

ORDINANCE 2021 – O -2

**AN ORDINANCE APPROVING A VARIANCE TO LAFAYETTE AND
MELISSA KNOX TO ALLOW CONSTRUCTION OF A RESIDENCE
ENCROACHING OVER THE FRONT YARD ZONING SETBACK LINE
(FILE NO. 01-PZB-21)**

WHEREAS, Lafayette and Melissa Knox are the owners of certain property located within the Village of Winthrop Harbor, commonly known as 212 Cavin Avenue, PIN 04-04-409-011, which property is legally described as set forth on the plat of survey attached as Exhibit A hereto, and which property is hereafter described as the “Subject Property”, and

WHEREAS, Smith Builders, Inc., (“Petitioner”), the contractor and agent for the said owners of the Subject Property has petitioned the Village for approval of a variance from the Village’s Zoning Code seeking relief from the provisions of Section 154.048(B)(1) thereof, which requires a front yard setback of 35 feet in R-2 residential zoning districts, and

WHEREAS, the Combined Planning Commission and Zoning Board (“PZB”) conducted a public hearing, following notification as required by law, on January 12 2021, and

WHEREAS, in his testimony on behalf of the Petitioner, Darren Smith, President of Smith Builders, Inc., described the following facts:

- a) That the original plat of subdivision from the 1920’s showed a 25-foot platted setback line;
- b) That his original building plot plan, submitted with his building permit application showed conformance with the platted setback;
- c) That the original building plot plan was duly rejected by the Building Official since the Zoning Code (adopted in 1964, long after the land was originally platted) requires a 35-foot setback;
- d) That the rejection of the original plot plan was duly and properly communicated to Mr. Smith and his surveyor;
- e) That Mr. Smith erroneously failed to grasp that his original plot plan was rejected, and he instructed his subcontractors and building crews to proceed with construction of the otherwise-permitted residence on the lot using the original plot plan;
- f) That the building project was duly inspected using standard protocols which did not disclose the improper site location of the construction;

- g) That when the request was made for an occupancy permit, the mistaken location of the residence was determined, rendering it impossible for the Building Official to issue this permit without a zoning variance.
- h) That the final measurements on the Subject Property show that the residence is located 26 feet from the property line rather than the 35 or more feet required by the Zoning Code.

WHEREAS, the foregoing testimony was uncontradicted, and

WHEREAS, the only other testimony offered was by a neighbor, Michael Hundall of 1820 3rd Street, Winthrop Harbor and owner of the adjacent vacant lot PIN 04-04-409-010, who stated that he had no objection to the variance request, and

WHEREAS, there is no evidence in the record before the PZB to indicate that the owners of the Subject Property were aware of, or participated in, the non-conforming location of the residence upon their lot, and

WHEREAS, the variance request was examined by the PZB at length, and the consensus of the members was that the construction of the residence in a non-conforming state was inadvertent and was the result of human error, and while there was a lack of evidence of complete compliance with the *LaSalle* factors that would ordinarily and customarily justify the variance requested, the PZB members described the scope of the variance as being comparatively minor in this particular setting due to the character of the neighborhood, the small number of residences affected in this block on this very short street and the lack of any apparent impact on surrounding properties, and therefore, upon a motion duly made and seconded, voted 7-0 in favor of recommending that the variance requested be granted, and

WHEREAS, the Village Board has received the recommendations of the PZB, and has duly deliberated upon the issues and it thereupon makes the following factual findings:

1. The proposed use of the Subject Property will not materially affect any other property, will not impose any hardship to anyone else and will create a comparatively minor non-conforming use, given the character of the neighborhood and surrounding properties.
2. The particular circumstances surrounding the erroneous construction upon the Subject Property would result in a very significant financial hardship upon the owner if the strict letter of the regulations were carried out in that the cost of correcting the error after construction is otherwise complete are obviously quite large, and the comparative benefit to the Village as a whole is not correspondingly significant.

3. That the hardship would also directly flow to the owners of the Subject Property in that they have been so far unable to move into the residence or otherwise use their property, and this inability would continue indefinitely if the variance is not granted.
4. The conditions outlined above create a Special Condition not generally applicable to other property within the same zoning classification.
5. The purpose of the variation is not based exclusively upon a desire to make more money out of the property, but rather to avoid the waste of resources on reconstructing an existing house and causing additional loss and inconvenience to innocent owners.
6. The hardship was created inadvertently by human error on the part of the property owner.
7. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements.
8. The proposed variation will not adversely impact the adequate supply of light and air to adjacent property, increase traffic, endanger public safety or diminish or impair neighborhood property values in the particular circumstances involving the Subject Property and its specific neighborhood.
9. Nothing herein should be considered to grant any other variance from the Zoning Code, and in particular, nothing herein should be considered to stand as a precedent of any kind for the abrogation of the setback rules applicable in residential zoning districts.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WINTHROP HARBOR, ILLINOIS, AS FOLLOWS:

SECTION ONE. The Mayor and Board of Trustees of the Village of Winthrop Harbor hereby find the facts as stated in the preamble hereof are true and correct and said findings are made a part of this Ordinance.

SECTION TWO. The request for a zoning variance is granted, and the existing non-conformity of the location of the constructed residence upon the Petitioner's property is allowed as a legal non-conforming use, provided that any other or further improvements constructed on the subject property shall be constructed in conformity with all applicable Village Codes as may then be in existence.

SECTION THREE. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

YEAS: (6) Hargett, Levin, Marabella, McCarthy, Weiss, Whitmore

NAYS: (0)

ABSENT: (0)

PASSED and APPROVED this 19th day of January, 2021.

Dr. MICHAEL BRUNO, Mayor

ATTEST:

JULIE RITTENHOUSE, Clerk