

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

Absent: None

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**

MOTION by Fahlen, supported by Pagnucco, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, May 10, 1999 be approved as submitted.

Motion passes unanimously.

#### **CASE NO. 966**

**Petitioner and Property:** Joseph and Antonia Grinnan  
1 Stone House Lane  
Unit 21, Westwood Common  
TH24-10-102-046

**Petition:** Petitioner requests a deviation to locate a gardener's shed in the front yard open space.

Joseph and Antonia Grinnan were present requesting a variance to build a small garden shed structure in the front yard open space. Joseph Grinnan stated that the Zoning Board of Appeals granted a variance for this structure on September 22, 1997. The garden shed was not built within the one year required. He explained that the building of the structure was not within their control in terms of when it would start. The Grinnans are now re-petitioning the Board and wish to proceed with the construction of the garden shed.

The proposed structure will be smaller (8' x 12') than the original building (12' x 15'). The previously requested structure was a combination greenhouse and storage shed; the proposed plan is for a structure to start seeds and a gardener's shed which will also serve a storage function. Antonia Grinnan indicated that the location has shifted slightly. The shed will be situated between newly planted trees which will move the location a few feet to the north and west.

Mr. Grinnan asked to incorporate by reference comments that were made in ZBA meeting minutes of August 25 and September 22, 1997. The Grinnans' position and reasons for the hardship have not changed.

**Decision:** MOTION by Kamp, supported by Parks, to approve the request for variance on the grounds that there is an exceptional practical difficulty which would prevent an otherwise permitted use on the property in another location due to the very unique configuration and topography of the petitioners' property.

Roll Call Vote:  
Motion passes unanimously.

#### **CASE NO. 964**

**Petitioner and Property:** Dana Allen Palmer  
20155 W. 13 Mile Road  
Lot 6 of Coryell Estates Subdivision  
TH24-10-227-005

**Petition:** Petitioner requests a deviation from the Fence Ordinance to allow a wood fence that is not 35% open to air and light; a deviation in fence height from the maximum 36" in the front yard to 6' high; a variance from the maximum 48" in the rear yard to 6' high; and, a variance to extend the fence past the rear of the house.

Dana Palmer requested a deviation from the Fence Ordinance to construct a six foot high fence on the front and east side perimeter of his lot with an electronically activated gate at the front of the property. The main reason for the fence is due to trespassing that occurs on his property. Motorists make U-turns daily at the foot of the driveway and occasionally pull into his circular drive and make a complete U-turn exiting onto 13 Mile Road. This constitutes a danger to his two small children who play in the front yard. Palmer also mentioned that his property is across the street from Groves High School, and students cut across his property. He is proposing the fence and gate for safety and privacy reasons.

The petitioner is requesting to construct a masonry column gate as part of the front fence. He submitted a picture of the type of gate he is proposing. The gate is not described in the appeal form; however, a 12' gate is indicated on the site plan submitted with the application.

Parks stated that the Zoning Board of Appeals has strict guidelines under which a variance can be granted: the enforcement of the ordinance creates peculiar or exceptional practical difficulties; enforcement of the ordinance creates an exceptional or undue hardship; or, interpretation of the ordinance is requested. Parks questioned the petitioner's reason for requesting a variance.

Palmer stated that enforcement of the ordinance creates a hardship in terms of the safety of his family. Motorists traveling west on 13 Mile Road who miss the left turn onto Evergreen target his driveway to make a U-turn and head back onto 13 Mile towards Evergreen.

Parks expressed his opposition to the proposed fence and to fences in general in front yards in the Village. He mentioned that he lives on Saxon which is a cut-through for people coming down Fourteen Mile Road. Parks does not think that erecting fences in the front yards of these houses is an answer to cut-through traffic. He does not view the applicant's perceived danger as giving the Board authority to grant a variance from the ordinance.

Palmer stated that he could locate his fence behind the greenbelt in the front yard so it cannot be seen. He commented that his property is unique in that it fronts on 13 Mile Road and not a subdivision street. His lot is next to a church. He thinks the fence will add beauty to the intersection.

Pagnucco asked if the petitioner would be allowed to install two pipes on either side of the driveway with a chain between them to prevent vehicles from entering his driveway.

Byrwa answered that the Fence Ordinance allows decorative fencing in the front yard at a maximum height of three feet to supplement landscaping. The property owner could petition the Board for an accessory structure in the front yard.

Parks suggested that the petitioner erect a sign saying "Private Driveway, Keep Out" on his property. Palmer asked if the Village would consider placing a "No U-Turn" sign in the road right-of-way west of Evergreen on 13 Mile Road.

It was mentioned that the ZBA approved a gate for property at the northeast corner of Pierce and 13 Mile Road. That case differed from the gate proposed in this case because there was an entranceway from 13 Mile Road into the property.

Kamp understands that the petitioner has lived in the house for nine months. It is the burden of the petitioner to demonstrate that there are no other alternatives in terms of trespassing. The vegetation on the east side of the property is very dense. Considering the abutting lots to the rear on Elwood and the location of the church next door, it does not seem probable that there will be a high frequency of people cutting through his property. Kamp does not find the petitioner's case persuasive in terms of trespassing.

In terms of motorists using the petitioner's driveway, Kamp suggests that the applicant may be able to make a more persuasive case for the need of a gate after more experience living at this location. A disadvantage as a relatively new homeowner is that the people who lived there before did not petition the Board for the same kind of relief. Features that the petitioner is looking for in this property may not be possible because of its location near the intersection. Kamp is not persuaded tonight as to the need for that kind of a gate.

Verdi-Hus commented that she lives directly behind Mr. Palmer. She believes that the previous homeowner had no problems with motorists entering the property because there was more foliage in the front yard which has subsequently been removed by Mr. Palmer. That foliage discouraged motorists from noticing that there was a driveway available for a U-turn.

Kamp stated that it is possible that motorists going west on 13 Mile Road who want to turn south onto Evergreen are missing the turn and use the petitioner's driveway to turn around and go back to Evergreen.

Palmer agreed that a "No U-Turn" sign on the opposite side of the street on 13 Mile Road just west of Evergreen Road would be helpful.

Fahlen has noticed a large stack up of cars on westbound 13 Mile Road waiting to turn left onto Evergreen. He suggested that Palmer ask Council to consider adding a "left turn on green arrow" on that traffic signal to discourage people from going through the light and making a U-turn in his driveway.

Palmer stated that he could do without a fence because of the greenbelt but would like to erect the gate structure.

Freedman entered the meeting at 7:55 pm.

Sharon Tischler of 21415 Virmar Court, President of South Berkshire Homeowner Association, stated that the property is located near the corner on a major street with a lot of traffic. She commented on the potential of pursuing a "No U-Turn" sign as well as the possibility of enhancing the traffic signal as suggested at 13 Mile and Evergreen Roads. She is not in favor of fencing the yard in the manner proposed. Tischler stated that she does not have enough information to comment on a gate.

VerdiHus read a letter dated June 10, 1999 from Joseph Tavi of 20300 Elwood in opposition to the six foot fence.

Pfeifer suggested that, in the event that the church comes before the Planning Board for site plan review in the future, a six foot wall be required along the west property line separating the church and residential property. He recommended that Village administration ask the Public Safety Department to monitor that area for motorists turning around in private driveways which would be a warrant necessary to justify installation of a left turn signal.

Byrwa proposed that Mr. Palmer could meet with Village Public Services Director, Renzo Spallasso, to discuss modifying the signal at 13 Mile and Evergreen Road to include a green arrow for left turns. Spallasso may be able to offer assistance in terms issuing a traffic control order for signage.

Kamp remarked that the petition may have stronger support in the future if the property owner continues to monitor the situation for other alternatives.

Palmer asked if there is specific ordinance language that applies to gates.

Byrwa responded that the petitioner can ask for a variance to permit an accessory structure in the front yard or a variance from the fence ordinance restrictions on height for the driveway area only. The board will have to make a determination on whether the gate proposed is an accessory structure.

Byrwa stated that the Board could make a determination on a specific gate proposed after reviewing an elevation drawing showing the height and style of gate. He suggested that the ZBA could table the appeal until next month's meeting which would eliminate the need to charge the property owner another application fee.

It was the sense of the Board that options other than fencing or a gate on this property should be explored. A left turn arrow at the traffic signal or signage may relieve the situation.

**Decision:** MOTION by Kamp, supported by Parks, that the petition be denied because the petitioner has failed to demonstrate that the enforcement of the ordinance creates either a peculiar or exceptional practical difficulty or an exceptional or undue hardship.

There was discussion of the motion.

Roll Call Vote:  
Motion passes unanimously.

Freedman expressed the view that the gate had some validity. Other members concurred that it could be a viable alternative if the applicant could demonstrate that alternative measures are not working to prevent intrusions on his property.

#### CASE NO. 965

**Petitioner and Property:** H. James Boyes  
17132 Buckingham  
Lots 546 and 547 of Rex Humphrey's Eco City  
TH24-01-130-015, -016

**Petition:** Petitioner requests a deviation from the required 12.5' minimum side yard open space to 4.1' for a rear addition.

Jim and Mary Boyes were present. Jim Boyes outlined plans for the proposed addition and referred to pictures provided to the Board. A 300 square foot bedroom will be added to the rear of the house bringing the total square footage of the house to approximately 2000 square feet. An existing small bedroom in the back of the house will be converted into a walk-in closet and a second bathroom.

The addition will abut an existing deck and extend 2.5' further towards the side lot line than the existing home. The required side yard is 12.5'. The existing house is 6.7' from the lot line and the proposed addition will be 4.1' from the lot line.

Boyes is asking for a variance to preserve the existing deck and to provide for an aesthetic balance between the east and west sides of the house. From a safety standpoint, there is access to the back of the house from the west side of the property.

Boyes stated that he talked to a number of neighbors. A letter was received from the neighbor across the street, Michael Mahoney of 17123 Buckingham, who has no objection to the addition. Other neighbors who submitted correspondence in favor of the proposal were Ben C. Nygard of 17111 Buckingham and Andrew C. Huebner of 17058 Dunblaine.

The next door neighbors provided Boyes with a statement saying that they object to moving the proposed addition closer to their property line thus reducing the side yard open space to 4.1'. Oleg Karakulian and Alena Adrianova have no objection to the addition going straight back continuing the existing 6.7' side yard.

Questions from Board members about the house and proposed addition were answered by the petitioner. The deck would have to be removed if the addition was to continue with the existing line of the house and remain at 15' x 20'. The room size would be 12.5' x 20' if the deck remains.

Byrwa advised the petitioner that building a structure closer than five feet from the lot line initiates building code requirements which include omitting windows on that wall and providing a one hour fire rating on the interior and exterior of that wall.

The petitioner asked to amend the petition to request that the addition continue with the existing line of the house. The distance from the house to the side yard is 6.7' feet.

**Decision:** MOTION by Freedman, supported by Pagnucco, that the petition as amended by the property owner be granted on the basis that enforcement of the ordinance creates a peculiar and exceptional practical difficulty by preventing construction of an addition which will continue the existing line of the house and existing variance.

Roll Call Vote:  
Motion passes unanimously.

### **ZONING BOARD COMMENTS**

It was questioned whether there are cases pending for next month's meeting. Byrwa commented that there is a case for the July 12 meeting that involves an existing fence at Norchester and Beaconsfield that does not meet the ordinance requirement that a fence's vertical surface area be at least 35% open to air and light.

Some members indicated that they will not be available for the July 12 meeting and others were not sure. Board members were asked to contact the Village office if they cannot attend the July meeting so a determination can be made as to whether there will be a quorum.

There was discussion of the fence requirement that its vertical surface area shall not have less than 35% open to air and light. Byrwa referred to the definition of Point of Observation: The determination of the percentage of openness to the free passage of air and light in fences, privacy screens and walls shall be made from a specific point of observation. The point of observation shall be a point 10 feet away from the structure, perpendicular to the vertical surface of the structure and viewed from a height above grade which is equal to 50% of the structure's height.

The Board talked about gates. It was noted that the Fence Ordinance does not address gates or trellises. A gate is considered an extension of the fence or it can be considered an accessory structure.

MOTION by Pfeifer, supported by Parks, that the meeting be adjourned at 8:30 pm.

Motion passes unanimously.

**MaryAnn VerdiHus, Chairperson**  
**Zoning Board of Appeals**

**Ellen E. Marshall**  
**Village Clerk**