

Present: Chairperson Verdi-Hus; Vice-Chairperson Kamp; Members: Dery, Fahlen, Freedman, Pagnucco, Parks and Pfeifer

Absent: Clark

Also Present: Village Building Official, Byrwa
Alternate Council Liaison, Stearn
Council member, Walsh

Chairperson Verdi-Hus presided and called the meeting to order at 7:30 p.m. in the Village Municipal building at 18500 W. Thirteen Mile Road.

APPROVAL OF MINUTES

On page 4, the last paragraph should be amended to read: "Kamp suggested that the Village Council consider amending the Ordinance so that petitioners like Vic's Market would not have to appear every year before the ZBA to request outdoor displays."

MOTION by Kamp, supported by Pfeifer, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, April 12, 1999 be approved as amended.

Motion passes unanimously.

CASE NO. 963

Petitioner and Property: Brian T. Cook
19218 Warwick
Lots 2613 and 2614 of Beverly Hills Subdivision #7
TH24-02-178-011

Petition: Petitioner requests an interpretation of how the language applies to an aluminum picket fence with spears. Fence Ordinance, Section 22.08.150 A. (2) Materials (in part): the use of "**protruding spikes or nails**".

The petitioner Brian Cook and his wife Jennifer recently made improvements to the landscaping around their house and would like to install a fence in their back yard to enclose a dog and also for aesthetic reasons. They received an estimate from Michigan Fence Company to install an aluminum picket fence. A brochure with picture of the proposed fence was submitted to the Board. The top of the fence is stamped in a spear shape which is rounded off on the ends. It is the most common fence that this fence company makes. There are number of these types of fences existing in Beverly Hills.

Cook contacted the building department regarding a fence permit. Because the Materials paragraph of the Fence Ordinance prohibits the use of protruding spikes or nails, Cook is asking for an interpretation as to whether the proposed fence is considered to have protruding spikes. He noted that the ordinance language places nails and spikes in the same category.

The petitioner stated that he contacted his insurance company relative to whether there were any risks associated with this type of fence or any exclusions on his homeowner's policy because of this type of fence. There were none.

Fahlen referred to similar fencing installed at the corner of Lincoln and Southfield Roads. There is a round ball on the top of the spears on that fence. Jennifer Cook stated the fence proposed has a larger point which is rounded at the top. The fence company makes another style of fence with a flat horizontal bar across the top. The petitioner views this fence as looking more obtrusive.

Byrwa stated that he did not issue a fence permit because he perceives the proposed fence as having protruding spikes. He discussed several options with the homeowners including fencing with a ball at the top of the spike. The petitioner requests interpretation of the ordinance with respect to the fence being proposed.

Verdi-Hus concurs that the proposed fencing has protruding spikes and might be a potential problem.

Parks stated that the section of the Fence Ordinance in question addresses materials and concerns things that can be put in a fence or on a fence to prohibit people from touching or coming over the fence. It says, "The use of razor wire, protruding spikes or nails, or elements that carry electricity are not permitted." Parks does not think it is the intent of the Ordinance to prohibit the type of fence proposed. From an aesthetic standpoint, the proposed fence is more attractive than a cyclone fence. It is Park's view that, if the proposed fence style is interpreted as having a protruding spike, the top of a cyclone fence where the metal comes together would be included in that definition.

Freedman believes that the intent of the Fence Ordinance is to prohibit erecting a fence in Beverly Hills that would injure someone if they were to climb the fence. She thinks it is a beautiful fence and is less obtrusive without a bar across the top. However, that bar keeps the fence from having protruding spears. She suggested a fence with stylistic balls instead of a point at the end of the spear.

Brian Cook maintains that all chain link fences in the Village are in violation of the ordinance if the interpretation is that anything that protrudes beyond the horizontal top part of a fence is a spike or a spear. Jennifer Cook related that the top of the fence does not have a sharp point. It is a rounded flat point. She does not think it can be construed as a spike that would cause injury to touch nor would she want anything in her yard that would hurt someone.

Kamp stated that a responsibility of this Board is to interpret the Ordinance consistent with applicable rules. Anyone aggrieved by the decision of the Zoning Board of Appeals is free to appeal through the Circuit Court. While the rules that would apply to the Court may not entirely apply to the ZBA, they provide this body with some guidance.

One rule that the Circuit Court will be guided by is generally construing the statute according to its plain and ordinary meaning. The Ordinance talks about materials and mentions three particular elements: razor wire, protruding spikes or nails, and an element to carry electricity. Kamp is not aware of any debate about this particular amendment to the ordinance that would lead him to conclude that this ordinance directs the ZBA to exclude fences that have points on them. There are existing wrought iron fences throughout the Village that have protrusions on top of them that are pointed.

Kamp thinks this language is directed towards an additional element like a razor or a spike or nail or some other element in addition to an otherwise pointed fence that would be prohibited. As the Ordinance is written, it combines spikes and nails suggesting a spike in the sense that it is a nail intended to be prohibited, not simply a point.

It is not up to the Zoning Board of Appeals to determine the policy in the Ordinance or whether it thinks it is a good idea that a fence should have a point on it. It is Kamp's view that the Ordinance is written in a way that it segregates individual elements, types of objects as a group, which suggests that it is not a pointed fence that is intended to be prohibited but some kind of element at the fence like razor wire or a nail. Considering the fact that there are wrought iron fences that have points on the top with various treatments throughout Beverly Hills, it appears that this Ordinance as amended was not intended to deal with that.

Kamp does not think the Village Council wanted the Zoning Board to substitute its judgment on what might constitute a hazard when it came to the design element of a fence. The Ordinance provides guidance in looking at elements that might be additions other than a design element. It is Kamp's opinion that a fence of the type shown in the pictures submitted would not be barred under that portion of the Fence Ordinance.

Byrwa remarked that a picket fence approved recently by the ZBA in the front yard of a home at Pierce and 13 Mile Road has balls on top of each spear. There are designs which make a picket fence safe and provide a similar look without having exposed metal objects that come to less than a 45 degree angle at the top.

Parks does not think this Board is charged with making policy decisions about whether or not a fence is dangerous. It can discuss the material than can or cannot be used. Parks thinks it is clear that the Ordinance is prohibiting people from putting things in their fences or on the top of their fences to keep people from coming over them. This body should not be in the position of questioning every finial on every fence that is made out of metal. Parks contends that the proposed fence does not have a protruding spike or nail.

Verdi-Hus commented that the Fence Ordinance which was probably adopted in the 1950s was updated in December of 1998. She remarked that the type of fence proposed was not in general use for homeowners until recently. Verdi-Hus believes that the original ordinance was intended to protect people who might be climbing over a fence from getting injured.

Jennifer Cook stated that wrought iron fences with the same design have been used for years. She mentioned that a neighbor has had a fence of this type for about 20 years. Brian Cook added that the fences in the brochure submitted to the Board are the type of aesthetically pleasing fences that he would like to see in the community as opposed to chain link fences.

Verdi-Hus maintains that there are amendments that can made to the design such as the bar across the top which still looks attractive yet does not present a hazard.

Kamp restated his view that the Ordinance does not prohibit a fence with a point on it. It excludes a fence to which something has been added such as razor wire or protruding nails or spikes.

Pfeifer does not think the term "spear" as it appears in the Ordinance applies to the fence design shown in the brochure. It is clear to him that the Ordinance is talking about safety and making sure that fences are maintained so that no nail is coming loose or no spikes are sticking out so as to injure people. Pfeifer does not think it has anything to do with the design concept of the type of fence the Board is considering tonight. He sees nothing wrong with the fence being proposed.

Decision: MOTION by Kamp, supported by Pfeifer, that the Zoning Board of Appeals adopt the interpretation of Section 22.08.150 A.(2) of the Zoning Ordinance as applied to the case before it that the term "protruding spikes or nails" does not bar the use of a fence with the design elements as presented in this case.

Roll Call Vote:

Dery	- yes
Fahlen	- yes
Freedman	- yes
Kamp	- yes
Pagnucco	- yes
Parks	- yes
Pfeifer	- yes
Verdi-Hus	- no

Motion passes (7 - 1).

CASE NO. 958

Petitioner and Property: Lawrence J. Nagle
18540 Hillcrest
Part of Lot 1841, all of Lot 1842
Beverly Hills Subdivision #4, TH24-02-228-003

Petition: Petitioner requests a side yard deviation from the required 15' minimum side yard open space to 8' for a one story rear addition.

The petitioner and homeowner Larry Nagle is proposing to build an addition to the back of his home which will extend the family room and kitchen and add a mud room, half bath, and storage area behind the garage. The corner of the existing house is closer to the property line than the required 15

feet. Nagle is asking for a variance from the side yard open space requirement to construct the addition 8 feet from the property line.

Freedman questioned why the proposed addition extends beyond the line of the house on the side closer to the neighbor's home when there is much more open space on the other side of the petitioner's house.

Nagle responded that he proposes to add more storage area behind his garage and a mud room. He plans to build another addition on the right side of the house in the future.

Parks observed that the house was not constructed in the middle of the lot which presents a difficulty with building an addition due to the placement of the house on the lot.

Todd Stearn of 15690 Kirkshire asked if the petitioner has talked to his neighbors about the proposed addition.

Nagle stated that he spoke with his neighbors and no one has objected. The neighbor nearest to his home would prefer the door to be on the side. There have been no written objections to the proposal.

Decision: MOTION by Parks, supported by Pagnucco, that the variance be granted on the basis that the placement of the house on the lot creates a peculiar or exceptional practical difficulty with respect to building an addition on that side of the house.

Freedman stated that she will not support the motion on the basis that there is room behind the house and on the other side of the house for an addition.

Fahlen commented that the house, which was constructed in 1946, is already in violation of the side yard open space requirements of the Zoning Ordinance.

Freedman remarked that she would vote for the variance if the addition was continuing with the line of the house rather than further extending the variance.

Roll Call Vote:

Fahlen - yes
Freedman - no
Kamp - yes
Pagnucco - yes
Parks - yes
Pfeifer - yes
Verdi Hus - yes
Dery - yes

Motion passes (7 - 1).

CASE NO. 959

Petitioner and Property: Dan O'Donnell
15961 Amherst
Lots 1797 and Part 1298, Beverly Hills #3 Subdivision
TH24-01-408-007

Petition: Petitioner requests a side yard deviation from the required 12.5' minimum side yard open space to 8.4' for a two story rear addition in order to continue with the existing line of the house.

Ann O'Donnell stated that the two-story house is on a long, narrow lot and is closer to the lot line than allowed by the ordinance. A variance is being requested to continue with the existing line of the house to build a two-story addition at the rear of the home.

Pfeifer stated that the petitioner is not proposing a variance any greater than already exists. There appears to be no other way to build an addition on this narrow lot.

Decision: MOTION by Freedman, supported by Dery, that the variance be granted due to a peculiar and exceptional practical difficulty because the lot is long and narrow and there is no other reasonable location for the addition.

Roll Call Vote:
Resolution passes unanimously.

CASE NO. 960

Petitioner and Property: Winston and Vicki Lew
31742 Southview
Part of Lot 3322 and all Lot 3323
Beverly Hills Subdivision #12, TH24-02-331-004

Petition: Petitioner requests a side yard deviation from the required 15' minimum side yard open space to 12.8' for a one story rear addition in order to continue with the existing line of the house.

The builder, Bob Sowles, was present on behalf of the property owners. It is proposed to build an addition which will continue the existing line of the house.

Decision: MOTION by Fahlen, supported by Pagnucco, that the variance be granted on the basis that it is extending the existing deviation.

Roll Call Vote:
Motion passes unanimously.

CASE NO. 961

Petitioner and Property: Mark Stielow
21891 Hampton
Lot 23 of Berkshire Grove Subdivision, TH24-03-302-004

Petition: Petitioner requests a deviation from the maximum 720 sq. ft. to 912 sq. ft. for an accessory building to store vintage cars.

The petitioner Mark Stielow proposes to construct an out building on his one acre lot for the storage of vintage cars. He is asking for a variance from the Ordinance to increase the size of the out building to park his hobby cars and store lawn supplies. The petitioner's two cars will be parked in the existing garage.

Stielow submitted a letter from an adjacent neighbor who does not have any problem with the proposed garage. Verdi-Hus read a letter from Carole J. Cohan of 21843 Hampton stating that she and her husband do not object to Mark and Katherine Stielow building a detached garage on the lot. Thomas Najor of 31800 Lahser stated his objection to the request for deviation in a note written to the Village. A letter dated May 5 was received from Bobby Watson of 31680 Lahser in opposition to the outbuilding at 21891 Hampton.

Dave Kachel of 21842 Hampton stated that he lives across the street from the petitioner. He does not see a problem with the applicant building this kind of building on a 150' wide acre lot.

Kamp asked why the enforcement of the ordinance creates peculiar or exceptional practical difficulty in this case.

Stielow responded that he would like to have the additional space and it did not cost much more to build a larger building. The building size would increase from the allowed 24' x 30' building to a 24' x 38' building with extra depth for storing two cars and yard equipment. The petitioner now stores

items at another site and would like to be able to store his things on his property. Stielow thinks his neighbors would appreciate his things being stored out of their line of sight.

Kamp suggests that the petitioner's need for storage space is not that much different from anyone else who might need storage space to house yard equipment.

At the Board's inquiry, Stielow stated that a 720 sq. ft. garage is the size of a common three-car garage. He stated that they bought a house on an acre lot so a large garage would not look out of place. The proposed garage would have the same siding, windows, and shingles as the house.

Pagnucco stated that the Ordinance includes size limitations for outbuildings for the purpose of maintaining the openness of the community.

Parks stated that the Zoning Board of Appeals does not have the power to grant a variance unless it can determine that enforcement of the Ordinance creates a peculiar or exceptional practical difficulty. He does not believe that a three-car garage in the back yard in addition to a garage attached to the house creates a hardship.

Decision: MOTION by Pagnucco, supported by Parks, that the petition be denied because a peculiar or unusual circumstance has not been demonstrated relative to this case.

Roll Call Vote:
Motion passes unanimously.

CASE NO. 962

Petitioner: Erin O'Neill
19955 Sunnyslope Drive
Lot 2872 of Beverly Hills #10 Subdivision
TH24-03-230-007

Petition: Petitioner requests a deviation to replace a 4 ft. cedar stockade fence in the backyard which is not 35% open to air and light.

Don Amalfitano was present with Lila Sheikh representing Erin O'Neill in her absence. The petition is for a deviation from the Fence Ordinance that requires that fences have a vertical surface area that is at least 35% open to air and light. The petitioner has a fence existing on her property that does not have that type of open air design.

Amalfitano submitted pictures of the current fence. O'Neill is requesting permission to replace the existing fence, which is in a state of disrepair, with a similar type of fence. She has a dog which is contained by the fence. The adjacent neighbor is in support of the fence being replaced by an identical fence which keeps the dog from seeing activity next door and barking. Another neighbor is concerned that a more open fence would not provide as much privacy.

Amalfitano remarked that Ms. O'Neill is meticulous and maintains her property very well. She is a real estate agent in this area and is involved with the community. The fence proposed is a superior grade fence that is identical to what is there now.

A letter was submitted from the closest neighbor who would be directly affected by the fence. There is also a signed petition from other neighbors who are in support of Ms. O'Neill accomplishing the repair of the fence.

Byrwa concurred that the fence is in need of repair. There are some rotted sections and missing portions of the existing four foot high stockade fence.

Don McLennan of 19977 Sunnyslope, who lives two doors west of the petitioner, stated that the current fence has been there for about 15 years. He has no objections to the proposed fence.

Selma Fisher of 19965 Sunnyslope abuts the petitioner to the west. The proposed fence is a more attractive fence than the existing fence. She urged the Board to grant a variance.

Verdi-Hus read a letter dated May 4, 1999 from Martin L. Kotch of 32900 Evergreen Road whose back yard abuts the petitioner's back yard. He stated that the fence shields his residence from headlights of cars driving into the O'Neill garage and provides privacy between the two properties.

In a letter dated May 7, 1999, Ann and Don Kuhn of 19945 Sunnyslope, who live next door to the applicant, enthusiastically support the request of Erin O'Neill to replace a four foot high cedar stockade fence in her backyard. The fence serves a useful purpose by defining boundaries for their pets. They view the request as a desire on the part of the applicant to maintain and enhance her property. The fence compliments her house and the landscaping well and serves as a security barrier.

A petition signed by five neighbors states: "Please be advised that my neighbor at 19955 Sunnyslope has informed me of the need to replace the existing fence on said property. I am in agreement that the current fence is in need of replacement and fully support the efforts to accomplish this task as soon as possible."

Selma Fisher	19965 Sunnyslope
Ann Kuhn	19945 Sunnyslope
Martin Kotch	32900 Evergreen
Rosemary McLennan	19977 Sunnyslope
Donald McLennan	19977 Sunnyslope

Freedman stated that she has not heard anything that convinces her that an exceptional or undue hardship would result by erecting a fence that conforms with the Ordinance. The Village recently spent a lot of time reworking its fence ordinance which addresses the opacity issue.

Kamp asked if the new Fence Ordinance grandfathers existing fences. Byrwa stated that, when a non-conforming fence needs to be replaced, the new fence must comply with the current ordinance which requires a fence to be 35% open to air and light. The Fence Ordinance states, "If more than 25% of the area of any single side of a fence requires reconstruction in any twelve month period, the entire fence shall be brought into compliance with this Ordinance."

Amalfitano added that the proposed fence would shield the petitioner from activity and lights on Evergreen Road. There are several people within that area who are asking that this fence remain as it is and have cited hardships they will experience if the fence is changed. The point was made that fence will be visible to only three people.

Byrwa stated that it was difficult to deny a permit on this fence considering that the homeowner was asking to maintain the property by replacing the existing fence.

Pfeifer agrees that the petitioner is asking to do nothing more than to replace a fence that has existed for 15 years. It does not detract from open space. There is a question of determining what hardship exists in this case.

Freedman stated that the Fence Ordinance includes a provision that indicates that Beverly Hills wants to maintain fences with a surface area that is at least 35% open to air and light. Parks emphasized the importance of this requirement in the Ordinance.

Amalfitano commented that it seems that the Ordinance was designed to promote the beautification of the community. This resident is making an effort to beautify her home which should not be discouraged. He thinks that the hardships voiced by the neighbors who want continued privacy should be considered.

Verdi-Hus stated that the neighbor's request for the same amount of privacy is not considered an exceptional difficulty. Fahlen remarked that there are many houses in the Village that let dogs out in fenced yards.

Todd Stearn commented that the resident can replace 25% of a fence a year for four years under the Ordinance. He questioned whether that is a practical difficulty under which the property owner should be allowed to replace 100% of the fence since the Village is trying to allow for maintenance of deteriorated fences. Kamp does not think the Ordinance can impose a practical difficulty because it was intended to be written as it is.

Dery suggested that a greenbelt could be planted along with a fence for added screening from noise and lights.

Pagnucco questioned whether the proximity of the property to Evergreen Road traffic could be considered a practical difficulty.

Pfeifer recalls that a six foot stockade fence was permitted across the back lot line about four houses to the south of the property in question.

Amalfitano commented that the proposed fence does not change the existing conditions with respect to open space. Verdi-Hus responded that Ordinance provides for non-conforming fences to be replaced with those that conform to the statute when they are replaced.

Decision: MOTION by Freedman, supported by Parks, that the petition be denied for a failure to demonstrate that the enforcement of the ordinance creates a peculiar or undue hardship.

Roll Call Vote:

Parks	- yes
Pfeifer	- yes
Verdi-Hus	- yes
Dery	- yes
Fahlen	- yes
Freedman	- yes
Kamp	- yes
Pagnucco	- abstain

Motion passes (7 yes - 1 abstention).

As a point of order, Pfeifer questioned whether it is permitted to abstain from voting without an explanation. Parks remarked that the abstention did not affect the outcome of the vote.

Pagnucco commented that this petition involves an unusual situation and there may be a way to grant a variance.

ZONING BOARD COMMENTS

Fahlen referred to the section of the application to appear before the Zoning Board of Appeals that reads, "I further state that if this request is granted, construction be started in accordance with the plans herewith submitted within ___ days from the date of filing this appeal." Byrwa explained that construction must start within one year from when a variance is granted.

Freedman referred to condominiums that have been under construction in Birmingham for years. She asked if the Village has a provision in its ordinance that requires that construction be completed within a reasonable amount of time.

Byrwa stated that the 1996 BOCA National Building Code, which the Village has adopted, states that the building official has the right to suspend a building permit if construction has been abandoned for six months or longer. Byrwa has mailed certified letters to builders in the Village stating that, if final inspection is not obtained in 30 days, the bond on the project will be forfeited and the Village will cancel their building permit. Projects are not kept open indefinitely.

PUBLIC COMMENTS

Todd Stearn stated that he is the alternate Council liaison for Doyle Downey.

MOTION by Freedman, supported by Parks, that the meeting be adjourned at 9:05 p.m.

Motion passes unanimously.

Mary Ann Verdi-Hus, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk