

VILLAGE OF RIVER FOREST
ZONING BOARD OF APPEALS MEETING MINUTES

October 14, 2021

A meeting of the Village of River Forest Zoning Board of Appeals was held at 7:30 p.m. on Thursday, October 14, 2021 in the Community Room of the River Forest Village Hall, 400 Park Avenue, River Forest, Illinois.

I. CALL TO ORDER

Chairman Martin called the meeting to order.

Upon roll call, the following persons were:

Present: Members Davis, Dombrowski, Lucchesi, Plywacz and Chairman Martin.

Member Smetana arrived via Zoom after roll call.

Absent: Member Schubkegel.

II. APPROVAL OF JUNE 10, 2021 ZONING BOARD OF APPEALS MEETING MINUTES

A MOTION was made by Member Lucchesi and SECONDED by Member Dombrowski to approve the minutes of the June 10, 2021 Zoning Board of Appeals meeting.

Ayes: Martin, Dombrowski, Lucchesi

Nays: None

Motion Passed.

III. APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR IN REGARD TO THE DEFINITION OF GRADE AT 558 LATHROP AVENUE

Secretary Radatz swore in all parties wishing to speak.

Jeff Olshesky, owner of the property at 558 Lathrop Avenue, explained that he is currently in the process of demolishing the existing home on the property. He submitted plans for a new home, and the Zoning Administrator has returned comments to him regarding those plans. Mr. Olshesky explained that he is appealing the Zoning Administrator's decision made in the

interpretation of the definition of the word "Grade". Mr. Olshesky argued that if he was required to use the definition of Grade that the Zoning Administrator used, the basement would be included in the calculation of the floor area of the home, and his plans would not be in compliance with Floor Area Ratio. Mr. Olshesky appealed the decision based on a recommendation from a soil engineer who performed a water table depth analysis that showed a high water table at the property.

Mr. Olshesky stated that he was not asking for a variance and did not want an adjustment to the FAR for the proposed home. He wanted to comply with the FAR restrictions, but the interpretation of Grade offered by the Zoning Administrator would cause the home plans to be out of compliance with the Village's Zoning Code. Mr. Olshesky reassured the Board that the plans as submitted comply with the maximum allowable building height restrictions in the Zoning Code, and that he is only disputing the interpretation of grade.

Mr. Olshesky then stated the three definitions of Grade present in the Section 10-3-1 of the Zoning Code. He stated that Section C of the definition of Grade is applicable to his property, as it is applicable to buildings having no walls that adjoin the street. He asserted that the issue is the definition of the word adjoin. He noted that the definition does not say "the lot," but refers to the wall of a building. Under this definition, the lot may adjoin the street, while the wall does not. He cited the Merriam-Webster definition of adjoin, which means "touching or to be in contact with." He then noted that the wall of the proposed home would be more than 5 feet from the street, and that definition C should apply.

Mr. Olshesky explained that the Zoning Administrator did not dispute the definition and used the subjective interpretation of the definition. According to Mr. Olshesky, the Zoning Administrator also cited previous historical interpretations, and with regard to the subjective interpretation, both the Zoning Administrator and Village Attorney in their memorandums mentioned that the intent of Section C was to apply to buildings sited in a deep property, such as the Cook County Forest Preserve property. Mr. Olshesky argued that this interpretation was subjective, unlike the definition in the Zoning Ordinance.

Chairman Martin then asked if the Members had any questions for the applicant. There were no questions. Chairman Martin asked if Village Staff had any comments.

Acting Village Administrator Scheiner concurred that the building height overall is in compliance with the Zoning Code and understood that the applicant's appeal was made because he could not build lower due to the water table. She also noted that the applicant has the option to seek remedy through the variation processes, which he has not done yet. She summarized that when a basement is built so that the elevation of the top of the First Floor of the is more than 4 foot - 9 inches above Grade, then the area of the basement level is included in the calculation of the Floor Area that counts towards the FAR limit for the

structure. This would put the proposed house at 558 Lathrop Avenue out of compliance with the maximum FAR allowed under the Zoning Code, which is 40%. If the area of the basement re is included in the FAR, it would place the property close to 60%.

Administrator Scheiner stated that the dispute is whether, within the definition of grade, the applicants fall under Section A or C of the definition. She acknowledged that the applicant argues that he falls under Section C, while the Zoning Administrator ruled that they fell under Section A. According to Administrator Scheiner, every residential property in the Village is adjacent to a street, and therefore Section A applies, unless it is on a corner, in which would Section B would apply. No residential properties in the Village fall under Section C. To argue that this property falls under the Section C would essentially render Section A inapplicable to residential properties throughout the Village and would modify how FAR is applied to residential properties.

Chairman Martin asked Administrator Scheiner if the words adjoining and adjacent have the same meaning.

Mr. Olshesky stated that his contention is that grade should be calculated by the average grade along the walls of the structure, and using that grade calculation, not measuring from the sidewalk.

Administrator Scheiner stated that in the past, the ZBA has considered zoning variations based upon building height relative to the definition of grade. She cited a matter reviewed by the ZBA a few years ago with regard to a proposed garage, where the garage height variation was based on an interpretation of the word grade, which was measured from the sidewalk to the top of that garage. So, the ZBA has previously utilized the definition of grade as measured from sidewalk of a property adjacent to a street, and not by the grade at the perimeter of the building.

Member Davis asked if there is a precedent where the property is naturally higher than the sidewalk. Building Official Radatz explained that this case does occur, and the controlling measurement of grade is measured from the elevation at the public walk.

Village Attorney Forte agreed with Administrator Scheiner in that, under the applicant's interpretation of grade, Sections A and B of the definition would be rendered void, as applicable to the entirety of the residential properties in the Village. He noted that the definition of grade as used in the Zoning Code should not be seen in a vacuum, and that the definitions section of the Zoning Code has been amended considerable times to adjust with the times, but the definition of Grade has not been amended.

Attorney Forte referred to the number of examples from nearby and other zoning ordinances in areas of Cook County that the applicant presented, that interpret grade differently, and

that actually refer to the interpretation that the applicant was pursuing. Attorney Forte noted that River Forest does not interpret grade in ways that other communities do, and that should be a sign that the intent of the Village is in fact that grade should be interpreted as the Zoning Administrator indicated in the memorandum, not in the way other surrounding communities, including Oak Park, interpret their definition of grade.

Chairman Martin asked if the applicant had any closing remarks.

Mr. Olshesky noted that his issue about whether the height of proposed basement should be included in the building's FAR. He said that any plain reading of the Zoning Code is unambiguous and not open to interpretation. He explained that he and his wife were very excited to move to River Forest. They exercised diligence by having a soil test performed by a soil engineer who recommended how deep they could dig. Then they consulted with an architect, and he looked at the Zoning Code as it was written. He and his wife spent over \$100,000 this year already on demolition, construction plans, and engineering.

Chairman Martin closed the public portion of the hearing.

A MOTION was made by Member Lucchesi and SECONDED by Member Plywacz to overturn the decision of the Zoning Administrator as it relates to the calculation of grade.

Member Davis then asked for the proper procedure if one thinks that the Zoning Code should be amended to clarify what adjoin means.

Attorney Forte explained that Village staff and the Members could discuss this at a future meeting, as it was not on the agenda for the meeting this evening. A text amendment on the issue could be brought to the ZBA for consideration in the future.

Ayes: Davis

Nays: Smetana, Plywacz, Lucchesi, Dombrowski and Martin

Motion Failed.

A MOTION was made by Member Lucchese and SECONDED by Member Plywacz to uphold the decision of the Zoning Administrator.

Ayes: Smetana, Plywacz, Lucchesi, Dombrowski and Martin

Nays: Davis

Motion Passed.

VI. CONFIRMATION OF NEXT MEETING - NOVEMBER 11, 2021

One application was anticipated to be filed for the November meeting.

VII. ADJOURNMENT


MOTION to adjourn was made by Member Davis and SECONDED by Member Lucchesi.


Ayes: Smetana, Plywacz, Lucchesi, Dombrowski, Davis and Martin

Nays: None.

Motion Passed.

Respectfully Submitted:


Clifford E. Radatz, Secretary


Frank Martin, Chairman
Zoning Board of Appeals

Date: 11/11/2021