

VILLAGE OF NILES

*1000 Civic Center Drive
Niles, IL 60714
www.vniles.com*



Approved Meeting Minutes

Monday, February 1, 2016

7:00 PM

Village Hall

Plan Commission and Zoning Board of Appeals

Chairman

Thomas Kanelos

Members

Susan DeBartolo

Morgan Dubiel

Ted Karabatsos

Barbara Nakanishi

Robert Schulter

Angelo Troiani

Staff Liaison Bruce Sylvester

CALL TO ORDER/ROLL CALL

The Niles Plan Commission and Zoning Board of Appeals was called to order at 7:01 P.M. All rose for the Pledge of Allegiance.

PRESENT: 7 Chairman Thomas Kanelos, Commissioners Ted Karabatsos, Susan DeBartolo, Angelo Troiani, Barbara Nakanishi, Robert Schulter, Morgan Dubiel

ABSENT: 0

Also present was Director of Community Development Charles Ostman and Senior Planner Bruce Sylvester.

APPROVAL OF MINUTES

Chairman Kanelos asked if there were any additions, clarifications or corrections to the minutes of January 4, 2016. There were none.

Commissioner Dubiel moved to **approve** the minutes of January 4, 2016. Seconded by Commissioner Nakanishi, on roll call the vote was:

AYES: 7 Dubiel, Karabatsos, DeBartolo, Troiani,
Nakanishi, Schulter, Kanelos

NAYS: 0

ABSTAIN: 0

There being seven (7) affirmative votes the motion carried.

OLD BUSINESS

15-ZP-38 Requesting approval of a 457.5 square foot variation from Village Ordinance Appendix B, Section IV(H)(2) to allow a 1,157.5 square foot garage that exceeds the Village's 700 square foot size limit at 8753 Sunset.

NEW BUSINESS

16-ZP-4 Requesting approval of a 3-foot 7-inch variation from Village Ordinance Appendix B, Section IV(J)(1) to allow a front porch to encroach more than the 20% allowed in the front yard at 6913 Jarvis Avenue, Niles.

- 16-ZP-5** **Requesting approval of a special use permit to allow a 'business whose primary activity is the sale of tobacco products' per Village Ordinance Appendix B, Sections VIII(B)(3)(hh) and VIII(C)(3)(a) at 7017 Milwaukee Avenue, Niles.**

DISCUSSIONS

1. **Continued discussion of staff memo for proposed garage size language for new zoning ordinance**

ADJOURNMENT

Chairman Kanelos called for the first item on the agenda tonight.

- 15-ZP-38** **Requesting approval of a 457.5 square foot variation from Village Ordinance Appendix B, Section IV(H)(2) to allow a 1,172.5 square foot garage that exceeds the Village's 700 square foot size limit at 8753 Sunset.**

Bruce Sylvester, Senior Planner, presented the case. This is the third meeting where this item is on the agenda. It was discussed in November, 2015 and then again in January, 2016. This item was tabled last month because of confusion over the plat. It was one year ago in January, 2015 that the Village approved a plat of re-subdivision which was not included in the packet last month, but it is included in tonight's packet. It is shown on the overhead. The plat approved by the Village a year ago divided the property on Sunset so that a portion of the rear yard at the south was attached to the adjacent property on Western to the south. That is what created the L shaped parcel. This plat was recorded and is now the description of the lot lines for this area. If there are questions about title transfers, etc. please ask those questions of the applicant or his attorney. Both are present tonight. At the November meeting there was confusion about the size of the proposed garage. Information provided by the applicant was unclear. Now there are precise measurements taken by staff. It is 35 ft. 1 in. deep front to back; 22 ft. 5 in. across side to side. The proposed carport is an additional 11 ft. in width and the same depth - 35 ft.1 in.. He is available for questions and Mr. Ostman will also explain this case. The applicant and his attorney will be available as well.

Commissioner Dubiel said regarding the five Findings of Fact - is this simply a mere inconvenience that he is already over [size] on his existing garage?

Mr. Sylvester said the current structure is already larger than the 700 sq. ft. limit, correct. The applicant and his attorney can make the case this is not just a mere inconvenience but a hardship. The applicants now need to explain how they meet the five criteria.

Chairman Kanelos said it was mentioned this was to be a carport. Is it really going to be a carport or a garage?

Mr. Sylvester said if he mentioned the word carport it was a mistake. As clarified in January the applicant is not looking for a carport but an extension of the existing garage. The addition would be enclosed.

There were no additional questions for Mr. Sylvester.

Charles Ostman, Director of Community Development, spoke. There is a difference between a lot and a parcel. This case deals with parcels. The parcel on Sunset contained the detached accessory structure [garage] in the back. The subdivision was approved early last year. The owner is in compliance either way. Besides the area of the garage created beyond the 700 sq. ft. - with that garage being attached to the Sunset address or the newly created lot on Western, both of them still comply with the zoning requirements. There are many areas in Niles where there are problems regarding lots and parcels. In the new rewrite of the subdivision ordinance, there are new words that clear up the non-conforming issues regarding lots and lot lines. This language is comparable to many other communities. This should be looked at as parcels for this garage, either way, besides being over the 700 sq. ft., complies with all the zoning requirements whether it's attached to the Sunset address or the newly created lot on the Western address.

Chairman Kanelos asked for an explanation of the zoning requirements that it meets.

Mr. Ostman said on the Sunset address as it sits now, it meets all the bulk requirements except for that area of the garage. There is an amendment that says no accessory structure shall be over 700 sq. ft. If it's attached to the Western property it also meets the zoning requirements.

Chairman Kanelos said the suggestion that is going to be made in the new zoning code is to allow up to 1,000 sq. ft. for accessory buildings if it meets the requirements of side yard, lot lines, the bulk ordinance, FAR, and impervious lot coverage.

Mr. Ostman said that is one of two recommendations. Other municipalities have building coverage. In Niles' new zoning code, building coverage is pegged at 35% of the lot. No more than 35% of the lot can be covered by buildings, whether it's the principle residence or accessory structure. They still left in the proposed zoning code - the accessory structure [garage] of 700 sq. ft. on top of the 35% building coverage.

Chairman Kanelos said if that was the code this would not comply.

Mr. Ostman said no because they left in the language that said 700 sq. ft. Many other municipalities leave out that 700 sq. ft.

Chairman Kanelos said in that case, if 700 sq. ft is left in, no matter how big a lot is, they can't meet the requirements to have, say, a three car garage.

Mr. Ostman said correct.

Chairman Kanelos said if we are going to change the code, he'd hate to penalize someone if what they were trying to do would be allowable in another three months. The other one is to allow up to 1,000 sq. ft.

Mr. Sylvester said the other recommendation they will be discussing later tonight is to have a flat percent, say 35%. If you have a larger lot, then you could have a larger garage. Look at the last memo in the packet, #9 in red. The total area of all accessory structures shall be included in the calculation to determine building coverage. At the top of the page the number it is referencing is 35%.

Commissioner Dubiel asked if Table 4-1 is already approved. It would be nice to see Table 4-1.

Mr. Sylvester said yes. He went to make copies to give to the Commissioners.

Commissioner Dubiel asked if this change [of 35%] is approved by the Board, are both lots still in compliance?

Mr. Ostman said yes.

Chairman Kanelos called the petitioner to the podium while awaiting the copies from Mr. Sylvester.

Paul Kolpak, attorney for petitioner David Cottrell, 6767 N. Milwaukee Avenue, Niles, stepped forward along with the petitioner. He has spoken to

Mr. Ostman repeatedly about the issues regarding ownership and hopes it has been explained adequately. The only issue left is the 700 sq. ft. and 1,172.5 sq. ft. request. There are other hardships. One question is why is there a building already built. His understanding is there were some miscalculations that Mr. Ostman can relay better than he can. Based on that it was built and then it was too big.

Chairman Kanelos said that explains why it is too big now. It doesn't explain a hardship for wanting to make it even bigger.

Commissioner Schulter asked who made the miscalculation.

Mr. Ostman explained. He asked Rich Wlodarski, Assistant Director of Community Development, to summarize what took place. When the 2nd permit for the current structure was applied for by David Cottrell on April 8, 2015, it was to have additional concrete around the garage and the sidewalk and to extend the existing slab. Mr. Cottrell was told all the concrete has to lead to a parking structure. At that time the Village thought it was going to be open. Mr. Wlodarski, without checking the zoning ordinance, indicated that to put up a carport would satisfy that section of the code to where the concrete would meet to a parking structure.

Commissioner Schulter said that was based on a carport, correct?

Mr. Ostman said Mr. Wlodarski erred in telling the owner that if he put up a carport he would be in compliance.

Chairman Kanelos clarified what Commissioner Schulter asked: if a carport was built would it be in compliance?

Mr. Ostman said no. It is looked at as the total building area of the accessory structure, whether it is a carport or a garage.

Chairman Kanelos asked what if it was a detached carport. There is a case later tonight where there is a garage and a carport.

Mr. Ostman said the carport is always added to the area that is allowed.

Chairman Kanelos said yes, the Community Development Department made a mistake. But the building wasn't built yet. If it was already built and the Village told you to tear it down - he doesn't understand the hardship.

Mr. Kolpak said the hardship is that Mr. Cottrell built this according to what

he was told to do.

Chairman Kanelos said but it wasn't built yet.

Mr. Ostman said when Mr. Cottrell started constructing, including that additional section that is in question, he went to the site and after observing knew the building was oversize. One wall of the garage was up [where they thought it was going to be a carport]. He only had a small portion of that addition to the garage going north and then back by the picnic table [the view is on the overhead]; there was one wall up there to continue the expansion of that garage. He came back to the office, spoke with the Village attorney and what direction would he give regarding the building permit that had been issued for this accessory structure over 700 sq. ft. His recommendation was to void the permit, even though there was a wall up, and stop the construction on that portion going to the north. Then have the property owner come before the Board again.

Commissioner Dubiel verified the east wall was up but has since been taken down. The main structure is larger than a normal garage and that was under construction at the time.

Mr. Ostman said he didn't know the details of that construction. But in the previous permit Mr. Cottrell applied for, it was under 700 sq. ft. What was actually constructed was over 700 sq. ft. When he was before the Board in July, 2014 the garage extension added to the front of the garage did show under 700 sq. ft. But when completed ended up to be 773 sq. ft.

Terry O'Connor, the contractor, 900 S. Broadway, Park Ridge, IL came forward and was sworn in. He has been involved in the building of this structure from the beginning. In January, 2014 Mr. Cottrell contacted him and asked if he'd help him out while he was helping out Ted Marion. The plan was to sever part of the lot and reinforce the dilapidated building. He got a permit in May, 2015 to reinforce the existing garage.

Commissioner Schuler asked which portion of the garage are you talking about.

Mr. O'Connor showed with a pointer which section [on the overhead] he reinforced. It was also a different roof line at the time. Also he was going to raise the roof and extend it into the carport.

Commissioner Dubiel asked if any work occurred between May, 2014 and January, 2015.

Mr. O'Connor said no. It was a plan Mr. Cottrell had to help Mr. Marion. Mr. O'Connor knew Ted as well.

David Cottrell, 8369 Western Ave., Niles, IL came forward and was sworn in. He applied for a permit in July, 2014. That is when they added 15 ft. to the front of it. It was completed and inspected by the Village in October, 2014. At that time the square footage was 776 sq. ft. In April 2015 they were contacted by the inspectors and told they couldn't have a gravel driveway. They needed to put in cement.

Commissioner Dubiel clarified July, 2014 the first permit was issued. Completed October, 2014. Inspected and approved at 776 sq. ft?

Mr. Ostman said it was and that the Village erred on that.

Chairman Kanelos asked what did they say the square footage was going to be.

Mr. Ostman said under 700 sq. ft.

Chairman Kanelos said the Village may have erred in the inspection; but the building didn't measure what the permit said it would be.

Mr. Cottrell said Mr. Wlodarski had been there to inspect several times. The garage in the back had not changed. Mr. Marion was contacted in March, 2015 and was told not to have a gravel driveway. At that time they applied for a permit for the cement driveway. That was in April and that is when Mr. Marion passed away unexpectedly. Next thing the ratios were off and cement was poured and they were in discussions about a carport. That came about in July, 2015 and the Village issued a permit.

Chairman Kanelos asked if when Mr. Cottrell applied for a permit for the driveway did it include the driveway going around the side of the building.

Mr. Cottrell said yes.

Mr. Ostman said no. When it was all framed out the concrete was to be like a patio and did not go all the way to the sidewalk. When they came back to inspect, the concrete went all the way out to the sidewalk. They poured before they had permission to pour.

Chairman Kanelos said there are so many loose ends to this case. He said most of them were because of him [Mr. Cottrell] and his contractor. The

point is you are trying to establish hardship. The Board does not see a hardship.

Mr. Cottrell said they were about 50% complete when the Village stopped them.

Mr. O'Connor said they were instructed to put in a footing and underpin. He went on to explain the underpin to the north side and east side of the concrete. They redid the existing garage floor because it was all dirt. He then pointed on the overhead to the areas he was referencing. They were going to make it a carport.

Mr. Ostman said that is correct. But when he went to inspect he shut it down. If they would have continued to build, the owner would have had so much invested that the Village attorney concluded Staff made an error in issuing the permit. The petitioner was entitled, because of his investment, to keep it.

Mr. O'Connor said when it was framed it looked gigantic. Once it was all put together it didn't look as big. He had a letter from the inspector John Montejo saying it was approved. There were stipulations in the letter. He went on to explain the stipulations.

Mr. Ostman said John is a building inspector, not a zoning person. He made notes and assumed the zoning was taken care of.

Commissioner Karabatsos asked what was the height of the garage and the height of the ranch home. He wondered if there was a way to get the original building permit from 2014.

Mr. Ostman said the only survey available is in the packet. He said there was enough information from the survey of 2014 to fulfill the zoning requirements later on.

Mr. Kolpak said permit #150479 to fix up the existing garage and extend it 15' was applied for January, 2014 and was finished October, 2014.

Chairman Kanelos asked if at that time there was a concrete floor poured in the existing garage that had a dirt floor.

Now there is a lot of confusion about the floor of the garage and the pouring of the floor and if the walls were moved. This went on for many minutes. There was much back and forth in trying to get the facts. Basically this is all

about if the building is new or redone. The reality is it is a brand new building. These past meetings the Board has been told many different versions of this story.

Commissioner Nakanishi said then it is safe to say the original garage has been demolished.

Mr. O'Connor said in bits and pieces.

Commissioner Schulter said the Village made a mistake and the contractor made a mistake. That is why you are back here and this Board has to fix it.

Mr. Kolpak said the facts are: did they make a mistake? Yes. Where they told to fix it a certain way? Yes. Did they comply and fix it a certain way? Yes. Is it not according to code? Yes.

Chairman Kanelos said the fair thing to say would be go ahead and build a carport. There is no hardship for a garage. As bothersome as this whole process is, a citizen should not be penalized if the code is going to change in a few months.

Commissioner Dubiel said right now there is a brand new garage that is at least 10% larger than normal code. Where are the favorable facts? Where is this particular hardship?

Mr. Kolpak said he feels this is a combination of events.

Mr. Cottrell said he has not been paid a dime throughout all this.

Chairman Kanelos asked if there were more questions. There were none. There were two from the public.

Lawrence Caporossi, 8743 Sunset, Niles, came forward and was sworn in. This is going to be a warehouse. What is the purpose of this warehouse? There are people on the road that have five or six cars and they don't have this type of structure. Is there another place in Niles where this is taking place? He feels it will depreciate every house on the block. There are six houses for sale on Sunset. This is going to make it more difficult to sell. His concern is if he wants to sell his house - people will walk in the backyard and say "what is that?" It looks like a barn. It's overkill.

Chairman Kanelos said he can point out another large garage in Niles. However the house and garage are on a one acre lot.

Commissioner Karabatsos said the lot was divided. But there is a fence. Which house is this garage going to service?

Mr. Ostman said right now it is servicing the Sunset address. That is the legal description of the parcel.

Vincent DiVarco, 8730 Park Lane, Niles, stepped to the podium and was sworn in. This now belongs to the Western Avenue address. All the permits were pulled in Ted Marion's name. How do you pull a permit after a man has been dead for a month? You don't see any signs in Cottrell's window. His name isn't on the deed for the Western Avenue house.

Mr. Kolpak said the property owned by Ted Marion is in a revocable trust. Mr. Cottrell is the successor beneficiary of that trust and is also the beneficiary and successor trustee. Upon Ted's death, he had the absolute right under the trust. The trust attorney is also present if need be. When Ted was dying he gave Mr. Cottrell beneficiary over the trust and also made him beneficiary of the trust. He owns it.

Mr. DiVarco said the Western Avenue property is not in Mr. Cottrell's name. It is in Mr. Cottrell's brother's name.

Mr. Kolpak said that property is in the name of Chicago Title and Trust.

Mr. Ostman said that doesn't make any difference when applying for a permit. The permit is a Building Department issue not a zoning issue.

Mr. DiVarco said there is no service door, there are no windows - it looks like a warehouse. It is ugly. Plus he has the other houses and each house has a two car garage.

Commissioner Schulter asked what is the footing for that wraps around the garage. Why waste all that money and concrete? What is the purpose?

Mr. O'Connor said he understood the Village wanted the concrete thickened all the way around the perimeter.

Commissioner Nakanishi asked if the Planning Department received any drawings or sketches to show what the proposed carport or proposed garage would look like?

Mr. Ostman said he has not seen any but imagines they were submitted at the time the permit was issued. He would have submitted plans for a carport

because it was suggested by Mr. Wlodarski.

Chairman Kanelos asked if it is supposed to be a carport with columns or one with a wall. He has little confidence if they approve a carport with solid walls, there will be a garage door there in the very near future. He asked why is there a concern over the square footage amount versus a percentage.

Mr. Ostman said after reviewing the language - 33% of the rear yard. That could not apply in this situation because this garage is in the side yard if it was transferred to the Western address. Right now it would comply if retained at the Sunset address. They have a tremendous amount of data on in the GIS system. Since the new language adopted in 2001 of 700 sq. ft. was added, there have been requests for two variations in the Village. One that we spoke of earlier for 700 sq. ft. at 8008 Oakton and he can't remember the location of the other. There is nothing in the new language that says 1,000 sq. ft.

Commissioner Dubiel is looking at the timeline if they are to approve this. The new code will be ready shortly. What is the hold up?

Mr. Ostman said the Board is waiting for a study to be completed for the Community Development Department then everything will coincide with the new zoning code.

Chairman Kanelos asked if they are pretty certain there is going to be new language in the code to allow for larger structures on larger lots.

Mr. Sylvester said in the current draft there is language that would allow larger than 700 sq. ft. That is for discussion later tonight.

Chairman Kanelos asked if on this lot, what size garage would be allowed under the 35% rule.

Mr. Ostman did not calculate that.

Commissioner Nakanishi asked if they can put in a requirement of windows and doors in the new zoning code. She thinks they should put that in if they are going to allow three car garages. It would avoid something that looks like this.

Mr. Ostman said no, not under the zoning code. That would be building code.

Chairman Kanelos asked more questions of Mr. O'Connor about the actual

construction of the roof. Too bad they don't have a sketch, just to see how bad it's going to be. He asked if there were any more questions. There were none. He entertained a motion.

Commissioner Troiani move to **approve** the request of approval of a 457.5 square foot variation from Village Ordinance Appendix B, Section IV(H)(2) to allow a 1,157.5 square foot garage that exceeds the Village's 700 square foot size limit at 8753 Sunset.

Chairman Kanelos said before anyone seconds this, he wants to make it clear if no one seconds or if it gets voted down, it's dead. Does the petitioner want this Board to table it until the zoning ordinance is modified? Once it's done, you have to start from the beginning and reapply.

Mr. Kolpak said his client would like to go ahead with the vote.

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

AYES: 4 Troiani, Schuler, Karabatsos, Kanelos

NAYS: 3 Nakanishi, Dubiel, DeBartolo

ABSTAIN: 0

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

Chairman Kanelos commented the Department really needs to stay on this construction going forward because he doesn't like when people disregard the Building Department and pour things larger than they are supposed to and turn around and make it look like our Building Department did something wrong.

Chairman Kanelos stated this Board is a recommending Board to the Board of Trustees who can either confirm or negate this decision. It will be necessary for the petitioner to contact Mr. Ostman and ask to be placed on the Board of Trustees agenda. The petitioner will then be notified of the date. Anyone in the audience who would like to be informed as to the date this will be heard by the Board of Trustees, leave your name and address with the recording secretary.

Chairman Kanelos called for the next item on the agenda.

16-ZP-4 Requesting approval of a 3-foot 7-inch variation from Village Ordinance Appendix B, Section IV(J)(1) to allow a front porch to encroach more than the 20% allowed in the front yard at 6913 Jarvis Avenue, Niles.

Bruce Sylvester presented this case. The applicant is in the process of rebuilding a house. The original house has been torn down. The builder is here tonight. He is using the old foundation for the new house. That foundation is closer to the front than would normally be allowed. Please see the plat in the packet. The foundation is 17 ft. 8 in. from the property line at the closest. He is asking for a variation so the front porch can encroach into the required front yard more than the 20%. If he kept with the 20% allowed encroachment, his front porch would be very narrow. With everything completed, the front porch would be 10 ft. 7 in. away from the property line. The calculations are on the front page of the Staff report. The request is for a 3 ft. 7 in. variation. On the overhead is a picture of a house a block away that shows what this request would look like when complete. It is not exact but would look similar. The only department to respond was Engineering with a request about avoiding some sanitary sewer services. All the required notifications were sent to the newspapers and property owners in the area.

Chairman Kanelos asked about the photo of the home down the street. Does Staff have the dimension from the end of the steps to the property line?

Mr. Sylvester said no, he does not have dimensions.

Commissioner Dubiel asked if they go to the 35% rule, what would it do to this particular property?

Mr. Sylvester said the 35% rule regulates how much of the lot can be covered by building. It would not come into play with this house. He believes the house is well under the 35% requirement. The issue here is that the proposed porch would be too close. It is two different regulations. One is how far away the building needs to be from the front property line. That is the regulation from which they are requesting relief. This is not an issue about building size or coverage. Niles doesn't have a current building coverage limit. There is an impervious surface coverage limit.

Commissioner Dubiel asked then what is the 35% applying to. Anything sitting on a slab?

Mr. Sylvester said that would just be buildings - houses, porches, etc.

Mr. Ostman said any structure, whether it be accessory or a principle building.

Mr. Sylvester said they did perform a zoning review on this house. This doesn't meet the requirement to have less than 60% impervious coverage.

Commissioner Dubiel said this appears to be a nice change to the neighborhood. Is this the type of development we want?

Mr. Sylvester said yes.

Chairman Kanelos said the house does need a porch because right now it looks like a tower. He is concerned about the steps being only 6 ft. 9 in. from the sidewalk. That's very close.

Commissioner Dubiel said gentrification and housing styles are going to affect that. This is very attractive and enhances the neighborhood.

Commissioner Troiani said this area used to be a Chicago neighborhood.

Commissioner Schulter asked if the picture on the overhead is current. What about the driveway and carport? Did the Village already approve that?

Mr. Sylvester said it is the most recent aerial photo they have. It shows a structure that does not exist anymore. Yes, the Village approved it. They told the applicant he could proceed with the construction of the house but he ran the risk that his request for variation would be denied.

Commissioner Dubiel said now he's under a hardship, which we've seen before. Something is very messed up.

Mr. Ostman said what is permitted on that lot is nearly 2,000 ft. of building coverage. If you add the house, the porch, the frame garage in the back - it comes to 1,676 sq. ft.

Chairman Kanelos told the petitioner is was not necessary to speak. He asked if any members of the public wished to speak. There were none. He then entertained a motion.

Commissioner Dubiel moved to **approve** 16-ZP-4 requesting approval of a 3-foot 7-inch variation from Village Ordinance Appendix B, Section IV(J)(1) to allow a front porch to encroach more than the 20% allowed in the front yard at 6913 Jarvis Avenue, Niles.

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

AYES: 7 Dubiel, Karabatsos, DeBartolo, Troiani,
Nakanishi, Schulter, Kanelos
NAYS: 0
ABSTAIN: 0

There being seven (7) affirmative votes the motion carried.

Chairman Kanelos stated this Board is a recommending Board to the Board of Trustees who can either confirm or negate this decision. It will be necessary for the petitioner to contact Mr. Ostman and ask to be placed on the Board of Trustees agenda. The petitioner will then be notified of the date. Anyone in the audience who would like to be informed as to the date this will be heard by the Board of Trustees, leave your name and address with the recording secretary.

Chairman Kanelos called for the final item on the agenda.

16-ZP-5 Requesting approval of a special use permit to allow a 'business whose primary activity is the sale of tobacco products' per Village Ordinance Appendix B, Sections VIII(B)(3)(hh) and VIII(C)(3)(a) at 7017 Milwaukee Avenue, Niles.

Bruce Sylvester said this is a request for a Special Use permit. This address is a multi tenant building at the corner of Milwaukee Avenue and Harts Road. Sherwin Williams Paint Store is the anchor store on the corner. The area is zoned B-2. It is a smoke vape store. This type of business will soon be incorporated into this section of the zoning rules. An aerial view is on the overhead. There were no concerns from other department heads. The Police Department questioned whether the products could be used with cannabis. All the notification requirements were taken care of.

Chairman Kanelos asked Mr. Ostman if he remembered another case similar to this. It seems something came back and bit them regarding something in that passage. Is there a concern about what can be sold? Is there smoking in the facility?

Mr. Ostman said yes, he remembers. He feels a big concern is they would sell products that could be used illegally. He visited the other site and there are signs that say all the products are to be used legally. The day he was in

there, two or three gentlemen were smoking in the facility, like a hookah.

Chairman Kanelos said the law is in order to smoke in the building your primary business has to be tobacco products and has to be a free standing building.

Mr. Ostman said yes. It was verified with the Village Attorney that any business that allows smoking inside has to be a free standing building. No adjacent tenants attached.

Commissioner Schulter said there is a similar business at Dempster and Ferris in Morton Grove and they allow smoking. It is not free standing but in a strip center.

Commissioner Dubiel said he lives near that strip on Milwaukee and Harts. There has been various issues in that neighborhood. Since that area is kind of the entrance to the community were there any other types of concerns expressed by the Police Department? There is a creepy motel nearby along with the gas station and corner store which seems to attract every character in the neighborhood. He said there is often a squad car there looking into some type of problem. He feels it is a tough way to enter Niles. He wonders how it complies with the 2030 Plan. He understands the need for revenue and that those empty spaces need to be filled.

Mr. Ostman said he didn't have any conversation with the Police Chief or Deputy Chief.

Mr. Sylvester said you could argue it either way. One of the goals in the Comp Plan is to fill vacancies and have vibrant commercial areas. And you could argue the community is trying to have a particular image.

Commissioner Dubiel said he understands there is a low rise motel that seems to attract a lot of transients. Next is the gas station that also attracts transients, many of whom hang out there. The police are there regularly. This then seems to be a third interest to that type of clientele. This strip reminds him of the Old Town/Wells Street area in Chicago.

Mr. Ostman said as far as enforcement he would be visiting the shop. Otherwise it is done via complaints. Residents can file a complaint with the state or they can call the Police Department and enforce it that way.

Chairman Kanelos asked Mr. Ostman when he went to Mr. Chiba's other location in Niles.

Mr. Ostman answered said it hasn't been recent, probably late last summer.

Commissioner Karabatsos asked what happens if they are not in compliance. Can the license or Special Use be revoked?

Mr. Ostman said he isn't sure. He imagines the Police Department would cite them for violation of Village ordinances. He isn't sure what would happen.

Chairman Kanelos called Village Attorney Joseph Annunzio on the phone since he was not present at the meeting. He asked the following: How does enforcement take care of smoking in the tobacco shop and what would be the outcome. And if this passes is there a condition that has to be put in as to what could happen.

Mr. Annunzio said first of all the police have to go in there and issue a ticket for smoking on the premises. You don't have to put in additional language to the motion because it is already in violation of state law if there is smoking inside the premises.

Mr. Ostman clarified the applicant tonight is the same owner of the shop at the north end of Niles at 8526 Golf Rd.

Chairman Kanelos asked if there were further questions for Staff. There were none. He called for the petitioner to come forward.

Tony Chiba, 9294 Home Terrace, Des Plaines, IL 60016 came forward and was sworn in. It is a smoke shop: tobacco, tobacco products, pipes, vape. Vape is very popular now. As soon as people start smoking vape they can get off nicotine. There's no smoking; it's retail, people don't sit down like in a hookah bar. But sometimes people buy something and try it in the store. There is a sign on the door that says make sure you are 18 years old to enter. When they purchase something, he makes sure he or his employees see the i.d. to make sure of the age. Sometimes the employee is busy and customers stand looking at the TV; all of a sudden they are trying a product.

Chairman Kanelos said he has heard sometimes there are people smoking [in the other location.] Mr. Ostman said he saw the same thing.

Mr. Chiba said he does not sell cigarettes. He said people smoke vape. He sells cigars but they are locked in a cabinet.

Commissioner DeBartolo asked if he sells anything in which cannabis can be used.

Mr. Chiba sells things that can be used for tobacco only. Once the customers leave the location, he does not know what they do with the containers they buy. He has no control over that.

Chairman Kanelos asked why is it necessary for that business at that location. He already has one in Niles.

Mr. Chiba said the reason he wants to be in that location is because it is the very beginning of Niles. Now there is going to be additional tax in Chicago so customers can go straight north on Milwaukee and buy as soon as they get into Niles. He feels it is a good location for him.

Chairman Kanelos said he knows it's a good location for him. Not sure it's a good location for Niles. That is a concern.

Commissioner Dubiel said there is testimony tonight from the department head who was at his other shop and people were smoking inside the shop.

Chairman Kanelos asked if there were other questions for the petitioner. Are there any questions from the public. There were none. He entertained a motion.

Commissioner Troiani moved to **approve** 16-ZP-5 requesting approval of a Special Use permit to allow a business whose primary activity is the sale of tobacco products' per Village Ordinance Appendix B, Sections VIII(B)(3)(hh) and VIII(C)(3)(a) at 7017 Milwaukee Avenue, Niles.

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

AYES:	3	DeBartolo, Troiani, Schulter,
NAYS:	3	Nakanishi, Dubiel, Kanelos
ABSTAIN:	1	Karabatsos

There being a tie the motion did not carry.

Chairman Kanelos stated this Board is a recommending Board to the Board of Trustees who can either confirm or negate this decision. It will be necessary for the petitioner to contact Mr. Ostman and ask to be placed on

the Board of Trustees agenda. The petitioner will then be notified of the date. Anyone in the audience who would like to be informed as to the date this will be heard by the Board of Trustees, leave your name and address with the recording secretary.

DISCUSSIONS

1. Continued discussion of staff memo for proposed garage size language for new zoning ordinance

Chairman Kanelos said this Board can either make recommendations for the new zoning ordinance or wait until they see a draft of the ordinance.

Mr. Sylvester wanted to make clear there are two Staff ideas. The first one starts on the first page of the memo. The changes are in red. There is already a drafted new zoning ordinance. The language is everything you see in black. For example, #10 is struck out. That is the language currently in the zoning ordinance. It says there is a 700 sq. ft. limit. It is replaced with the language down below under #11 and #12.

Commissioner Schulter mentioned Mr. Ostman said this rule has already been adopted in other villages and towns.

Mr. Sylvester said the first alternative is Staff gets rid of the hard and fast 700 sq. ft. number and say the limit would be 33% of the rear yard. Let's say the house is set way back on the lot.

Commissioner Schulter said what if it is a corner lot.

Mr. Sylvester said there is a method to determine which is the rear yard whether it's interior or a corner: there is a rear yard. Once the rear yard is determined, only 33% of that rear yard can be covered with accessory structures. If the house is closer to the front, then the rear yard would be bigger and the property owner could have more square footage of accessory structures. The point is the first alternative is to limit the size of accessory structures to a percentage of the rear yard. The second possibility is just take 35% of the whole lot, that is what could be covered with buildings. If there is a huge house, then the garage needs to be smaller. If there is a tiny house, they could have a massive garage, as long as the combination of the two is less than 35% of the entire lot. The second alternative is what other communities in the northern Chicago metro area use.

Chairman Kanelos said a lot of other communities in the northern suburbs have larger lots than Niles.

Mr. Ostman said he looked at comparables. There are some larger lots when you go into Northbrook, etc. But they also have smaller lots.

Chairman Kanelos said he is concerned that both ways restrict people with smaller lots. He feels it is heading in the wrong direction.

Mr. Sylvester said a third alternative would be to pick a number. The current number is 700. You can pick 800 or 1,200.

Commissioner Dubiel said the rule says Niles only wants a 700 sq. ft. garage. What was the original intent of that number.

Mr. Ostman said that goes back to 2001. It started with a property owner who wanted a large structure in the rear yard. Staff thought it was excessive at that time and would not fit within the neighborhood.

Commissioner Dubiel said and here we are fifteen years later. Do you feel differently about that number?

Mr. Ostman said no. There have only been two variations on that 700 sq. ft. One was on an acre lot where the gentleman put up a three car garage. Now they should be able to put up a large accessory structure if they have the land to do it. It would have been done differently if they had building coverage then. But that was a long time ago.

Commissioner Dubiel said the intent is to limit the density on a particular lot. Would it be possible to get a survey to show sample lot sizes throughout the Village. Example would be here's what 35% looks like.

Mr. Ostman said with the GIS data on hand that can be done.

Commissioner Dubiel said the intent of this Board is to encourage development. We used to get a lot of heat about people building too big during the boom of 2008 and 2009.

Mr. Ostman said in the GIS data there is a lot of information to be pulled. He can also find out the current coverage in the Village.

Commissioner Schulter said in his time on the Board he hasn't seen many variance requests for garages. Is there really a problem concerning this?

Mr. Ostman stated only two.

Chairman Kanelos said maybe people don't want to go through the hassle of trying to build a bigger garage and then go somewhere else. A lot has changed the last fifteen or twenty years in homeowner preference and Niles is coming up on the short end. Housing is something they need to address and newer, successful families want more than we have in Niles. People don't want the little 1,000 sq. ft. ranches or bungalows anymore.

Commissioner Karabatsos asked why #10.3 was worded that way.

Mr. Sylvester said detached garages are limited to 15 ft. in height. Period. That should be item F - detached garages shall be included in the calculation to determine building coverage.

Commissioner Nakanishi said under #9.3 accessory structures, it says no permanent accessory structures shall be built over existing public sewer or water lines. Then it goes on to say if an accessory structure is built over etc. How can that be?

Mr. Sylvester said it pertains to new structures. If it is an existing structure, then they try to get easements.

Mr. Ostman said when you get into the townhome area like Chesterfield and Nordica, subdivisions were not done correctly in the past and easements were not included in the plat. The developer just went in there and put in sewer lines. But even though there is no easement, the homeowners have a right to put a shed there. Now this stops that property owner. If there is a utility in the ground, you cannot put up a shed - easement or no easement. This is moving forward. It creates some issues in the townhome areas.

Mr. Sylvester said perhaps all these loose ends could be resolved to the Board's satisfaction and be incorporated into the draft that gets distributed to the [unintelligible] rather than continuing this discussion with the public where there might be a lot of people in the audience.

Commissioner Schulter asked if Staff could email this information.

Commissioner Dubiel said he thinks there is value in getting information on the 35% coverage.

Mr. Sylvester said Staff will put together some examples and email them to this Board. It will be put on the agenda for the next Plan Commission

