

MINUTES OF MEETING
ZONING BOARD OF ADJUSTMENT
OCTOBER 3, 2023, 4:00PM
DOCKET 1394
4 Glenview Road

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Tuesday, October 3, 2023. The following members of the Board were present:

Chairman Ms. Liza Forshaw
Ms. Laura Long
Ms. Elizabeth Panke
Mr. David Schlafly
Mr. Dan Welsh

Also present: Mayor Spewak; Erin Seele, City Attorney; Greg Dohrman, City Attorney; Anne Lamitola, Director of Public Works; Paul Garlock, Building Commissioner; Andrea Sukanek, City Planner; and Lori Mullins, Deputy City Clerk.

Ms. Forshaw called the meeting was called to order at 4:00 P.M. and explained general procedures.

Ms. Forshaw introduced Docket 1394 as an appeal by a person claiming to be aggrieved by a decision of the Building Commissioner to issue a building permit to another party. She explained that the Board will consider a motion to allow or deny the appeal considering the passage of time. If such a motion is proposed and seconded, 3 of 5 members must vote in the affirmative in order to pass it. If a motion is proposed and seconded to overturn the decision of the Building Commissioner to issue the building permit, 4 of 5 members must vote in the affirmative to pass the motion.

Approval and Adoption of the Agenda

The agenda was amended and adopted unanimously upon motion by Ms. Long and second by Mr. Welsh.

Approval of the Minutes from the September 5, 2023 meeting

The minutes were approved unanimously upon motion by Ms. Long and second by Mr. Schlafly.

Docket 1394

Appeal petition submitted by Paul Martin Law, L.L.C., representing David P. Oetting, regarding the issuance of a building permit for construction of a new home at 4 Glenview Road. Petitioner contends that the property is in violation of 111.A(3)(b) and V.B.(1) of the Zoning Ordinance due to the lot not meeting the minimum 90' frontage requirement for the C zoning district and that construction approval should not have been granted.

Ms. Forshaw first recognized Greg Dohrman, representing the City, who requested to address the Board on some preliminary matters. Mr. Dohrman made two points:

- The City has a change in the position reflected in the staff report, which suggested hearing the both the timeliness issue and the decision of the Building Commissioner on the merits and would like the Board to reconsider this approach and hear evidence and rule on the timeliness issue first, before proceeding to hear evidence on the merits of the petitioner's case against the building permit. If the Board determines that the petition is untimely, it would be unnecessary to hear the petitioner's case on the merits of the Building Commissioner's issuance of the building permit. It is within the Board's discretion to rule solely on the timeliness issue.
- An objection, for the record, of any attempt by the applicant to call Erin Seele, the City Attorney, as a witness. Legal authority on this issue will be supplied if requested by the Board.

Mr. Paul Martin, representing the petitioner, objected to Mr. Dohrman's request for the Board to rule on the timeliness issue first, stating that he prepared for the hearing on the assumption that evidence would be heard on both the timeliness issue and the merits of the decision to issue the building permit. He asserted that his evidence on the timeliness issue is intertwined with his evidence on the merits of the Building Commissioner's decision to issue the permit, and said he was not prepared to address only the issue of timeliness. He stated he had asked for a continuance to have Ms. Seele testify and he has many exhibits which could be supplemented and submitted beforehand. He is asking for a continuance but prepared if that is denied and renewed his objection to bifurcate the issues.

Ms. Forshaw moved to have the Board deny the applicant's request for a continuance. The motion was seconded by Ms. Long. The roll call vote was as follows:

Chairman Ms. Liza Forshaw "in favor of denial"
 Ms. Laura Long "in favor of denial"
 Ms. Elizabeth Panke "in favor of
 denial" Mr. David Schlafly "in favor of
 denial" Mr. Dan Welsh "in favor of
 denial"

Mr. Martin made the following objections to specific items of evidence produced by the City:

- He objected to Exhibit F, the Staff Report, stating that the report contains hearsay and conclusions and should not be considered admissible evidence.
- He objected to Attachment 2 to the Staff Report, the Building Department construction activity summaries, stating that the summaries are vague and not the best evidence of the construction activities.
- He requested that his objections be continuing.

Mr. Dohrman responded that the City is submitting Exhibit D, an affidavit of the City Clerk, that addresses Exhibits E, F and G. He said that the City records that Mr. Martin objects to are business records, which are an exception to the hearsay rule limiting admissibility of evidence. The affidavit meets legal standards and would be admissible in court. The Board can decide what weight to give the documentation while hearing the evidence.

Mr. Welsh moved that the objections as articulated by the applicant be overruled, and that the underlying documents be deemed admissible and be given the appropriate weight by the Board. Ms. Long seconded the motion.

The roll call vote was as follows:

Chairman Ms. Liza Forshaw "in favor"
Ms. Laura Long "in favor"
Ms. Elizabeth Panke "in
favor" Mr. David Schlafly "in
favor" Mr. Dan Welsh "in
favor"

Ms. Sukanek was sworn in by the court reporter and presented the following information on behalf of the City: The building permit for 4 Glenview Road was issued in August 2022. Mr. Oetting is objecting to the issuance of the building permit on the ground that the property is in violation of II1.A(3)(b) and V.B.(1) of the Zoning Ordinance due to the lot not meeting the current minimum 90' frontage requirement for the "C" zoning district. According to the Board's Rules and Regulations, appeals must be submitted within 30 days after the denial of a permit or after a final decision has been submitted in writing to the applicant. The time to file was within 30 days from the issuance of the building permit in August 2022. The applicant has had over 1 year to appeal the decision and is therefore out of time. Moreover, Mr. Oetting signed the architectural plans as a subdivision trustee in January 2022 (indicating his disapproval). He received direct notice of a request for a variance for a retaining wall by the property owner in September 2022 and wrote a letter of opposition to the variance. Based on this, she believes the Board lacks jurisdiction to hear the appeal.

Mr. Martin cross-examined Ms. Sukanek and argued that the 30-day limit to appeal the issuance of a building permit does not apply to this instance. He asked Ms. Sukanek if the 30-day time limit applied to this case since Mr. Oetting did not receive written notice.

Mr. Dohrman objected to the question as calling for a legal conclusion. Ms. Forshaw sustained the objection.

Mr. Martin contended that if you take section 7 of the ZBA Rules and Regulations (the rule setting a 30- day time limit for filing an appeal) literally it does not pertain to someone who wants to appeal a granted permit. He argued that the appeal was filed in a reasonable time. He also questioned Ms. Sukanek on the amendments to the plans.

Ms. Forshaw introduced the following exhibits to be entered into the record:

Exhibit A- Zoning Ordinance 1175, as amended;

Exhibit B - Public Notice of the Hearing;

Exhibit C - List of Residents sent notice of meeting;

Exhibit D - Affidavit of City Clerk;

Exhibit E -Application of appeal and supporting documents submitted by the
petitioner Exhibit F -City staff report and attachments 1-8

Exhibit G - Rules and regulations of the Zoning Board of Adjustment of the City of Ladue
as amended June 30, 2022

Exhibit H - 3 additional letters opposed to petitioner

Exhibit I - Letter from the petitioner to Dr. Abdalla

Ms. Forshaw entered the additional letters of opposition to the appeal into the record as Exhibit H.

Upon Mr. Dohrman's redirect, Ms. Sukanek established that amendments to the building plans were only aesthetic and had nothing to do with the property lines. She reiterated that the petitioner saw the building plans 18 months prior to filing his appeal. Mr. Dohrman argued that the statute allows the Board to adopt rules on timeliness and that is exactly what the Board did and stated the intent behind the 30-day rule is perfectly clear because even in 30 days a lot can happen with a building permit.

Mr. Martin began to present a summary of evidence.

Mr. Dohrman requested a decision regarding the issue of timeliness before the evidence is presented on the merits of the Building Commissioner's issuance of the building permit.

Board discussion ensued. Mr. Welsh stated the Board can decide the issue of timeliness based on the presentation of both parties, ask more questions regarding timeliness, or can put off the decision on timeliness and allow all evidence.

Dr. Abdalla, the property owner, made a request to the Board that he be heard on the issue of timeliness. The court reporter placed him under oath. He presented a letter dated 6/19/23 from Mr. Martin, representing Mr. Oetting, stating that the property lacks the 90' frontage required by City Ordinance, and compared that to the date of filing of the appeal at the end of August.

Ms. Forshaw entered the additional letter into the record as Exhibit I.

He also testified that the day the permit was issued in 2022, a letter was delivered to the petitioner with sweets, expressing thanks for assistance with the process of getting their building permit issued.

Board discussion ensued regarding voting on the issue of timeliness. Mr. Welsh stated that the Board can decide the issue of timeliness based on the statute and the rule with respect to the 30 days adopted by this Board or hear evidence beyond the timeliness issue. Ms. Panke said she believed that Mr.

Oetting was clearly beyond the 30 days.

Mr. Martin objected to the Board taking a vote on the issue of timelessness before he could present his full case on the merits. He argued that as a trustee, Mr. Oetting only looked at aesthetics, and relied on the City for zoning compliance such as the minimum legal frontage of the lot. When asked, Mr. Martin said he would need 1 to 2 hours to present his full case.

Board discussion ensued. Mr. Welsh expressed that the substantive issue is not necessarily related to review of the rule.

Mr. Welsh moved that the petitioner's application be denied on the basis that the appeal was submitted out of time. Mr. Schlafly seconded the motion. The roll call vote was as follows:

Ms. Lisa Forshaw "in favor"
Ms. Laura Long "not in favor"
Ms. Elizabeth Panke "in favor"
Mr. David Schlafly "in favor"
Mr. Dan Welsh "in favor"

With five (4) votes in favor and one (1) against, the motion passed, and the appeal was denied.

Adjournment

At 5:27 p.m. the meeting adjourned upon motion of Mr. Welsh and second of Ms. Long.

A legal transcript will be filed with the minutes.

DOCKET 1394

DATE OF HEARING

October 3, 2023

NAME

Paul Martin Law, L.L.C. representing David P. Oetting

DESCRIPTION OF PROPERTY

4 Glenview Road

CAUSE FOR APPEAL

Petitioner contends that the property is in violation of III.A(3)(b) and V.B.(1) of the Zoning Ordinance due to the lot not meeting the minimum 90' frontage requirement for the C zoning district and that construction approval should not have been granted.

RULING OF THE BOARD

After discussion, on the basis of the evidence presented, the Board ruled that the petitioner's challenge to the decision of the Building Official is untimely and therefore the petitioner's appeal is denied.



Ms. Liza Forshaw, Chairman