



Legislation Details (With Text)

**File #:** 18-528B      **Version:** 1

**Type:** Ordinance      **Status:** Passed

**File created:** 6/22/2018      **In control:** City Council

**On agenda:** 7/17/2018      **Final action:** 7/17/2018

**Title:** 1. Concur with PZC and the Petitioner and pass the ordinance approving a variance from Section 6-2-10:2 of the Naperville Municipal Code to allow an existing pergola to remain in the required corner side yard; or  
 2. Concur with staff and deny the request for a variance from Section 6-2-10:2 of the Naperville Municipal Code to allow an existing pergola to remain in the required corner side yard - PZC 18-1-023

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Ordinance, 2. Exhibit A- Legal Description, 3. Exhibit B- Plat of Survey, 4. Exhibit C- Standards, 5. Application, 6. Depiction of Existing Pergola, 7. Letter to Commissioners, 8. Location Map, 9. Public Comment, 10. 6.20.18 PZC Minutes DRAFT

Date	Ver.	Action By	Action	Result
7/17/2018	1	City Council	approved with conditions	Pass

**CITY COUNCIL AGENDA ITEM**

**ACTION REQUESTED:**

1. Concur with PZC and the Petitioner and pass the ordinance approving a variance from Section 6-2-10:2 of the Naperville Municipal Code to allow an existing pergola to remain in the required corner side yard; or
2. Concur with staff and deny the request for a variance from Section 6-2-10:2 of the Naperville Municipal Code to allow an existing pergola to remain in the required corner side yard - PZC 18-1-023

**DEPARTMENT:** Transportation, Engineering and Development

**SUBMITTED BY:** Gabrielle Mattingly

**BOARD/COMMISSION REVIEW:**

The Planning and Zoning Commission consider this matter June 20, 2018 and voted to recommend approval of the request (approved 5-3). Staff is not in support of the request.

**BACKGROUND:**

The subject property is zoned R1A (Low Density Single-Family Residence District) and is located within the Saddle Creek Unit 2 Subdivision. The 0.25 acre property is currently improved with a single-family residence. The property is bound by Spikehorn Ave to the north and Thatcher Drive to the east. Spikehorn Avenue is the front property line and Thatcher Drive is the corner side property line.

The petitioner, Ginny Colburn, requests approval of a variance to allow an existing pergola to remain

in the required 30' corner side yard. The existing pergola is 10' 10" by 12' 1" (approximately 131 square feet) and 10' tall. The pergola was constructed without a permit. Staff learned about the existence of the pergola through the homeowner who applied for a permit after the construction of the pergola. The homeowner has provided a detailed explanation which can be found in the attachments.

The pergola was built over an existing patio that was reviewed and approved through a permit applied for in 2008 (note: the permit also included the installation of a fence and inground pool at the subject property). While the patio also encroaches into the required corner side yard setback, city records show that the 2008 permit was issued and a final inspection on the patio was approved. Accordingly, staff considers the patio a pre-existing approved condition which does not require a variance to remain in its current location.

**DISCUSSION:**

Per Section 6-2-10:2 (General Zoning Provisions: Accessory Buildings, Structures and Uses of Land), all accessory buildings, structures or uses shall comply with the front and corner side yard requirements of the zoning district in which it is located; in accordance with the R1A district, the required corner side yard setback is 30'. The existing pergola is 10' 10" and is located approximately 19' 2" from the property line adjacent to Thatcher Drive, thereby encroaching slightly less than 11' into the required corner side yard setback.

The petitioner's responses to the Standards for Granting a Variance are included in the Development Petition; staff does not concur with the responses to the standards submitted by the petitioner. Staff's comments with respect to the proposed variance standards, based upon a review of the subject property, applicable Code provisions for the R1A Zoning District and standards for variance requests, are as follows:

*Variance Standard #1: The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan.*

Staff Comments: As noted above, accessory structures are required to comply with the corner side yard setback. The purpose of this regulation is to preserve sight lines and the open nature of the corner side yard. The existing pergola is currently not in compliance with the accessory structure regulations. Staff finds the pergola does not preserve the open nature of the corner side yard and therefore, is not in harmony with the intent of the accessory structure regulations. While the patio is currently in the same location, it was previously approved through a permit and inspection process and, due to its design, does not add any perceived bulk within the corner side yard setback.

*Variance Standard #2: Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district.*

Staff Comments: The subject property is zoned R1A. It is not unique from other properties in the same zoning district and strict enforcement of the accessory structure regulations does not result in a hardship. While the petitioner indicated there are unique features on the lot that do not allow for location of the pergola in compliance with the code, staff does not find the existence of the large pool in the backyard to be a cause for a hardship.

*Variance Standard #3: The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property.*

Staff Comments: The proposed variance for the location of the pergola will alter the essential character of the neighborhood. Upon review, staff did not find structures located in the corner side yards of the adjacent properties. As noted above, the petitioner can locate an accessory structure 5' from the interior and rear property lines and meet the code requirements. If a pergola was constructed in a location that met the City's Zoning Code, the pergola would have the added benefit of being located further from the street.

***Planning & Zoning Commission Action***

The Planning and Zoning Commission considered this matter at their meeting on June 20, 2018. The Planning and Zoning Commission moved to adopt the findings of fact as presented by the petitioner and approve PZC 18-1-23 (approved 5-3). Dissenting votes were cast on the request finding that the corner side yard is intended to remain open and that a hardship cannot be of the petitioner's own making. Staff is not in support of the request.

***Key Takeaways***

- The petitioner requests a variance to permit an existing pergola to remain in the corner side yard at the subject property, 2304 Spikehorn Avenue.
- Staff does not support the requested variance because the pergola is not consistent with the standards for Granting a Variance.

**FISCAL IMPACT:**

N/A