

## **COUNCIL ACTION REQUIRED**

### **ZONING BOARD OF APPEALS**

Park Ridge, Illinois

Regular Meeting  
Thursday, September 28, 2006  
City Council Chambers

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

#### **A. ROLL CALL**

##### Present

Ann Tennes, Chairman  
Anita Bloom  
Atul Karkanis  
Alice Borzym-Kuczynski  
Kurt Prinz  
Joe Sweeney  
Gary Zimmerman

##### Staff

Randy Derifield  
Tom Hoff  
Carolyn Lombardo

##### Council

Ald. Joe Baldi, Council Liason

##### Others Present

Approximately 4 citizens

#### **B. APPROVAL OF MINUTES – July 28, 2005**

G. Zimmerman made a motion to approve the minutes of the August 24, 2006, Zoning Board of Appeals meeting and was seconded by A. Karkhanis. K. Prinz stated that the motion as stated for case V-06-07 should include that proof of ownership and title policy were to be provided by the applicant. Mr. Prinz also stated that on the second case, V-06-18, the motion should include that if Academic Tutoring Center leaves, then this variance would terminate. Chairman Tennes said that Ald. Mary Ryan is Alderman of the sixth ward, not the seventh. The Board, by voice vote, unanimously approved the minutes, as corrected.

#### **C. ZONING APPEALS – None**

## D. VARIANCES

### 1. ZONING CASE NUMBER: V-06-19: 432 North Prospect Avenue

Henry and Valerie Gruss, owners and applicants, are requesting an Unauthorized Variance to allow a raised patio (terrace) and stairs that encroach 5.5 feet into the required side yard setback to remain as constructed, in conflict with Section 7.01.E.2.a.1 of the Zoning Ordinance of the City of Park Ridge.

The subject property is Zone R-1A single Family Residential. The property is located on the west side of North Prospect Avenue bounded by Sibley Street to the north, Elm Street to the south and Grand Boulevard to the west. Dimensions of the property are 75 feet in width and 200 feet in depth.

The Variance would allow a stone raised patio (terrace) and stairs to remain in place, being located 2.26 feet and 2.70 feet, respectively, from the south property line. The required side yard setback in the R-1A Residential Zoning District is 10 percent of the lot width, and in this case, a 7.5-foot side yard setback is required. A raised patio, such as this one, is not considered a patio or terrace as per Section 4.04.A.25 of the Zoning Ordinance. Section 4.04.A.25 applies only to patios or terraces constructed at grade.

A permit was issued on May 25, 2005, for a one-story addition that included access stairs at the rear of the addition. The stairs were modified without zoning approval or applying for a building permit and is the subject of this variance request.

The following exhibits were entered into the record:

1. Application
2. Proof of Ownership
3. Plat of Survey
4. Site Location Map
5. Building Plans
6. List of Neighboring Property Owners
7. Statement in Support for Requested Variance
8. Legal Notice Published in Park Edge Herald-Advocate September 7, 2006
9. Posting of Zoning Hearing Sign
10. Notice of Appearance by City of Park Ridge
11. Landscape Plan
12. Letter From Mr. and Mrs. Matthew Gieser, dated September 13, 2006
13. Petition From Neighboring Property Owners

Mr. Gruss stated that the design of the stairs and raised terrace to the library addition was dictated by two concerns: maintaining the architectural integrity of the two-story greystone residence, and preserving a century-old maple, which was located near the addition.

Originally, the backyard exit from the library was designed to be a staircase that descended sharply from the addition to the grade. This design proved to be unworkable, potentially dangerous, and completely out of scale to the residence. Accordingly, the exit area was

redesigned to construct a terrace and more gradual staircase, providing a more proportional, easier and safer descent into the backyard.

The placement of the stairs was limited by the presence of a century-old silver maple tree directly west of the terrace. If the stairs were built as originally designed, the tree would have been at the base of the stairs. As a result of this limitation, and the need to provide a more gradual descent from the terrace, the stairs were placed in their current location at the southwest corner of the terrace. This provided a safer descent and a better flow into the backyard. It also prevented direct encounters with the maple tree, and/or the need to remove it.

The redesign further called for ringing both the stairs and terrace with landscaping, including several non-obtrusive deciduous and coniferous trees as well as a variety of shrubs, so that from the street and adjoining properties, the area around the stairs and terrace would be visually pleasing.

Construction of the stairs and raised terrace was completed in September 2005, as was most of the major landscaping of this property. In April 2006, a severe storm significantly damaged the maple tree. The tree was split down the middle and one of its main limbs fell onto the neighbor's driveway. It was determined that the tree could not be saved and the tree was removed. Since then the space occupied by the tree has been used for additional landscaping.

Although the maple tree that was one of the factors in the design of the stairs and terrace is no longer present, requiring the removal and redesign the stairs and terrace and removal of any related landscaping will result in an undue hardship. The expense alone will be significant.

The Variance request, if granted, will not alter the residential character of the neighborhood. As mentioned above, the structure is in keeping with the architecture of the residence, and the area around the stairs and terrace has been landscaped in a pleasing manner.

Mr. Gruss further stated that while over the last few years they worked diligently to remodel and upgrade the home consistent with its architectural character, they did so according to code and without violation. He also submitted a letter from his neighbor to the south of his residence that stated their endorsement of the terrace and stairs and the enjoyment of the existing landscaping, Exhibit 12. He also submitted a petition from 16 of his neighbors requesting the Zoning Board of Appeals approve the Variance, Exhibit 13.

Some Board members stated the raised terrace and stairs were constructed without a building permit and the owner should have known this requirement. This request is a self-imposed hardship. If a permit would have been reviewed by the City, the owner would have identified the problem prior to construction. This is an excessive encroachment in the required side yard. The majority of the Board noted that the owner made a mistake in not applying for a permit. The terrace and stairs are well designed and attractive. The tree that existed when the construction took place created a unique situation, which necessitated the redesign of the stairs from the original plan. The removal of the terrace and stairs would create a hardship for the owner. The Board stated that requiring the correction of the encroachment when the owner sold the property would be an appropriate condition approving this case. The terrace and stairs do not adversely affect the character of the neighborhood.

No other citizens addressed the Board regarding this case.

The Zoning Board of Appeals made findings of fact based on the evidence presented at the public hearing. These findings are attached to and made part of the minutes.

A motion was made by A. Kuczynski, seconded by G. Zimmerman, that the Variance to Section 7.01.E.2.a.1 of the Park Ridge Zoning Ordinance for 432 North Prospect Avenue, Zoning Case Number: V-06-19, to allow the raised terrace and stairs that encroach 5.5 feet into the required side yard setback to remain, as shown on the plat of survey by John Hendrickson, dated August 2006, be recommended to the City Council for approval, with the following conditions necessary to protect public interest:

1. The encroaching terrace and stairs shall be removed when the current owners of the property sell.
2. This approval cannot be assigned to any successor with interest in the property.
3. There shall be no enlargement, replacement or major repair to the terrace and stairs.
4. There shall be no fence along the south property line and there shall be no obstruction of access on the north side of the property.
5. A waiver of any right to litigate the issue, including an indemnity and hold harmless, should any third party sue the City over this determination or any of its actions or omissions leading up to his Variance request. This waiver document must be satisfactory to the City Attorney.

**COUNCIL  
ACTION  
REQUIRED**

**MOVE THE CITY COUNCIL DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE GRANTING A VARIANCE TO SECTION 7.01.E.2.a.1 OF THE PARK RIDGE ZONING ORDINANCE TO ALLOW THE RAISED TERRACE AND STAIRS THAT ENCROACH 5.5 FEET INTO THE REQUIRED SIDE YARD SETBACK TO REMAIN, AS SHOWN ON THE PLAT OF SURVEY BY JOHN HENDRICKSON, DATED AUGUST, 2006, WITH THE FOLLOWING CONDITIONS NECESSARY TO PROTECT PUBLIC INTEREST:**

- 1. THE ENCROACHED TERRACE AND STAIRS SHALL BE REMOVED WHEN THE CURRENT OWNERS OF THE PROPERTY SELL.**
- 2. THIS APPROVAL CANNOT BE ASSIGNED TO ANY SUCCESSOR WITH INTEREST IN THE PROPERTY.**
- 3. THERE SHALL BE NO ENLARGEMENT, REPLACEMENT OR MAJOR REPAIR TO THE TERRACE AND STAIRS.**
- 4. THERE SHALL BE NO FENCE ALONG THE SOUTH PROPERTY LINE AND THERE SHALL BE NO OBSTRUCTION OF ACCESS ON THE NORTH SIDE OF THE PROPERTY.**
- 5. A WAIVER OF ANY RIGHT TO LITIGATE THE ISSUE, INCLUDING AN INDEMNITY AND HOLD HARMLESS, SHOULD ANY THIRD PARTY SUE THE CITY OVER THIS DETERMINATION OR ANY OF ITS ACTIONS OR OMISSIONS LEADING UP TO THIS VARIANCE REQUEST. THIS WAIVER DOCUMENT MUST BE SATISFACTORY TO THE CITY ATTORNEY.**

Vote on the motion was as follows:

AYES	<u>4</u>	Ms. Tennes, Ms. Bloom, Mr. Karkhanis, Mr. G. Zimmerman
NAYS	<u>3</u>	Ms. Kuczynski, Mr. Prinz, Mr. Sweeney

**E. OTHER ITEMS FOR DISCUSSION**

Chairman Tennes thanked Alderman Baldi for his efforts in supporting the ZBA decision to fine the applicant on the Variance for the rear yard encroachment at 301 North Home Avenue. Several City Council members suggested reducing or negating the fine and Alderman Baldi explained the Board’s decision and the fine was upheld.

Pat Livensparger, 413 Courtland Avenue, questioned the Board regarding a fine structure for residents who build without a permit. Mr. Hoff explained their intent is to try and rectify problems, giving owners the opportunity to comply. Typically the fine is doubling the building permit fee.

**F. CITIZENS WISHING TO BE HEARD ON NON-AGENDA ITEMS – None**

**G. ADJOURNMENT – The meeting adjourned at 9:25 p.m.**

ZONING BOARD OF APPEALS

\_\_\_\_\_  
Ann E. Tennes, Chairman

\_\_\_\_\_  
Date Approved