the factory. They put the house up the end of July.

Commissioner Ward asked if he was talking with the plant about changes. The final approval was May 20.

Mr. Cazares said when he sent the plans, he told them it was the final go-ahead.

Ms. Nye said after Board approval, it had to be approved by engineering, building, and plumbing. The permit was officially issued June 26th.

Mr. Cazares said he picked up the permit and started the next Monday.

Vice-Chairperson Hogan asked when the roof was delivered to the site.

Mr. Cazares said the building was started on Monday and the roof was put on Friday.

Ms. Schlossberg said it was not until the inspection that Mr. Cazares realized they had the wrong set of plans.

Mr. Cazares said the first time he realized he had the wrong set of plans was two weeks after the inspection when he spoke with Ms. Nye.

Commissioner Ward said they do not want to set a precedent where a builder can skirt the rules. They want to make sure everything in the Village is done fairly.

Vice-Chairperson Hogan said the criteria on which they decide to grant a variance is something they clearly want in advance.

Ms. Schlossberg does not think precedence needs to be taken into consideration; the facts matter. Each case should be proven by its merits.

Commissioner Ward said if a builder built a stick frame house, and he did whatever he wanted and the Commission said that was okay, that would absolutely set a precedent.

Chairperson Bush said her concern is that the problem was known relatively early on and it could have been fixed. She asked how they tried to fix the problem.

Ms. Schlossberg said they explored adding a piggyback, which would make it a little bit bigger, or cutting the building down without creating structural problems.

Commissioner Ward asked what work was done after the at-risk letter.

Ms. Schlossberg said that is not what is at issue.

Mr. Cazares said they finished the exterior work and all landscaping outside. The builder said they can remove the piggyback without affecting the inside of the house. The house is not finished inside.

Ms. Nye said a variation has to meet all eight standards in order for Staff to recommend approval. The process is not designed for after the fact; it is designed to come forward before something has been built. Some standards do not apply because the structure already exists. Practical difficulty – Staff does not believe there is a practical difficulty. A set of plans was approved by the Village and that set of plans was not built. The petitioner found out about it at the earliest time that the inspectors could have caught it and yet work continued. There was a “proceed at your own risk” letter. Even though the solutions are costly or difficult, it does not constitute a practical difficulty. Unique physical condition – the property is standard, flat and rectangular. It is not unique. Not self-created – this standard is not applicable. Denied substantial rights – all new construction has to obtain approval of rules and regulations. All are held to the same standard. Ordinance and planned purposes – this is not meant for relief after the fact. The height regulations – the building height is determined by the pitch of the roof. A steeper pitch allows for a taller home. Staff does not believe that this request is in harmony with the Zoning Ordinance. No other remedy – there are other remedies. It is up to the Zoning

Board to determine if any of them are reasonable. Staff does not believe this request meets any of the Standards, so they do not recommend approval.

Ms. Nye said the approval process led to three sets of plans, the 1st – the house was a little too big and a little too tall and it had a daylight plane issue, the 2nd set – the house was smaller but there was still an issue with the height and the daylight plan, and the 3rd set, which was approved by the Staff and was on site, was fully compliant, but was not built. The approved set of plans was for a stick built house. The plans did not indicate it would be a truss. The building inspector found this at the earliest possible time. After the inspection, the Village sent a letter that included options: one was to remove the roof and build it according to the plans; two was to choose an alternative design to modify the roof. Staff thought that construction would stop while they were discussing the modification. The owners continued to build until they submitted the variation in December.

Mr. Summers said that the plans were for a stick built house. If they were going to make a change to that, it should have been resubmitted to the Village for approval. Every truss company that the Village has worked with has submitted shop drawings for approval prior to manufacture.

Commissioner Anderson said inspections are to ensure the buildings are built to specifications. If it was not prefab, the inspector may have caught it earlier. Being built off-site enhances the chance of something going wrong in the process.

Mr. Summers said that is the purpose of the shop drawings for prefabricated homes. Typically, shop drawings are sent back to the client for approval before they are manufactured.

Commissioner Lee said standard practice is to make sure the dimensions are correct. Someone has to measure after the truss is installed to make sure it is within the height. Someone had to be on site to validate and verify the dimensions were compliant to the plans.

Mr. Summers said that the materials that were delivered should have been checked with the plans on-site before they were assembled.

Vice-Chairperson Hogan asked if it is typical that the builder schedules the framing inspection.

Ms. Nye said yes, they schedule it.

Commissioner Ward said that the petitioner, as a novice builder, clearly missed checking some boxes.

Chairperson Bush said the rules are the same for the professional builder as they are for the builder doing his own thing.

Commissioner Ward asked what is the penalty.

Ms. Schlossberg said a taller building could have been built, a more massive building could have been built, and there are no life safety issues. At this point it would be a costly fix, so at this time can the petitioner is applying to the Zoning Board for zoning relief.

Commissioner Ward suggested that if there are no teeth to an uncompliant issue, it sets precedence.

Ms. Schlossberg said this deviation is trivial and has no impact on the neighborhood. They are asking for a variation of zoning relief. It was a mistake. If the builder could remove the upper trusses, he could get the dimensions to within 4 inches. He is willing to do that. Beyond that, it would be a structural issue.

Ms. Nye said a variation is still what is required. The house that was built is not compliant under the Zoning Code.

Mr. Belcher said most villages have a height restriction. As an architect, he looks at proportions. Most villages look at the front presence of the home.

Mr. Summers said our ordinance addresses all four sides of the building.

Chairperson Bush said that the plans were for a stick built house and that is not what he did.

Chairperson Bush swore in members of the public who wished to speak.

A neighbor who lives three houses down to the east and has been there 30 years said it is a nice neighborhood. He does not understand why this is going on. All neighbors are in favor of the house as it is. He feels sorry for them. It is not obnoxious.

Chairperson Bush said it is because we have rules.

Chairperson Bush swore in more members of the public who wished to speak.

Michelle, James' sister, lives in Inverness, said sometimes people make mistakes. He does not have the money to fix this problem.

Chairperson Bush asked what is the most cost effective way to fix this problem.

Mr. Belcher said there are two sets of trusses that make up the roof. If they take off the piggyback, it will be within 4 inches of the height. It could be done, but it would not be as aesthetic.

Ms. Nye said the back roof covers the most of the mass. The front part is actually the tallest part.

Mr. Belcher said there are two different pitches, a 12/12 and a 7/12. They could leave the front part (12/12) and change the back pitch.

Ms. Nye said they cannot measure them differently per the Zoning Ordinance.

Mr. Summers said it is not an option to use a variation to interpret the provisions of the Code. It could expose the Village to litigation for not treating all properties the same.

Commissioner Lee said it looks like the front gable is higher than the main roof.

Ms. Nye said the gable on the side is actually the tallest point. The decorative gables are a little bit shorter. The gable in question is a little taller than the back portion.

Chairperson Bush asked if the Commission's option is all or nothing about the petition.

Ms. Schlossberg said none of the options will fix the daylight plane short of removing the entire roof.

Chairperson Bush asked if the Staff has a bigger problem with the daylight plane or the roof height.

Ms. Nye said they are both noncompliant and do not meet the Zoning Ordinance standards.

Commissioner Ward said the problem is that it is all or nothing. There is no penalty. The talk in town is what will they do to me if I don't comply. The Commission needs to supply a disincentive.

Chairperson Bush said if they just fined the petitioner, it would not be an incentive to the next builder who wants to build a taller house. They would just consider the fine that will have to be paid to build what they want.

Commissioner Ward said the penalty for them to fix their house would be \$150,000 in order to get a certificate of occupancy.

Mr. Summers said our remedy is to not issue a certificate of occupancy. It is not a guarantee that they do not occupy the property. Then it would go to the Cook County Court system to fix the penalty.

Vice-Chairperson Hogan asked what Staff recommends the Commission do tonight.

Ms. Nye said Staff recommends denial. The final decision is with the Board. If the Commission does not agree with Staff's findings, they would need to adopt their own or the petitioners.

Commissioner Anderson asked if there is an opportunity for Staff and the builder to talk. The Commission could deny it and the petitioner could come back with another proposal or we could continue it.

Mr. Summers said the petitioner would have to request the continuation.

Vice-Chairperson Hogan asked if there could be a simple amendment to the Zoning Ordinance to address this situation.

Mr. Summers said they would have to consider the drawings of the solution and carefully reconsider them in regard to the Standards.

Ms. Schlossberg said they are willing to consider the piggyback removal option and a variation for the daylight plane. Then they would only need a small variation for the 4 – 6 inches in height. Staff would have to approve the final plans that they meet the Standards. Staff has been very cooperative.

Commissioner Ward said he is not going to approve a small variation that will make a beautiful house ugly.

Commissioner Lee asked if the variation will impact when the owner wants to sell the house.

Mr. Summers said most realtors would look for the certificate of occupancy. The variation will stay with the property until it is destroyed.

Ms. Schlossberg asked the feeling of the Commission.

Ms. Nye said if they were to go with the option of taking off the piggyback trusses and making a flat portion at the top of the roof, Staff would need to see physical plans and review them.

Commissioner Lee asked Staff to explain the daylight plane.

Ms. Nye said they measure it at the grade of the property line. It protects the neighboring properties from casting large shadow. They measure 14 feet up and at a 45-degree angle. The maximum is 20 feet.

Commissioner Lee mapped the letters from the neighbors; there is one property at the back of the lot that was conspicuously missing. She asked if there was a story as to why they did not write a letter.

Ms. Nye said they have not received any negative letters.

Commissioner Ehrle thinks the modification looks fine.

Commissioner Anderson thinks it is a complex case. There was an honest mistake. He likes the compromise.

Ms. Nye said the ZBA would have to articulate findings of fact different than Staff and then vote.

Commissioner Lee asked if the height was determined from the grade.

Ms. Nye said it is measured from the average pre-development grade at the front face and measures to the top peak.

Commissioner Ward asked since there is no mal-intent was there still a need for specific findings for the Standards.

Commissioner Ehrle said he likes the revision and this needs to be subject to the eight Standards and some do not apply.

Vice-Chairperson Hogan noted that this was not intentional. No one is accusing the petitioner. They are to decide if the variance criteria has been met. He feels badly about it and is hoping for some solution. He does not think he can vote for a variance.

Commissioner Ferry agrees with Vice-Chairperson Hogan. She does not want to open the door for other builders to take advantage of the situation. She would not grant the variance.

Commissioner Lee feels bad for the owners. It is well-designed. She agrees with the rest of the Board.

Chairperson Bush said she does not think she can fix this. It is carved in stone. She cannot approve it.

Vice-Chairperson Hogan moved to approve ZBA 18-01, a variation from Chapter 6, Section 6.12 of the Village of Barrington Zoning Ordinance relative to a variation for an increase in the maximum permitted height of a primary structure. The petitioner is additionally requesting approval of a variation from Chapter 6, Section 6.1, Subsection D of the Village of Barrington Zoning Ordinance relative to an exception from the daylight plane requirement. Commissioner Ehrle seconded the motion.

Roll call noted the following: Commissioner Ehrle, no; Commissioner Ward, yes; Commissioner Anderson, yes; Commissioner Ferry, no; Commissioner Lee, no; Vice-Chairperson Hogan, no; Chairperson Bush, no. The vote was 5 ayes – 2 noes; the motion carried.

Commissioner Anderson said the reason he voted yes was that he felt there was a significant hardship on the petitioner, but he understands that rules are rules.

Chairperson Bush said maybe there should be different standards for these type of homes.

Commissioner Anderson said if they had built a stick house, the inspector would maybe have caught it earlier.

Vice-Chairperson Hogan asked the Board to fashion equitable remedies.

Mr. Summers said they do not have discretion on the Standards but they do on the underlying ordinance. This petition is appealable to the Circuit Court of Appeals.

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Minutes

December 12, 2017

Vice-Chairperson Hogan motioned to approve the December 12, 2017 meeting minutes, by a voice vote, recorded all ayes. Commissioner Ward seconded the motion. Chairperson Bush declared the minutes approved.

Planners Report

Adjournment

Vice-Chairperson Hogan moved to adjourn the meeting and Commissioner Ward seconded. Chairperson Bush adjourned the meeting at 9:40 p.m.

Respectfully submitted,

Jean M. Emerick
Recording Secretary

Approval Date: February 13, 2018