

VILLAGE OF NILES

*1000 Civic Center Drive
www.uniles.com*



Final Approved Meeting Minutes

Monday, November 4, 2019

7:00 PM

Village Hall

Planning and Zoning Board

Chairman

Thomas Kanelos

Members

Susan DeBartolo

Morgan Dubiel, Vice Chairman

Ted Karabatsos

Terrence McConville

Barbara Nakanishi

Robert Schulter, Secretary

Charles Ostman, Community Development Director

CALL TO ORDER/ROLL CALL

The Niles Planning and Zoning Board was called to order at 7:03 P.M. All rose for the Pledge of Allegiance.

PRESENT: 6 Chairman Thomas Kanelos, Commissioners Ted Karabatsos, Robert Schulter, Barbara Nakanishi, Terrence McConville and Morgan Dubiel

Also present was Director of Community Development Charles Ostman and Village Attorney Danielle Grcic. Commissioner Susan DeBartolo was absent.

APPROVAL OF MINUTES

Chairman Kanelos asked if there were any additions, clarifications or corrections to the minutes of October 7, 2019. There were none. He entertained a motion.

Commissioner McConville moved to **approve** the minutes of October 7, 2019.

Seconded by Commissioner Dubiel on roll call the vote was:

AYES: 4 McConville, Karabatsos, Nakanishi, Kanelos

NAYS: 0

PASS: 2 Dubiel, Schulter

ABSENT: 1 DeBartolo

There being four (4) affirmative votes the motion carried.

PUBLIC COMMENT

The public is allowed to ask questions or comment after the Board has heard the petitioners' testimony after each case.

OLD BUSINESS

19-ZP-19, 6620 Wood River Drive - WITHDRAWN

NEW BUSINESS

19-ZP-24, 7600 Neva Ave

A request for approval of a variation from Niles Zoning Ordinance Section 9.4 to allow the construction of a pergola that is less than 10' away from the principal structure and encroaches into the required corner side yard setback.

Charles Ostman, Director of Community Development, presented this case. This is case 19-ZP-24, a request for approval of a variation from Niles Zoning Ordinance Section 9.4 to allow the construction of a pergola that encroaches 12'4" into the corner side yard setback where no encroachment is permitted. A variation from Section 9.3(a)VII requires that accessory structures must be 10' away from the principle structure. A legal notice was published in The Bugle on October 17, 2019 and notices to all owners of property within 250' were mailed on October 16, 2019. An on-site sign was also placed on the property on October 16, 2019. The agenda was posted on the Village website and at the Village Hall. The applicant is proposing to construct a pergola over an existing patio on the side of his property. The proposed pergola will be 10' high and will occupy 224 sq. ft. The property is zoned R-2 and is located on a corner lot. The required corner side yard for this lot is 18' [inaudible]. The proposed pergola will encroach 12'4" into the required setback leaving 6'5" between the pergola and the southern lot line. Section 9.4 of the zoning ordinance states that pergolas are not to encroach into the corner side yard setback. The existing patio is approximately 5.5' away from the principal structure on the lot. Accessory structures must also be 10' from the principal structure as measured from the building.....

Chairman Kanelos asked about the rule of the principal structure being 10' away – he seems to recall that has something to do with the fire department and safety.

Mr. Ostman said the code was created many years ago.

Chairman Kanelos said the fire department did not comment because Staff did not send them anything on which to comment, correct?

Mr. Ostman answered he probably should have sent this to the fire department for comment.

Chairman Kanelos said this is not really a pergola. By definition a pergola has an open roof and vines grow on it. This is more of a roof – a covered structure but still falls under the pergola definition. Are there any other structures in the area that have this type of a corrugated, fiberglass roof?

Mr. Ostman said there are a few in town. He does not remember exactly where they are.

Commissioner Schulter said there is one near Notre Dame High School but it is more of an open pergola.

Chairman Kanelos asked if there were more questions for Staff from the Commissioners. There were none. He asked Mr. Ostman if he knew when the patio was installed.

Mr. Ostman said he did not but the applicant is here and can answer any questions.

Chairman Kanelos called for the petitioner to come forward.

Sarkis Marma, homeowner, 7600 N. Neva, Niles, came to the podium and was sworn in. He has lived there since 1999. The patio was constructed in 2007. He planned to put in the pergola at the same time as the patio but his job took him overseas for months at a time. When he would come back home, it was for 2 week stretches and he did not have a chance to complete the pergola with all of his international travel. He hasn't had a chance to finish it. He has tried tent-like tops from Home Depot but they blow away. He and his family now sit in the garage when outside.

Chairman Kanelos asked if when Mr. Marma put in the patio, did he know that pergolas were not allowed in that spot.

Mr. Marma said Dennis [O'Donovan?] came to inspect the patio [in 2007] and asked if they were going to park cars on it. He answered no, they were going to put a pergola over it. He did not know it was not allowed.

Commissioner Dubiel asked Mr. Ostman to put the pictures on the overhead screen, the same 4 pictures that are in the Commissioners' packets tonight.

There is a problem showing the pictures.

Chairman Kanelos said they are the photos at the back of the package. It has to be shown on the overhead as part of the record while they are discussing the location of the patio and proposed pergola. Let the record show there is also a shed in the yard. Commissioner Dubiel was asking about these 4 pictures on the last page. It shows the patio from different angles and another structure in the northwest corner of the lot that is the shed. There is also a fence that went in 2001. The patio went in after that [2007].

Commissioner Dubiel asked Mr. Marma if that was his intention all along – to put a pergola over the patio.

Mr. Marma said yes. However, he did not have the time to construct it.

Chairman Kanelos said it is something Mr. Marma wanted all along but he did not obtain a permit for it. He said had Mr. Marma told the Village in 2007 when the patio was poured, they would have told him a pergola is not allowed in that area. He could have put the patio somewhere else on his property.

Mr. Marma said he was not asked.

Commissioner Dubiel said Mr. Marma had a permanent fence and permanent patio but at no time was a permit issued for a pergola.

Chairman Kanelos asked if there were any more questions from the Commissioners. There were none. There were no questions from the public audience either. He entertained a motion.

Commissioner Nakanishi moved to **approve** case 19-ZP-24 at 7600 Neva Ave., a request for approval of a variation from Niles Zoning Ordinance Section 9.4 to allow the construction of a pergola that is less than 10' away from the principal structure and encroaches into the required corner side yard setback.

Seconded by Commissioner McConville, on roll call the vote was:

AYES 3 Nakanishi, McConville, Schulter

NAYS: 3 Dubiel, Karabatsos, Kanelos

ABSENT: 1 DeBartolo

There being a tie (three (3) negative votes and three (3) votes in favor), the motion was not approved.

Chairman Kanelos said unfortunately this committee has not passed the request for a variation for a pergola.

Mr. Marma said he was already paying a lot of property tax and cannot understand why this is not allowed.

Chairman Kanelos said this Board has nothing to do with property taxes, only zoning issues and this pergola is not allowed in the requested location. The Zoning Board looks at the existing law. This request violates 2 issues in the Zoning Code.

19-ZP-25, 7715 Neva Ave

A request for approval of a variation from the Niles Zoning Ordinance Section 9.4 to construct a porch that encroaches 8.6' into the corner side yard where an encroachment of 3.2' is permitted, and a second porch that encroaches 4.7' into the corner side yard where an encroachment of 3.2' is permitted.

Mr. Ostman said the legal notice was published on the same dates as the previous case in the The Bugle on October 17, 2019 and notices to all owners of property within 250 feet were mailed on October 16, 2019. An on-site sign was also placed on the property on October 16, 2019. The agenda was posted on the Village website and at the Village Hall. The applicant requested this variation. Mr. Gillespie plans on building 2 porches that encroach into the corner side yard: the western portion will encroach 8.6' into the required setback, the eastern portion will encroach 4.7'. They will be unenclosed and serve first floor only as required by the zoning code.

Chairman Kanelos said both of these porches are on the north side of the property, correct?

Mr. Ostman said yes, both are on the north side. One is to the east and one to the west.

Commissioner Dubiel asked if there was an application for a ramp to make it handicapped accessible. It looks like there may be a ramp at some point, according to the application.

Mr. Ostman said if there is a hardship for the family, the Village does not make it any more difficult for people to meet the ADA requirements for a ramp. They work with the homeowners to configure what may be needed for a ramp. Right now, there are stairs in place.

Commissioner Nakanishi could not hear what Commissioner Dubiel said.

Commissioner Dubiel said to look at the 2 designs in the packet. This is generated by a hardship to the person living with Multiple Sclerosis. There is not going to be a ramp at this time but may be in the future.

Chairman Kanelos said they can ask the homeowner about a future ramp. He called for the petitioner to come forward.

Daniel Gillespie, petitioner, 7715 N. Neva, Niles, came to the podium and was sworn in. As of this time, there is no ramp. However, the way it is set up there could be a ramp at a later date. The house address is Neva, but the front of the house is on Harvard. They moved in December, 2018. He wants

to extend the east side beyond the stairs so his wife has a place to sit. She doesn't want to sit in the garage. He was using a laser pointer to show the location of everything on the overhead. He explained the west front porch ends near the door and there is not enough room for his wife to get out with the steps right there to go down to the sidewalk. That is why he wants to extend that porch – to be able to open the door all the way and also have room for a chair to sit down.

Commissioner Dubiel said therefore you are wanting to build it this way so if you do have to put in a ramp, there is room to do so.

Mr. Gillespie said yes. The east porch is nearer to the garage. He is trying to turn the stairs to the side so his wife can go down directly to the driveway near the garage. This would not be covered like the west porch.

Commissioner Dubiel said Mr. Gillespie's testimony is this is being done because the stairs and entrances are unsafe due to his wife's medical condition.

Chairman Kanelos said the problem is they have no dimensions on any of this.

There was discussion about the length of each of these extension setbacks.

Mr. Ostman said it gets complicated when it is a corner lot. He explained the different dimensions regarding the front of the building.

Chairman Kanelos said the porch to the east – the plan is to make it 5' from the plane of the garage and the offset is already 4.28'. They are looking to move it 9" further. This is not showing anywhere on the plan. If we pass it, it must be correct. The house itself is already encroaching, but it is legal non-conforming. The west porch looks to be considerably larger but there are no dimensions for that. It is more than 11' because it looks bigger than the other one. Dimensions are important. His is a code issue but the steps are listed as 10' nose to nose. That is not acceptable. They should be 12' nose to nose, correct?

Commissioner Karabatsos was speaking about the bump out of the house. Most of his comments were inaudible.

Commissioner Dubiel said maybe this should be tabled until all the measurements are accurate.

Chairman Kanelos asked when Mr. Gillespie planned on doing this work.

Mr. Gillespie said he would like to get at least the west side completed this fall. He is already having some concrete work done. When you come out of the house there are 4 stairs to the front walk; then 5' more sidewalk and another single step to the ground near the main sidewalk.

Commissioner McConville said he has a similar situation wherein his home is on a corner lot and his address is not on the same street as the front of the house. It seems the zoning codes do not take these conditions into account i.e. the actual usage as opposed to the zoned usage. He feels that should be taken into consideration.

Chairman Kanelos said he agrees. The building encroaches 3-1/2' already.

Commissioner Karabatsos asked if we can make it a condition not to exceed since we do not have the dimensions.

Chairman Kanelos said yes, if someone makes that motion.

Commissioner Dubiel said they could also make a motion it must also conform with the building code and

Chairman Kanelos said everything has to apply with the code.

Mr. Ostman said the stairs are not considered an encroachment, no matter how far they go.

Commissioner Dubiel said to Mr. Gillespie the Board has read the application and these distances are correct for building the porch, is that correct?

There is discussion as they are looking at the overhead screen regarding the dimensions. There are so many different numbers going on here.

Chairman Kanelos asked if Mr. Gillespie could come back next month with more accurate numbers and dimensions. Maybe Mr. Ostman can help with that. We just do not have the data needed to pass this ordinance for your home.

Commissioner McConville asked if was possible to delay the eastern porch and approve the western porch.

Chairman Kanelos answered let us wait until all the correct dimensions are in and we can handle it all at one time.

Commissioner Nakanishi moved to **table** item 19-ZP-25 until next month's meeting, December 2, 2019.

Seconded by Commissioner McConville, on roll call the vote was:

AYES 6 Nakanishi, McConville, Dubiel, Karabatsos,
Schulter, Kanelos

NAYS: 0

ABSENT: 1 DeBartolo

There being six (6) affirmative votes the motion carried.

19-ZP-26, 6940 Cleveland St

A request for approval of a variation from the Niles Zoning Ordinance Section 4.3(A) for a rear yard setback of 5.7', where a setback of 20' is required, and a variation from Section 4.3(B)i to allow an addition that is higher than the allowable height.

Chairman Kanelos said this is a resubmission on a house last month, correct?

Mr. Ostman said yes, this is a new application with some changes. Legal notice was published in The Bugle; a legal notice was placed on the property. It was also on the Village website and in the lobby. The owner is proposing to remodel this home with a second story addition and new family room, mud room on the first floor and expand the existing garage. The property is zoned R 35A and is considered a reverse corner lot. The applicant is seeking 2 variations. The first is from Section 4.3(A) that requires the rear yard setback in the R2 35 district is 20'. The existing house has a non-conforming rear yard with a 5.9' set back. The garage expansion, mud room and family room will extend the house northward toward the interior side yard by about 18' to about a 5.9' rear setback. The second variation would be from Section 4.3(b)i that states from an existing home with non-conforming rear yards, additions may be constructed as long as the addition does not extend any higher than a line drawn from the house at a 35-degree angle starting at 1' above grade at the rear property line. The addition as proposed would intersect that plane. The petitioner had previously applied for a rear yard setback and is now resubmitting the plans with changes.

Chairman Kanelos said the height issue is on the garage portion, correct?

Mr. Ostman is showing the front elevation on the overhead screen. Yes, that is the only issue. The petitioner is maintaining the building line along the property line. It is 5'8".

There is discussion while pointing out the changes on the screen.

NAYS: 0

ABSENT: 1 DeBartolo

There being six (6) affirmative votes the motion carried.

The meeting adjourned at 8:00 p.m.

Kathleen Janessa, Recording Secretary