



MINUTES OF THE REGULAR MEETING OF THE PLAN COMMISSION, VILLAGE OF TINLEY PARK, COOK AND WILL COUNTIES, ILLINOIS

December 1, 2022

The meeting of the Plan Commission, Village of Tinley Park, Illinois, was held in the Council Chambers located in the Village Hall of Tinley Park, 16250 Oak Park Avenue, Tinley Park, IL on December 1, 2022.

CALL TO ORDER –CHAIRMAN GRAY called to order the Regular Meeting of the Plan Commission for December 1, 2022 at 7:00 p.m.

Jarell Blakely, Management Analyst, called the roll.

Present and responding to roll call were the following:

Chairman Garrett Gray
James Gaskill
Terry Hamilton
Andrae Marak
Ken Shaw
Brian Tibbetts
Kurt Truxal

Absent Plan Commissioners: Eduardo Mani
Angela Gatto

Village Officials and Staff: Dan Ritter, Interim Community Development Director
Lori Kosmatka, Associate Planner
Jarell Blakey, Management Analyst

Petitioners: Kate & Andrew Mitchell, Owners of 7800 Joliet Drive North

Members of the Public: Robert Brown, Owner of 7801 Marquette Drive North

COMMUNICATIONS- None

APPROVAL OF THE MINUTES - Minutes of the November 17, 2022 Regular Meeting of the Plan Commission were presented for approval. A motion was made by COMMISSIONER TIBBETTS, seconded by COMMISSIONER TRUXAL to approve the November 17, 2022 minutes as presented. CHAIRMAN GRAY asked for a voice vote; all were in favor. He declared the motion carried.

TO: VILLAGE OF TINLEY PARK PRESIDENT AND BOARD OF TRUSTEES

FROM: VILLAGE OF TINLEY PARK PLAN COMMISSION

SUBJECT: MINUTES OF THE DECEMBER 1, 2022 REGULAR MEETING

**ITEM #1 PUBLIC HEARING –7800 JOLIET DRIVE NORTH, MITCHELL –
CORNER FENCE VARIATION**

Consider recommending that the Village Board grant Kate Mitchell a Variation from Section III.J. (Fence Regulations) of the Zoning Code at the property located at 7800 Joliet Drive North in the R-2 PD (Single Family Residential, Bristol Park PUD) zoning district. This Variation would permit a six-foot (6') high open style fence to encroach up to seventeen feet five inches (17'-5") into the required 30-foot secondary front yard.

Present and responding to roll call were the following:

Chairman Garrett Gray
James Gaskill
Terry Hamilton
Andrae Marak
Ken Shaw
Brian Tibbetts
Kurt Truxal

Absent Plan Commissioners: Eduardo Mani
Angela Gatto

Village Officials and Staff: Dan Ritter, Interim Community Development Director
Lori Kosmatka, Associate Planner
Jarell Blakey, Management Analyst

Petitioners: Kate Mitchell, Owner of 7800 Joliet Drive North
Andrew Mitchell, Owner of 7800 Joliet Drive North

Members of the Public: Robert Brown, Owner of 7801 Marquette Drive North

CHAIRMAN GRAY introduced Item #1. COMMISSIONER GASKILL made a motion to open the public hearing. Second was made by COMMISSIONER TIBBETTS. CHAIRMAN GRAY requested a voice vote. Hearing no opposition, the motion was declared carried.

CHAIRMAN GRAY confirmed that he received certification of public legal notice being posted. He invited staff to present their report.

Lori Kosmatka, Associate Planner, presented the staff report.

CHAIRMAN GRAY asked if the Petitioner had anything to add.

CHAIRMAN GRAY swore in the Petitioner, Kate Mitchell, Owner of 7800 Joliet Drive.

Kate Mitchell stated that there has been an issue over the last six years that they have owned the home with trespassing leading to the desire to have a fence. Originally, it was not planned to have the fence but due to the circumstances they needed to add one.

Kate Mitchell stated the original application put in October 2021 was denied based on the fencing regulations at the time. When contractor was secured, contractor was given denied plans. Fencing contractor placed fence due to the lack of petitioner informing the contractor of the revised plans in place.

Kate Mitchell stated the fencing contractor was approached concerning lack of conformance to zoning regulations. However, at the end of June 2022, a Village code enforcement officer informed Kate Mitchell that the fence was not within regulations. Code Enforcement notified Kate Mitchell that she could apply for a variance that would likely not pass or she could replace the fence within regulation. Kate Mitchell noted that both of those options are not feasible. The replacement of the fence is a financial challenge and not having a fence exacerbates the trespassing issue.

Kate Mitchell clarified that the error was on her part not the contractors because she gave inaccurate plans.

COMMISSIONER GRAY asked the Commissioners if they had any questions or comments, beginning with COMMISSIONER MARAK.

COMMISSIONER MARAK asked when it was amended, if shentended it to be placed on the administratively approved line and would the height need to be adjusted.

Kate Mitchell confirmed that is correct.

COMMISSIONER TRUXAL noted no additional comments and he was in line with the staff report.

COMMISSIONER GASKILL asked if it was all completed in one day.

Andrew Mitchell answered that it was all completed in one day.

COMMISSIONER HAMILTON stated that the end of the fence at the property line meets another non-conforming fence then asked that when the neighboring non-conforming fence needs to be replaced will it need to be replaced by the existing code.

Lori Kosmatka informed the Commissioner that was correct.

COMMISSIONER GASKILL asked was there a fence there previously.

Kate Mitchell stated there was not a fence on the side where there was an issue.

COMMISSIONER GASKILL then asked if she was having a problem with her neighbors to the rear of her property.

Kate Mitchell stated the only fencing that they put in that appears to be the issue is the portion that runs along De Soto Drive.

COMMISSIONER TIBBETTS noted no additional comments.

COMMISSISONER SHAW asked if post hole inspections were done.

Dan Ritter, Interim Community Development Director, informed the Commissioner that we no longer conduct post-hole inspections.

CHAIRMAN GRAY asked the petitioner to expand on the aggressive interaction between the neighbor and fencing contractor.

Kate Mitchell explained that the neighbor to the rear approached the contractor informing the contractor that the fence was not conforming to code.

CHAIRMAN GRAY asks if family was home.

Kate Mitchell commented that her mother and children were at home at that time.

CHAIRMAN GRAY asked the petitioner when did she realize that the fence was not within regulation and when was the Village notified.

Kate Mitchell explained that she did not initially inform the Village due to the fact she did not realize it was not up to code due to the season it was erected and it was aesthetically pleasing.

COMMISSIONER GASKILL asked if the contractor was notified.

Kate Mitchell responded that she did not because she did not immediately notice and does not fault them for the improper erection of the fence.

COMMISSIONER GRAY commented he appreciated her testimony and asked if there was any more comment from the Commission.

COMMISSIONER TIBBETTS asked if there was a physical hardship specifically relating to landscaping, brickwork or architecture.

Kate Mitchell responded that there is a concrete patio and would require pavers to be removed.

COMMISSIONER SHAW clarified that the petitioner could receive administrative approval for 20' from the property line (10' into setback, 5' max open style). He asked what did the issued permit allowed.

Lori Kosmatka clarified that the permit issued was for a 6' fence at the code compliant 30' from the property line.

COMMISSIONER SHAW clarified with the petitioner there was no notification to the contractor.

Kate Mitchell responded that was correct.

COMMISSIONER SHAW stated that if they had informed the installer then there would be no issue. He continued by clarifying that the hardship is the expense involved with the fence not a physical hardship.

Kate Mitchell agreed that the hardship was financial.

COMMISSIONER GASKILL asked if the contractor had a copy of the plan.

CHAIRMAN GRAY clarified that according to Ms. Mitchell she failed to inform the contractor of the revised plans.

COMMISSIONER SHAW stated that a professional fence installer improperly installed a fence.

CHAIRMAN GRAY clarified that he was just explaining the plight of the petitioner.

Dan Ritter informed the Commission that the permit application can be applied for by either the resident or the contractor. He noted that generally contractors will apply for the permit themselves to avoid a situation like this.

COMMISSIONER TIBBETTS asked if the petitioner applied for the permit themselves.

Kate Mitchell responded that they did and that is when they were informed of the need to amend the plans. She noted that she failed to inform the contractor.

CHAIRMAN GRAY asked if the petitioner has anything else to add.

Kate Mitchell thanked the Commission for their time and emphasized that their fence is aesthetically pleasing and accommodating to the neighborhood.

CHAIRMAN GRAY asks if there is public comment.

CHAIRMAN GRAY in Robert Brown, Owner of 7801 Marquette Drive North.

Robert Brown presented information to the Commission noting that he had informed the petitioner several times that the erection of their fence was not legal. Mr. Brown continued to note that a key issue between the two is the lack of access to the drainage easement that exists between the two properties.

CHAIRMAN GRAY asked staff if the plat of survey dated November 2021 was the most updated survey provided.

Lori Kosmatka responded that is the survey they submitted.

CHAIRMAN GRAY asked if the drainage easement is still active.

Dan Ritter informed the chair that it is still an active easement.

CHAIRMAN GRAY stated that the permit states the fence is 5' high and not 6'.

Dan Ritter clarifies that administrative approval is set a 5'.

Robert Brown stated that the issue has been ongoing for over 26 years and he is against the variation.

COMMISSIONER SHAW clarified that Robert Brown is the owner of the property with the legal non-conforming fence. He asked staff if Mr. Brown needed to replace his fence would it need to conform to the current standards.

Lori Kosmatka confirmed that is correct.

COMMISSIONER SHAW asked Robert Brown if he was aware of this regulation.

Robert Brown stated that he was not aware of this because he was granted a variance for that fence.

COMMISSIONER SHAW asked if he was who approached the contractor.

Robert Brown stated that he was and the contractor stated that he got the permit number from the contractor to verify.

Dan Ritter stated that there is no record of the variance for that property that staff knows of.

COMMISSIONER GASKILL commented that the contractors had a copy of the permit before installation.

Dan Ritter clarified they had the permit from the petitioner with the wrong plans.

COMMISSIONER HAMILTON asked what the difference between the fence as it currently stands and the administrative approval specifically regarding access to the easement.

Lori Kosmatka responded that either locations will have a gate that would allow access.

Dan Ritter noted that the easement will be gated in either way. He noted that staff is not opposed to a 6' fence which will give the petitioner the ability to keep the current fence but further setback from its current location.

COMMISSIONER GASKILL asked if the green line in the diagram was the fence as it stands today.

Lori Kosmatka confirmed that it was.

COMMISSIONER MARAK clarified there is no difference between any of the fences in terms of access to the easement.

CHAIRMAN GRAY informed the Commissioner that he was correct. He asked the petitioner if they had adequate access to the easement.

Kate Mitchell confirmed that access is there but there are no utilities in the easement she knows of.

Dan Ritter stated that easements generally go in place and stay there regardless of the use of the easement.

COMMISSIONER HAMILTON stated that he does not see much of a difference between the proposed administrative approval and the fence as it is installed. He continued by stating that he does not feel that the installation was done with malicious intent and the fence is aesthetically pleasing.

CHAIRMAN GRAY requested a motion to close the public hearing. COMMISSIONER SHAW made a motion to close the public hearing. Second by COMMISSIONER TIBBETTS. CHAIRMAN GRAY requested a voice vote hearing no opposition the motion was declared carried.

Lori Kosmatka presented the standards.

COMMISSIONER MARAK stated that the third condition is not applicable to the current situation.

Dan Ritter clarified that the Plan Commission can amend the findings of fact as they see fit.

COMMISSIONER MARAK noted that he does not feel that there is hardship. Then stated that he remembers from the Plan Commissioner training that if a condition does not apply the Commission should move past it.

Dan Ritter responded that the standards are generally in the negative and if someone wanted to vote yes, they would need to vocalize why they meet the standards.

COMMISSIONER TRUXAL asked that if the public hearing is closed can they continue discussion.

Dan Ritter clarified that the Commission can discuss more but there can be no more questions to the petitioner or members of the public once the hearing is closed.

COMMISSIONER SHAW stated that staff has advised that the findings of fact as presented does not support recommending approval. He stated that if they want to approve they will need additional

findings of fact to support recommending approval. He agreed with staff comments on standards on 1 and 2 but agreed with COMMISSIONER MARAK in disagreeing what was written for the third standard. He emphasized that the incorrect installation was due to the Petitioner's action or inaction, and that the hardship is not a result of the property, but rather that the hardship is the expense. If it was installed as permitted, we would not be having this discussion. These are important findings of fact to him that came out of the hearing. He supported Staff's suggestion that the Board consider approving a six foot fence at the administrative variance line.

COMMISSIONER TRUXAL agreed and said it was a good compromise. Though there is potential for damage to the posts as a minor expense, they could otherwise keep the rest of the material.

CHAIRMAN GRAY suggested a straw poll to see who would be open to a new motion that would allow the new motion for a six foot fence at the ten foot encroachment for a variance of a six foot tall fence rather than a five foot tall fence. All Commissioners agreed except COMMISSIONER GASKILL.

COMMISSIONER SHAW clarified that because they have a petition in front of them, they would still have to make a recommendation on what was presented so there is a response to the petition, and then make a new motion.

Dan Ritter responded that is what is recommended by staff. The cleanest way is to vote on what they asked for unless they agree to change it. A second motion could then be brought up.

CHAIRMAN GRAY concurred with COMMISSIONER MARAK as well that Standard 3 doesn't necessarily alter the essential characteristics of the neighborhood. He asked for the first motion what the suggested wording would be for the findings.

Dan Ritter noted that we understood and agreed it could be changed to say it is not going to alter the essential character.

CHAIRMAN GRAY asked for a straw poll on who thought it was not going to alter the essential character. All Commissioners agreed.

Dan Ritter noted that when you make the motion, he recommends they say it as the findings of fact as amended by the Commission, and discussed here at the meeting.

CHAIRMAN GRAY entertained a motion and asked that whomever will read the motion to adjust it to say it is as amended by the Plan Commission.

COMMISSIONER SHAW made a motion to recommend that the Village Board grant a Variation to the Petitioner, Kate Mitchell, from Section III.J. (Fence Regulations) of the Zoning Ordinance, to permit a six-foot high open fence encroaching up to seventeen feet five inches (17'-5") into the required 30 foot secondary front yard, where a fence encroachment is not permitted at 7800 Joliet Drive N in the R-2 (Single-Family Residential) Zoning District, consistent with the Submitted Plans and adopt Findings of Fact as discussed and amended tonight." Second by COMMISSIONER HAMILTON.

Present and Voting in the affirmative:

COMMISSIONER HAMILTON

Present and Voting in the negative:

COMMISSIONER GASKILL
COMMISSIONER MARAK
COMMISSIONER TIBBETTS
COMMISSIONER TRUXAL
COMMISSIONER SHAW
CHAIRMAN GRAY

CHAIRMAN GRAY declared the motion as denied. He entertained a second motion as previously discussed in terms of approving the administrative variance line, but with the variation of a six foot high fence instead of a five foot high fence.

COMMISSIONER SHAW made a motion to recommend that the Village Board grant a Variation to the Petitioner, Kate Mitchell, from Section III.J. (Fence Regulations) of the Zoning Ordinance, to permit a six-foot high open fence encroaching ten into the required 30 foot secondary front yard, where a fence encroachment is not permitted at 7800 Joliet Drive N in the R-2 (Single-Family Residential) Zoning District, consistent with the Submitted Plans and adopted Findings of Fact as discussed and amended this evening. Second by TRUXAL.

Present and Voting in the affirmative:

COMMISSIONER GASKILL
COMMISSIONER MARAK
COMMISSIONER TIBBETTS
COMMISSIONER HAMILTON
COMMISSIONER TRUXAL
COMMISSIONER SHAW
CHAIRMAN GRAY

CHAIRMAN GRAY declared the motion as carried. The item will be going to the Village Board December 20th, 2022. He asked the Petitioner to get with Staff on how to attend. He noted that the Commission is recommending that the fence be moved to the administrative line.

Dan Ritter noted that the December 20th meeting will only be for First Reading.

COMMISSIONER SHAW noted that the Village Board could still vote to approve the first motion.

Dan Ritter responded that yes, and they would need a supermajority and their own findings.

TO: VILLAGE OF TINLEY PARK PRESIDENT AND BOARD OF TRUSTEES

FROM: VILLAGE OF TINLEY PARK PLAN COMMISSION

SUBJECT: MINUTES OF THE DECEMBER 1, 2022 REGULAR MEETING

**ITEM #2 WORKSHOP – MASSAGE ESTABLISHMENTS –
ZONING ORDINANCE TEXT AMENDMENT**

Consider recommending that the Village Board adopt a proposed text amendment to the Tinley Park Zoning Ordinance amending Section II and Section V defining massage establishment uses and designating them as a Special Use within certain zoning districts.

Present and responding to roll call were the following:

Chairman Garrett Gray
James Gaskill
Terry Hamilton
Andrae Marak
Ken Shaw
Brian Tibbetts
Kurt Truxal

Absent Plan Commissioners: Eduardo Mani
Angela Gatto

Village Officials and Staff: Dan Ritter, Interim Community Development Director
Lori Kosmatka, Associate Planner
Jarell Blakey, Management Analyst

Petitioners:

Members of the Public: None

CHAIRMAN GRAY introduced Item #2.

Jarell Blakey, Management Analyst presented the staff report.

CHAIRMAN GRAY asked for comments from the commission.

COMMISSIONER SHAW asked for clarification regarding the special use designation.

Dan Ritter, Interim Community Development Director, clarified that currently it is only allowed in B-1 and B-2 classified as a general service industry.

COMMISSIONER SHAW stated that this is essentially creating a class for the use.

Dan Ritter confirmed that is the case similar to other text amendments that have been proposed in the past.

COMMISSIONER SHAW stated that he appreciates the research that staff has completed and the fact that there are clear exceptions are clear in the definition. He asked how is the 25% established.

Jarell Blakey responded that it would be 25% of the service floor not the entire facility which would be monitored through the change of use application process.

Dan Ritter noted it is Usable Floor Area definition which doesn't include areas like sprinkler or electric rooms. Some areas may be shared. Staff makes the best interpretation. If someone disagrees, there is a whole process to that to come before you to disagree with Staff's interpretation.

CHAIRMAN GRAY asked if the text amendment should add more specificity to the definition to include the usable floor space or service floor designation should be added to avoid vagueness in the future.

Dan Ritter responded yes. It is good to add something that is defined in the Zoning Code.

CHAIRMAN GRAY asked if there were minimum square footage requirements for these uses.

Dan Ritter responded that there are not minimum square footage requirements. He also noted someone would not be able to do this in their house. It is not an allowable home-based use, but someone could take a 400 sq. ft. space in a shopping center such as one room in a Walmart. It could be very small or someone could have 1000 sq. ft. with many rooms. A massage room in a Chiropractor's Office could be an exception.

COMMISSIONER SHAW commented that the reason this is being considered is to avoid any further incidents with inappropriate business activity. This amendment is an attempt to create language to permit legitimate massage businesses to operate, and hones in on the ones otherwise not. He noted the types of businesses that are seeking to act unlawfully will be discouraged with more administrative red-tape and would likely go to another town.

CHAIRMAN GRAY noted that he appreciates that this will dissuade unlawful businesses from occupying spaces in the town.

COMMISSIONER SHAW stated that he appreciated that it makes it difficult for illegitimate businesses but not so complicated that legitimate businesses won't go through the process.

Dan commented this was what was in another community Hoffman Estates. People would come up to the Plan Commission and talk about their history, otherwise if they didn't wish to do that then they'd move on and go somewhere else. It also gives Police a chance to look into any background history setting a point in time as opposed to just business licenses. Our job isn't to prevent massage businesses or be concerned with the distance between them. Rather it's more to see if it is a legitimate business. He has seen this type of regulation work before and believes it is a good option given issues in the past here.

CHAIRMAN GRAY asked what is the recourse for repeat offenders.

Dan Ritter informed the chair that a condition would be added that states the special use permit could be revoked in the event of repeat offenses.

COMMISSIONER SHAW noted that it would not be placed in the code but added in by condition.

COMMISSIONER TIBBETTS stated that if it is conditional, it needs to be difficult to truly discourage unlawful actors.

Dan Ritter responded that in those cases the petitioner will have to come in front of the plan commission to explain the incident.

COMMISSIONER SHAW stated that by adding the process and requirement to be reviewed it would not be an issue if they are willing to come in and testify to the legitimacy of their business.

CHAIRMAN GRAY noted when people violate the village code they generally will back off.

Dan Ritter commented that he feels it is a start and gives the village another mechanism to control the issues. He continued to note that the expansion into the B-1 and B-4 districts can be aided by allowing these businesses in the strained zoning districts.

COMMISSIONER TIBBETTS stated he had no additional comments

COMMISSIONER HAMILTON stated he had no additional comments.

COMMISSIONER GASKILL asked who would perform the background check on these individuals.

Dan Ritter informed the Commissioner that the police department can run full background checks on the ownership and if ownership were to change they would have to come in front of the plan commission.

COMMISSIONER HAMILTON asked if that is due to the special use being permitted to the owner and not the land.

Dan Ritter informed COMMISSIONER HAMILTON that is correct.

COMMISSIONER TIBBETTS asked about name changes.

Dan Ritter stated that name changes are allowed without a change of ownership.

COMMISSIONER TIBBETTS asked what happens if a business tries to change its name after getting caught.

Dan Ritter stated that if it is the same underlying business owners, they would still need to explain the incident.

COMMISSIONER TRUXAL stated he thinks it is a good idea.

COMMISSIONER MARAK commented that the suggested amendment is a balanced regulation that will still encourage legitimate businesses while minimizing non-legitimate businesses.

Dan Ritter stated that this should also help to mitigate any unflattering reputations that exist in the massage industry.

CHAIRMAN GRAY stated that he does not mind the expansion into the B-1 and B-4 zoning districts as long as there is this process. He is OK with the legitimate businesses. Public hearing is scheduled for December 15th.

TO: VILLAGE OF TINLEY PARK PRESIDENT AND BOARD OF TRUSTEES
FROM: VILLAGE OF TINLEY PARK PLAN COMMISSION
SUBJECT: MINUTES OF THE NOVEMBER 17, 2022 REGULAR MEETING
ITEM #3 WORKSHOP/PUBLIC HEARING – GAS N WASH, 18301 LAGRANGE RD – SPECIAL USE, FINAL PLAT, VARIATIONS, AND SITE PLAN/ ARCHITECTURAL APPROVAL

Consider recommending that the Village Board grant Leonard McEnery on behalf of Gas N Wash a Special Use for a Automobile Service Station and Variations (Urban Design Overlay, Parking Minimum, Parking Locations, Wall/Ground Signs, etc.) to permit an gas station with a convenience store, car wash, and two drive-thru restaurant uses at the property located at 18301 LaGrange Road (SEC LaGrange Rd and 183rd St) in the B-3 (General Business and Commercial) zoning district.

***Requested to continue to 12/15/2022 meeting.*

Present and responding to roll call were the following:

Chairman Garrett Gray
James Gaskill
Eduardo Mani
Ken Shaw
Brian Tibbetts
Kurt Truxal

Absent Plan Commissioners: Eduardo Mani
Angela Gatto

Village Officials and Staff: Dan Ritter, Interim Community Development Director
Lori Kosmatka, Associate Planner
Jarell Blakey, Management Analyst

Petitioners:

Members of the Public:

CHAIRMAN GRAY introduced Item #3 then entertained a motion to continue this item.

COMMISSIONER GASKILL made a motion to continue the Workshop and Public Hearing for Item #3 to the December 15, 2022 Plan Commission Meeting. Second by COMMISSIONER TRUXAL. CHAIRMAN GRAY requested a voice vote. Hearing no opposition, the motion was declared carried.

Good of the Order

Dan Ritter, Interim Community Development Director, presented the following:

- Dunkin Donuts on 171st is close to being opened.
- Crumbl Cookies is close to opening.
- Smoothie King is waiting on utilities.
- Starbucks on 171st and Harlem is open
- Amazon Fresh should be opening within the next week.
- Pete's Fresh Market is beginning sitework. They will be coming back in front of the plan commission to change their site plan.
- Ascend has obtained permits and work will beginning soon.

COMMISSIONER SHAW requested that the Commission revisit the fencing regulations within the Village.

Receive Comments from the Public

- None

COMMISSIONER GASKILL made a motion to adjourn the Meeting. Second by COMMISSIONER SHAW. CHAIRMAN GRAY requested a voice. Hearing no opposition, he declared the Meeting Adjourned at 9:03pm.

PLAN COMMISSION STAFF REPORT

December 1, 2022 –Public Hearing

Mitchell – Corner Lot Fence Setback Variation

7800 Joliet Drive

Petitioner

Kate & Andrew Mitchell

Property Location

7800 Joliet Drive

PIN

27-36-105-016-0000

Zoning

R-2 PD (Bristol Park PUD)

Approvals Sought

Variation



EXECUTIVE SUMMARY

The Petitioner, Kate Mitchell, is seeking a Variation from Section III.J. (Fence Regulations) of the Zoning Ordinance to permit a six-foot-high, open-style fence encroaching up to 17'-5" into the required 30-foot secondary front yard, where a fence encroachment is not permitted at 7800 Joliet Drive. The Petitioner has already installed the fence at the requested location and is looking to resolve the zoning violation. A permit had been issued and the approved plans were compliant but the fence was installed at the incorrect location, which was identified upon inspection.

The Petitioner has requested the fence setback Variation to protect the property from damage due to previously alleged trespassing on the property. The Petitioner installed the fence to align with the neighbor's existing nonconforming fence, and had it run at jogging angles along mature landscaping.

Secondary front yard fences are required to be located at the building setback line of 30 feet in the R-2 zoning district. The Petitioner could comply by code to have the six-foot high open-style fence at the 30-foot Required Setback Line of the secondary front yard. Also, five-foot open style fences may, with administrative approval, encroach up to ten feet in the Required Setback Line of the secondary front yard. If the Variation request is denied, the Petitioner would be required to remove or relocate the installed fence or be subject to code violation citations and fines.

Project Planner

Lori Kosmatka
Associate Planner

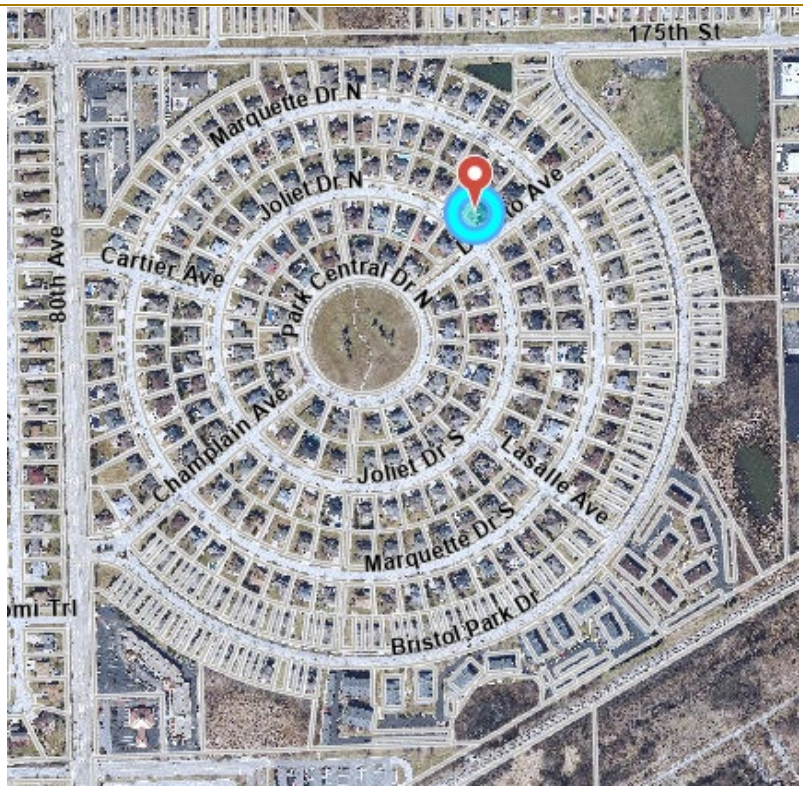
EXISTING SITE & HISTORY

The subject property is a corner lot, located on the north corner of Joliet Drive N and Desoto Avenue in the Bristol Park Planned Unit Development (PUD). The subdivision as part of the PUD was annexed into the Village in 1990. The development contains concentric rings of single-family residential with commercial, townhomes, and multi-family on the surrounding exterior areas.

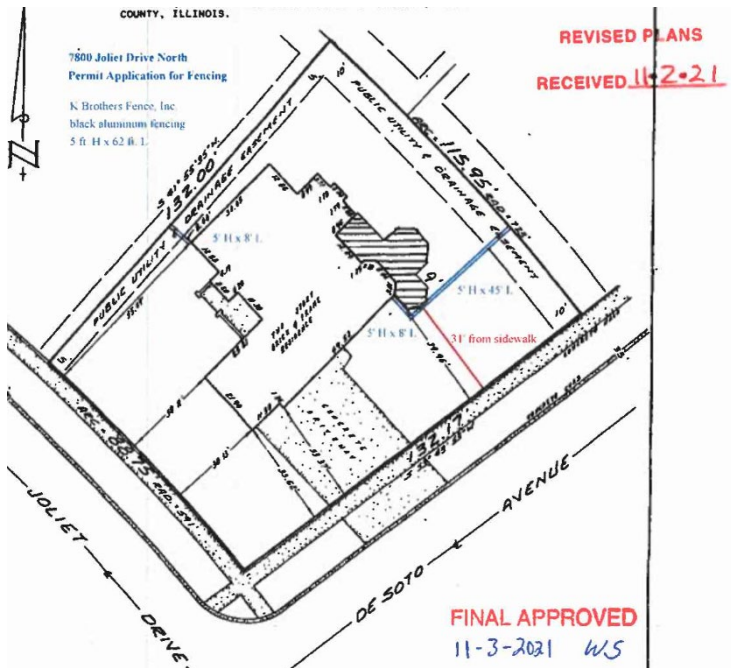
The lot has 88.75' of primary frontage on Joliet Drive, with the rear property line parallel to Joliet Drive being 115.95 feet. There is 132.17 feet secondary frontage on Desoto Avenue with the parallel rear property line being 132.00 feet. When averaging the property lines per the plat of survey, the property is approximately 13,519 sq. ft. Approximate parcel area is 12,550 sq. ft. The side of the house along the secondary front yard is situated along Desoto Avenue at a slight angle, where it is 39.96 feet from the property line at its northeastern corner and 33.62 feet from its southeastern corner.

The Petitioner recently installed the requested fence at the northeastern corner of the house. The Petitioner states there were issues with trespassing on the subject property, and the Petitioner installed a fence to protect the property from damage. The homeowner's initial submittal for the fence permit application depicted a proposed fence 20 feet from the sidewalk within the 30-foot secondary front yard. The Village notified the Petitioner that the proposal did not meet fence code regulations and the homeowner revised the proposal to depict the proposed fence 31 feet from the sidewalk. The revised proposal thus met fence code regulations and the fence permit was issued (approved November 3, 2021).

The Petitioner worked with a fence contractor to install the fence. Upon inspection, it was discovered that the fence was not installed in the approved code compliant location, but rather within the secondary front yard at jogging angles with varied distance from the property line (see photos and plat below). The Village provided a deadline for the Petitioner to either decide to move the fence to the permitted location or request relief through a Variation if they believed there was a unique hardship. The Petitioner is aware that if the Variation is denied they will need to comply with the code requirements. Staff has recommended that they have a plan in place prior to the decision to avoid code enforcement action.



Aerials of Property (location of parcel lines is approximate)



Previously Approved Fence Permit 11/3/21, Code Compliant



Installed fence, Noncompliant; 12'-7" to property line, angled jogging



Left: Fence and landscaping in relation to sidewalk. Right: Fence with angled jogging to meet existing neighbor's fence

ZONING & NEARBY LAND USES

The subject property is a corner lot within the R-2 Zoning District and part of the Bristol Park PUD. Surrounding nearby residences are also part of the PUD and have the same underlying zoning district. Beyond the concentric rings of single-family detached residential, the PUD's zoning contains R-5, R-6, B-1, and B-4 zoning districts. The Zoning Ordinance requires primary and secondary yard setbacks of 30 feet each within the R-2 zoning district.

The lot of approximately 13,519 sq. ft. is below the required minimum corner lot size of 16,250 sq. ft. per the Zoning Ordinance, however, the property was developed as part of the PUD's specifications and is not unique from surrounding properties. Available square footage parcel areas from the Village's GIS map are only roughly approximate, but the subject property's 12,550sq. ft. is comparable to surrounding corner properties (12,443 sq. ft. at 7801 Marquette Dr., 13,090 sq. ft. at 7801 Joliet Dr., 12,584 sq. ft. at 7700 Marquette Dr.; 12752 sq. ft. at 7701 Joliet Dr.; 11,422 sq. ft. at 7700 Joliet Dr.)

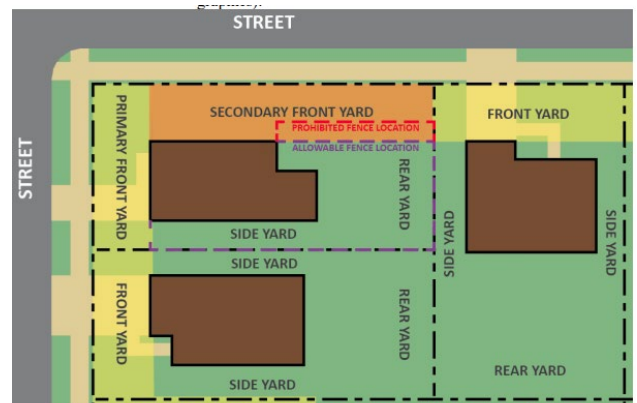
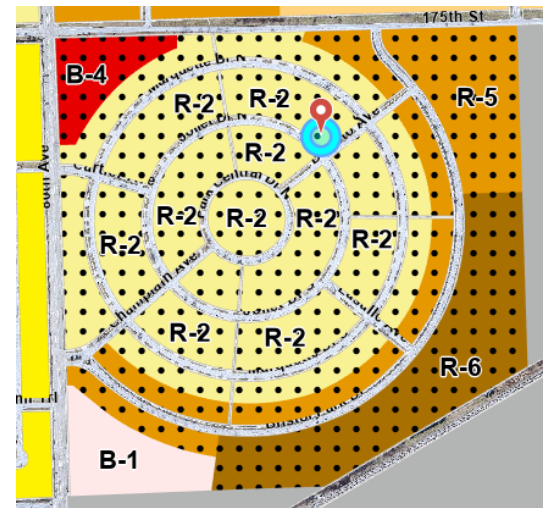
The majority of corner properties in the Bristol Park neighborhood have an essential character where fences are generally not located in the front yards. Some such as 7700 Marquette Dr. S comply by aligning with the side of the house's façade along the secondary front yard. Village records indicate only one previous fence variation in the Bristol Park PUD at 7800 Marquette Dr. N. Other fences in neighborhood include the adjacent north neighbor at 7801 Marquette Dr. N and a few other Bristol Park locations observed including 7877 Marquette Dr. S and 7948 Joliet Dr. N. Aside from the one property with the variation, those properties with non-conforming fences will need to come into conformance when they are eventually replaced.

Current Fence Regulations

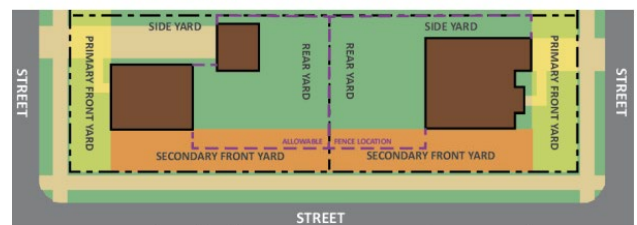
After months of discussion between the Zoning Board of Appeals, Plan Commission, and Community Development Committee, the Village Board adopted an ordinance in January 2018, amending the fence regulations for fences within a secondary front yard. The amendment provided clarification to the Code. Previously, the Code was not uniformly enforced, created aesthetic issues in streetscapes, and resulted in many non-conforming fences. It was known when adopting these newer regulations that many existing fences would become legal non-conforming and would be required to come into conformance with the current codes when replacement is necessary.

Section III.J. "Fence Regulations" states that for corner lots, fences are only permitted at or behind the Required Setback Line in the primary front yard and secondary front yard, though, per Section III.J.3.a. (*Administrative Approvals of Secondary Front Yard*), administrative approvals may be granted

for fences in secondary front yards when they are open style fences with a maximum of five feet (5') in height could encroach up to 10 feet into the Required Setback Line in the secondary front yard in the R-1 Zoning District. This administrative approval option requires that the fence must not obstruct sight lines and cannot abut a neighboring primary front yard. The subject property appears to not have sight line obstruction issues nor abuts a primary front yard, however, the installed fence is located beyond the allowable 10 feet encroachment and it exceeds the maximum five foot allowable height for this administrative approval.



Graphic: Prohibited Fence Location in Secondary Front Yard



Graphic: Allowable Fence Location in Secondary Front Yard

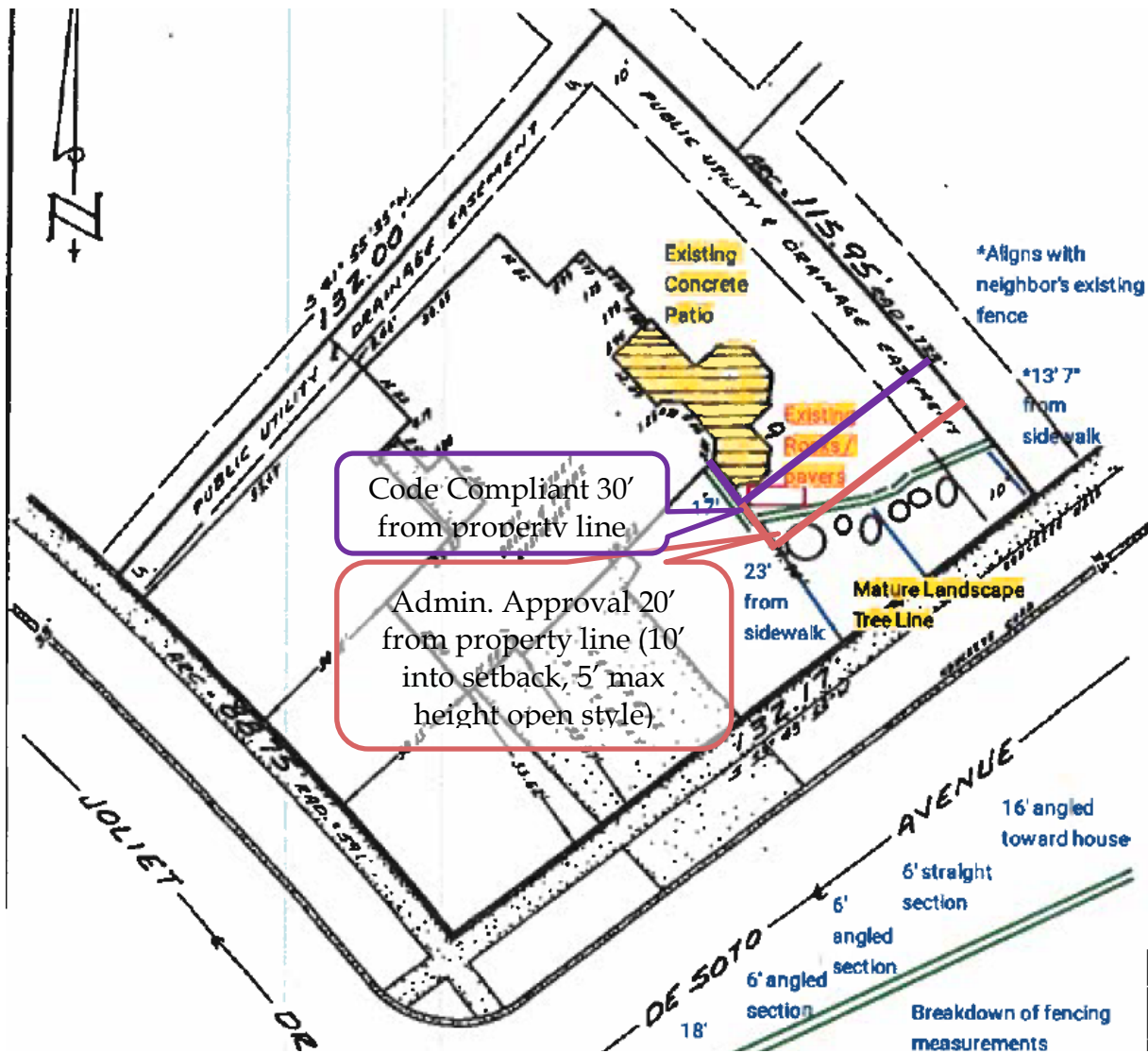
Graphic per Section III.J.3.a.1

VARIATION REQUEST

The Petitioner requests the variation to allow the recently installed fencing at the existing location. The fence is a six-foot (6') high, open-style fence which the Petitioner states at its closest (greatest encroachment) is 13'-7" from the sidewalk, thus 12'-7" from the property line, (as the property line is offset one foot from the sidewalk) and encroaching up to 17'-5" into the Required Setback Line of the 30-foot secondary front yard. The fence has a varied distance from the property line due to its angled jogging which the Petitioner notes at its furthest (least encroachment) is 23 feet from the sidewalk. The Petitioner shows the fence run, in green, dimensions in blue, and circle/ellipses as mature landscaping. The Petitioner has marked up the plat of survey, providing dimensions from the sidewalk rather than the property line. Variation requests must be calculated from the property line. The Petitioner installed the fence to align with the neighbor's existing nonconforming fence, and had it run at jogging angles along mature landscaping. The Petitioner's narrative provides additional detail and photographs.

The Petitioner can conform with the Village's fence code regulations aside from having no fence. The Petitioner can outright comply with the code requirements, as previously permitted, by having the fence (up to six feet tall, either open or privacy style permitted) relocated so it is at least 30 feet from the property line (*purple solid line on the plat below*). Alternatively, the Petitioner could be allowed an administrative approval to install an open-style fence up to five feet in height to encroach up to ten feet into the setback thus locating 20 feet from the property line (*pink solid line on the plat below*), however this is one foot shorter than the installed fencing. Since the northeastern corner of the home is 39.96' from the property line, nearly ten feet greater than the 30' secondary front yard minimum, these options would still allow for some enclosure of land beyond the face of the house along Desoto Avenue.

Staff is concerned about setting a precedent for future variation requests if there is no clear physical hardship or uniqueness of property identified. Hardships for a Variation must be related to the physical characteristics of the property and cannot be created by the owner (or previous owners) of the property. If the Variation is granted, if the north neighbor eventually wishes to replace their fence, that neighbor will need to meet the code, which would cause a gap in the fencing. The majority of corner properties in the Bristol Park neighborhood have fences that are generally not located in the front yards. A few corner properties in the neighborhood have fences, and most of which appear to conform to the code. For the few fences that don't comply, they will need to come into compliance upon their replacement.



Marked Up Plat of Survey by Applicant (in green) and conforming options by Staff (in purple and pink)

STANDARDS FOR A VARIATION

Section X.G.4. of the Zoning Ordinance states the Plan Commission shall not recommend a Variation of the regulations of the Zoning Ordinance unless it shall have made Findings of Fact, based upon the evidence presented for each of the Standards for Variations listed below. The Plan Commission must provide findings for the first three standards; the remaining standards are provided to help the Plan Commission further analyze the request. Staff has drafted Findings of Fact which do not support recommending approval of the Variation as presented. If the Plan Commission would like to recommend this Variation for approval, these Findings of Fact will need to be amended.

1. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in the district in which it is located.
 - ***The subject parcel can still yield a reasonable return under the conditions of the district it is located. The Petitioner has options to comply with code, including locating the fence outside of the front yard, or seeking administrative approval for a five-foot-tall fence encroaching ten feet. None of these compliant options limits the owner's ability to yield a reasonable return on their property.***
2. The plight of the owner is due to unique circumstances.
 - ***The subject property does not present a clear, physical hardship related to the property. The Petitioner could have a fence outside of the secondary front yard.***
3. The Variation, if granted, will not alter the essential character of the locality.
 - ***The Variation, if granted, will alter the essential character of the locality. The majority of corner properties in the Bristol Park neighborhood have an essential character where fences are generally not located in the front yards. Few corner properties in the neighborhood have fences, and most of which appear to conform to the code. Properties with non-conforming fences that do not have a variation will need to come into conformance when they are eventually replaced.***
4. Additionally, the Plan Commission shall also, in making its determination whether there are practical difficulties or particular hardships, take into consideration the extent to which the following facts favorable to the Petitioner have been established by the evidence:
 - a. The particular physical surroundings, shape, or topographical condition of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
 - b. The conditions upon which the petition for a Variation is based would not be applicable, generally, to other property within the same zoning classification;
 - c. The purpose of the Variation is not based exclusively upon a desire to make more money out of the property;
 - d. The alleged difficulty or hardship has not been created by the owner of the property, or by a previous owner;
 - e. The granting of the Variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located; and
 - f. The proposed Variation will not impair an adequate supply of light and air to an adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

MOTION TO CONSIDER

If the Plan Commission wishes to act on the Petitioner's request, the appropriate wording of the motion is listed below. The protocol for the writing of a motion is to write it in the affirmative so that a positive or negative recommendation correlates to the Petitioner's proposal. By making a motion, it does not indicate a specific recommendation in support or against the plan. The Commission may choose to modify, add, or delete from the recommended motions and any recommended conditions.

"...make a motion to recommend that the Village Board grant a Variation to the Petitioner, Kate Mitchell, from Section III.J. (Fence Regulations) of the Zoning Ordinance, to permit a six-foot high open fence encroaching up to seventeen feet five inches (17'-5") into the required 30 foot secondary front yard, where a fence encroachment is not permitted at 7800 Joliet Drive N in the R-2 (Single-Family Residential) Zoning District, consistent with the Submitted Plans and adopt Findings of Fact as proposed in the December 1, 2022 Staff Report."

LIST OF REVIEWED PLANS

Submitted Sheet Name		Prepared By	Date On Sheet
	Application (Redacted)	Applicant	10/19/22
	Response to Standards for Variation	Applicant	Rec'd 10/19/22
	Applicant Narrative and Photos	Applicant	Rec'd 11/22/22
	Plat of Survey (Marked by Applicant)	Applicant	Rec'd 10/19/22

PLAN COMMISSION STAFF REPORT

December 1, 2022 – Workshop

Zoning Text Amendment – Massage Establishments

Petitioner

Village of Tinley Park

Zoning Code Sections

Section II (Rules and Definitions) and Section V (District Regulations)

Approvals Sought

Text Amendment

Project Manager

Jarell Blakey
Management Analyst



EXECUTIVE SUMMARY

The Village of Tinley Park Zoning Ordinance currently regulates massage use establishments as part of Personal Service Establishments zoning use classification. The municipal code mentions a specific definition for purposes of business licensing however, there is no specific definition in the zoning code. Due to recent violations of the municipal code by multiple business, there is a need to create a separate definition and use allowances for massage-related businesses.

The proposed text amendment is specific to massage establishments which are service-based businesses by nature but focus on massages as the primary function. The proposed amendment will define what a massage is, what constitutes a massage establishment, what a massage therapist is, who is defined as a patron, and exceptions. In addition to providing definitions, the ordinance will modify the current zoning regulations to require a Special Use Permit for massage establishments in certain districts to ensure they have proper licensing, a clear businesses model, and can comply with all other municipal and state regulations. Currently, under the Personal Services Establish zoning use classification, the use is permitted in the B-2 (Community Shopping) and B-3 (General Business & Commercial) Zoning Districts. Direction is needed to understand if any other districts would be appropriate to locate in with a Special Use permit.

Staff is proposing the text amendment to the zoning ordinance to allow the village greater oversight of these establishments. Staff's intent is to mitigate further violations of the Village Code of Ordinances by requiring the applicant to be subject to the Special Use approval process.

EXISTING DEFINITION AND REGULATION

Currently, massage use establishments are not specifically defined within the zoning ordinance. As it is currently written, these uses are considered to be part of Personal Service Establishments, which are permitted only in the B-2 (Community Shopping) and B-3 (General Business and Commercial) Zoning Districts. In addition to massage, similar service uses without specific definitions would fall into this category. Barbershops, beauty parlors, salons, and day spas are considered a separate, more permissive category additionally permitted in the B-1 (Neighborhood Shopping) and B-4 (Office and Service Business) Zoning Districts. The Plan Commission and Village Board may consider if it is appropriate to include a Special Use in the B-1 and B-4 Zoning Districts.

PERSONAL SERVICES	R-1 thru R-7	B-1	B-2	B-3	B-4	B-5	ORI	M-1	MU-1
Service establishments, personal – which services are performed on the premises	X	X	P	P	X	X	X	X	X
Barbershops, Beauty Parlors, and Day Spas	X	P	P	P	P	X	X	X	X

The Zoning Ordinance describes the intents of the Village's Zoning Districts. The B-2 (Community Shopping) Zoning District as "intended to provide for a wide variety of related retail-type businesses along with personal uses and other complementary uses", not only serving nearby residents, but also neighboring communities. The B-3 (General Business & Commercial) Zoning District is "designed to accommodate a wide range of specialized commercial uses. intended to include those uses which would not be compatible in a neighborhood or community-type shopping center".

Comparatively, the B-1 (Neighborhood Shopping) Zoning District and B-4 (Office & Service Business) allow for less intense commercial use. The B-1 district is "intended to provide areas for retail and service establishments to supply convenience goods or personal services for the daily needs of the residents living in adjacent residential neighborhoods". Neighborhood centers in these districts are among the hardest hit with vacancy due to a downturn in traditional retail, they also have some of the most restrictive use allowances due to location near residential. These are typically located in residential areas and have lower traffic volumes that lead to additional difficulties in leasing. A massage use that complies with all laws and ordinances would not create any external negative affects like noise, parking, odors, etc. and could be a good fit in these districts.

The B-4 district is "intended to provide areas used primarily to provide office space for service-type businesses . . . as a buffer or transition between residential and commercial areas". Similarly, to B-1, these office districts suffer from higher vacancy than the traditional business zoning districts and have been designed for service uses like massage.

Open Item #1: Discuss allowing massage uses to apply for a Special Use Permit in B-1 and B-4 zoning districts where they are currently prohibited.

PROPOSED NEW DEFINITION AND REGULATION

Staff has proposed the following definitions based on research from comparable communities. The proposed definitions will be located in Section II "Rules and Definitions" Subjection B "Definitions"

MASSAGE: Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external soft parts of the body with hands or with aid of any mechanical electrical apparatus or appliances, with or without rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations used in this practice, under such circumstances that it is reasonably expected that the person to whom treatment is provided, or some third-party on such person's behalf, will pay money or give other consideration or any gratuity therefore.

MASSAGE ESTABLISHMENT: A corporation, partnership, limited liability company (LLC), or business having a source of income or compensation derived from the practice of massage as defined above, and which has affixed place of business where any person, firm, association or corporation engages in or carries on any of the activities described above as twenty-five (25) percent or more of the primary function of the business, and is not owned by licensed massage therapist as defined by the laws of the State of Illinois. For purposes of corporations, partnerships, and limited liability company, an owner is defined as any person or other legal entity who owns fifty (50) percent of the corporation, partnership or limited liability company.

EXCEPTIONS:

- Hospitals, nursing homes, specialty physicians, or similar uses
- Any barber, cosmetologist, esthetician or nail technician lawfully carrying on their respective businesses to the extent authorized under a valid unrevoked license or certificate of registration issued by the State of Illinois. Provided, this exemption is only intended to permit normal and customary barbering, cosmetology, esthetic and nail technology services which involve incidental physical contact, such as scalp rubs, facials, and hand manipulations which otherwise qualify as massage activities. This exemption is not intended, and does not permit, general massage activities as part of any barber, cosmetologist, esthetician or nail technician business beyond that authorized by their state license or certification.
- Any athletic trainer registered in the State of Illinois who administers such athletic-related massage in the normal course of training duties.
- Having less than twenty-five (25) percent of business square footage for massage use.

The proposed changes would be housed in the following area; Section V "District Regulations" Subsection B "Schedules of Regulations, Schedule I – Schedule of Permitted Uses (By Use Type)"

PERSONAL SERVICES	R-1 thru R-7	B-1	B-2	B-3	B-4	B-5	ORI	M-1	MU-1
<u>Massage Establishment</u>	<u>X</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

RECOMMENDATION

Upon completion of a successful Plan Commission Workshop, proceed to a Public Hearing scheduled for December 15, 2022, at the regular Plan Commission meeting.



Village of Tinley Park

Memo

Date: December 1, 2022

To: Plan Commission

From: Daniel Ritter, AICP
Interim Community Development Director

Subject: Continuation of Item 3 - Gas N Wash

Item 3 on the meeting agenda for a workshop/public hearing for Gas N Wash at 18301 LaGrange Road has been requested for a continuation by the Petitioner. They continue to work through coordinating final staff review comments and update plans. Continuation is requested to the December 15, 2022 Plan Commission meeting.