

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

Absent: None

Also Present: Village Manager, Hanlin
Council Liaison, Downey
Council Members, Craig and 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 Pfeifer, supported by Clark, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, July 19, 1999 be approved as submitted.

Motion passes unanimously.

CASE NO. 967

Petitioner &

Property: Mary Kay Jacobs
19011 Bedford
Lot 2400, part 2357 of Beverly Hills #6
TH24-02-180-003

Petition: Petitioner requests a deviation to retain the shadow box board-on-board replacement fence that has already been installed.

Mary Kay Jacobs stated a fence was replaced that was erected about 11 years ago. A permit was received for the original fence. She did not realize that a new permit was required to replace an existing fence. The ordinance was changed since the erection of the original fence and no longer permits the shadow box type of fence that was installed. A variance is being requested to retain the fence.

Jacobs commented that all of their neighbors approve of the fence. She has received approval from the homeowners association for the fence as part of the process of requesting a variance. The house is located on a busy corner. Jacobs stated that you can see over the fence which is only about 3 1/2 feet high.

Sharon Tischler of 21415 Virmar Court asked how much of the fence was replaced. The petitioner indicated that the entire fence was replaced with a new fence.

Verdi-Hus read letters from the following neighbors who are in favor of the variance being granted to allow the fence to remain:

Marianne and Drew Schmidt	19096 Bedford
Dale Epker	32464 Beaconsfield
Greg and Diana McComas	19116 Bedford
Nancy Marsh	32344 Mayfair
Gary Feucht	19010 Bedford
Lori Lackman-Zeman	18935 Bedford
William J. Shea	32461 Beaconsfield
Charles and Judy Gowing Harris	18906 Bedford

A petition was submitted with the following signatures. It states: "I have no objection to the cedar, shadow box replacement fence that has been installed at 19011 Bedford. It is a very attractive improvement. With the fence standing at only 3 1/2 feet, the yard can easily be seen and the green space is not compromised, as the landscape remains very visible at an angle while driving or walking by.

Ronald F. Williams	19041 Bedford
Charles Shady	19070 Bedford
Drew and Marianne Schmidt	19096 Bedford
Nancy E. Marsh	32344 Mayfair
Louis E. Chiesi	19091 Bedford
Mary L. Hribernih	32431 Mayfair
Douglas J. Ziemnick	32304 Beaconsfield
Douglas J. Michals	32415 Beaconsfield

Freedman commented that she thinks that the fence is attractive. However, this Board has to find that there is a peculiar or exceptional practical difficulty in order to grant a variance. The Zoning Board of Appeals has been faced with similar fence issues recently. The new Fence Ordinance specifically addresses the opacity of a fence which indicates that the Village is committed to this issue. Freedman does not think that the petitioner has demonstrated any peculiar or exceptional difficulty other than mistakenly erecting a fence that is in violation of the Ordinance.

Parks observed that the new fence is lower and less opaque than the previous fence. You can see through the new fence at certain angles. The Fence Ordinance attempts to maintain the open look of the community and prohibit stockade fences. Parks thinks the fence is close to meeting the letter and the intent of the Ordinance. The hardship is the petitioner's lack of knowledge in this particular case, and to take the fence down would be a tremendous hardship. One of the issues is to educate the residents of Beverly Hills about what they can and cannot do with respect to erecting fences. Parks added that the Board considers every fence on a case by case basis.

It was reviewed that "the determination of the percentage of openness to air and light in fences shall be made from a specific point of observation. The point of observation shall be a point ten feet away from the structure, perpendicular to the vertical surface of the structure and viewed from a height above grade that is equal to 50% of the structure's height."

Pfeifer commented that he cannot agree with approving variances on the basis that a petitioner is not aware of the ordinance requirements. A fence has to be at least 35% open to air and light, and the fence in question is not. Suggestions were made as to how the fence could be altered to be brought into compliance with the ordinance. The petitioner responded that the suggestions were labor intensive and would be a hardship.

Kamp does not think it is a principal responsibility of this Board to educate the public about the Fence Ordinance, although it is helpful. He stated that this is a Board of limited powers. The Board takes the law and the public policies that the Village Council has established in the ordinances and it determines, based on the circumstances before it, whether there is an exceptional or peculiar situation that justifies a variance.

Further, zoning ordinances set certain rules and establish an aesthetic that is consistent with an overall plan that Council has established for the Village. As part of that plan, the Council has determined that fences of a certain kind will be prohibited. An opacity requirement was adopted as part of the ordinance after due consideration. This criteria has been established and applies uniformly throughout the Village.

In addition to the criteria for fences, the previous and current ordinance governs the replacement of fences. There is an ordinance that says a person cannot replace more than 25% of a fence at a given time without complying with the new ordinance. The idea is that over time all the fences in the Village will take on a consistent characteristic as provided in the zoning ordinance. In this case it is 35% openness to air and light requirement.

The Board must find that there is an exceptional or peculiar situation in order to justify a variance. The hardship being presented in this case is the petitioner's lack of knowledge of the Ordinance. Kamp believes that the laws of this State consistently say that it is up to the individual citizens to comply with the ordinances and educate themselves accordingly. Unfortunately, the petitioner performed no inquiry into the circumstances that apply to the replacement fence. That has raised a predicament for the petitioner. Regardless of whether he likes the fence or not, Kamp does not see

the petitioner's circumstance as being any different from that of any other citizen in the Village who has to comply with ordinances.

It was mentioned that the new Fence Ordinance was publicized in Village newsletters following its adoption.

Decision: MOTION by Freedman, supported by Kamp, that the request for variance be denied on the basis that a peculiar or exceptional practical difficulty has not been demonstrated.

Roll Call Vote:

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

Motion passes (8 - 1).

CASE NO. 972

Petitioner & Property:

Dale Irvine
32041 Verona Circle
Part of Lot 439 and all Lot 440 of Beverly Hills No. 1
TH24-01-282-007

Petition: Petitioner requests a deviation from the minimum 12.5' side yard open space to 6' open space for an attached garage with an addition behind it.

Dale Irvine explained that there is an existing breezeway and attached garage which is set back from the front of the house. It is proposed to extend the existing front line of the house to build a two-car garage and a living addition behind the garage. The existing six foot side yard variance will be maintained. The house was constructed in the 1940's.

A letter dated August 7, 1999 was received from the petitioner's next door neighbors, Jon and Patricia Oen of 32061 Verona Circle. They have no objection to the proposed deviation.

Jean Martell of 32231 Verona Circle asked questions about the proposal which were addressed by the petitioner.

Pfeifer remarked that this house predates the Village Zoning Ordinance. The six foot sideyard has been in existence, and there is no intention on the part of the petitioner to increase the variance. Irvine referred to the drawing and pointed out that the side yard open space is 6 feet at the front of the house and widens to 9 or 10 feet extending back toward the rear yard due to the shape of the lot.

Decision: MOTION by Pagnucco, supported by Clark, that the petition be approved based on the practical difficulty with the existing structure being built prior to the adoption of the Village Zoning Ordinance. Granting the variance will allow the homeowner to build an addition which follows the existing line of the house.

Roll Call Vote:

Motion passes unanimously.

CASE NO. 974

Petitioner: Joseph R. Sterbling, Adler Building Co.
29612 Pond Ridge
Farmington Hills

Property: 31375 W. Rutland
Lots 23 and part of 22, Re-Plat of Artesian Heights
TH24-01-376-021

Petition: Petitioner requests a deviation from the minimum 12.5' side yard open space to 7.3' open space for a rear addition in order to continue with the existing line of the house.

Joseph Sterbling was present representing the homeowners, Mr. and Mrs. Naglick. The property owners propose to build a one-story rear addition that will continue the existing side yard distance of 7.3' in lieu of the required 12.5'. Sterbling estimates that the house was built in the early 1950's.

A letter dated August 4, 1999 from Paula Reiche of 31279 E. Rutland listed two concerns that she would like the Board to consider. She asked what considerations are being made to address water drainage. She questioned the height of the new addition.

Sterbling stated that water will drain to the rear of the lot. A single story addition is proposed at the same height as the existing house.

Decision: MOTION by Fahlen, supported by Pfeifer, to approve the request for variance on the basis that enforcement of the Ordinance creates peculiar or exceptional practical difficulties by preventing construction of an addition which will continue the existing line of the house and existing variance.

Roll Call Vote:

Fahlen - yes
Freedman - yes
Kamp - yes
Pagnucco - yes
Parks - yes
Pfeifer - yes
Verdi-Hus - yes
Clark - yes

Dery recused herself from the vote due to a personal conflict with the petitioner's builder.

Motion passes (8 yes - 1 abstention).

Freedman commented that she observed an unsightly shed on the property adjacent to the petitioner's lot. She asked that the building official look into this because it appears to be a second accessory building.

CASE NO. 975

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

Petition: Petitioner requests a deviation to install a gate in the front yard open space.

Dana Palmer stated that he is in need of a gate at his driveway. Motorists make U-turns 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 presents a danger to his two small children who ride their bikes in the drive. A gate would alleviate this problem.

Verdi-Hus stated that this is the second time Mr. Palmer has been before the Zoning Board of Appeals with this request. In June of this year (Case No. 964) he requested a variance to erect a six foot fence in his front yard with a gate.

Board members asked the applicant to address his experience since the June meeting at which time measures were suggested to alleviate the situation. The petitioner did not convince the Board at that time that there was a large enough problem to rule in favor of the petition.

Palmer asserted that his children who are three and five years old play in his front yard where cars have been coming onto his property to make a U-turn. The gate will be 40' from the front property line and will not be visible unless someone is directly in front of the property proceeding to enter. There will be two 4' x 4' posts on each side supporting the gate.

Parks observed that the gate will not prevent cars from turning around in his driveway because they have 40 feet in which to pull in and out. Palmer replied that he does not have a problem with that. He is trying to prevent people from pulling into his yard and turning around in his circular drive. The occasion of people turning around in his driveway was three times in the last year.

Palmer remarked that a gate is classified as an accessory structure for this hearing but he maintains that a gate is not a structure.

Kamp stated that the Village Ordinance defines structure as "anything constructed or erected, the use of which requires location on the ground or attached to something having location on the ground." Pagnucco, Kamp and Parks related similar situations in their neighborhoods where vehicles turn around in driveways in areas where a street does not go through. Parks maintains that, if this situation is an undue hardship, anyone who does not want cars turning around in their driveway would be permitted to erect gates.

Kamp suggests that there has been no change in the circumstances since the last time Mr. Palmer presented his request for a gate. He questioned how the petitioner's circumstance is different from those of other residents. Palmer responded that a car could appear and not see the children through the heavy foliage on his property.

Kamp stated that the house is set back quite a distance from the street with a distance between the edge of the road right-of-way and the start of the foliage. There were alternatives discussed when the petitioner appeared before the Board previously which included posting a sign that says, "private property". It is incumbent on the petitioner to show exceptional or practical difficulty.

Palmer expressed the view that the proposed gate is not a structure. He submitted a photograph of an existing gate on 13 Mile Road just east of The Corners shopping center in Southfield Township and a gate on the corner of Pierce and 13 Mile.

Pagnucco stated that the gate on the corner of Pierce and 13 Mile Road was approved by this Board last year. The house has a driveway that accesses both 13 Mile Road and Pierce. The difficulty was that people go through that property to cut off the traffic light.

Sharon Tischler of 21415 Virmar Court questioned whether the Public Safety Department would be concerned that erecting a gate would prevent access by emergency vehicles. She stated that there are other neighbors on 13 Mile Road who have commented about motorists turning in their driveways. Tischler said she never heard that comment from the couple who lived in the house in question before the Palmers. She noted that there is a substantial amount of traffic in the area due to the reconstruction of the 13 Mile Road bridge.

Verdi-Hus remarked that the Zoning Board of Appeals has not addressed gates across driveways other than the case on Pierce and 13 Mile Road. It may be a public safety concern.

Norman Rubin of 31020 Rivers Edge Court stated there is an inordinate number of illiterate drivers on 13 Mile road who cannot read signs saying "road closed to through traffic". He maintains that drivers on 13 Mile think it is their right to use any street or driveway to turn around if they cannot get where they want to go. Rubin thinks it is incumbent on the Village to offer protection to the people who live along 13 Mile Road. Enforcing the law that says "road closed to through traffic" is a public safety issue.

Verdi-Hus commented that the enforcement problem related by Mr. Rubin is not a matter that is within the purview of this Board. The Board is addressing the variance requested by this petitioner.

MOTION by Fahlen, supported by Parks, that Case No. 975 be tabled in order to request that administration provide the Board with information from the Public Safety Department regarding gates with respect to ingress and egress onto residential property.

Esther Palmer questioned which ordinance the request for a gate violates.

Kamp stated that the petition before the Board requests a variance from Village Ordinance 22.08.100 entitled Accessory Buildings, structures and uses in residential zoned districts. The ordinance states that no accessory buildings, structures or uses shall be erected in the front or required side open space or within permanent easements. The definition of structure in the ordinance is anything constructed or erected, the use of which requires location on the ground or attachments to something having location on the ground.

Roll Call Vote:

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

(Motion fails 8 - 1).

The petitioner left the room at this point.

MOTION by Fahlen, supported by Pagnucco, that the request be denied on the basis that no exceptional or undue hardship has been shown.

Roll Call Vote:

Motion carried unanimously.

CASE NO. 976

**Petitioner &
Property:**

Sabin P. Papp
16037 Hummel Court
Lots 474, 475, 476 of Beverly Manor 1
TH-24-01-456-002

Petition:

Petitioner requests a rear yard deviation from the 40' minimum required open space to 18' rear yard open space for a proposed addition.

Sabin Papp requested a deviation from the rear yard open space from 40' to 18' in order to construct a 20' x 28' addition on the house. The house has no basement. It is an odd-shaped lot. The petitioner explained that his family would like to add the needed space to their house and remain in the neighborhood.

Freedman stated that the house to the rear seems close to the area where the proposed addition would be erected. She questioned the distance between the proposed addition and adjacent neighbor's home. That dimension was not known.

Decision: MOTION by Pfeifer, supported by Fahlen, that the variance be granted based on the hardship that exists due to the home being constructed prior to the existing ordinance and the fact that there is nowhere else on the property to expand the structure. There has been no negative input from the neighbor closest to the addition.

Roll Call Vote:
Motion passes unanimously.

CASE NO. 977

Petitioner & Property: John and Monica Richards
31650 Allerton Drive
Lot 27 of Crystal Springs #2
TH-24-02-402-013

Petition: Petitioner requests a rear yard deviation from the 30' minimum required open space to 18.6' rear yard open space for a proposed addition.

John Richards explained that the house is located on an unusual, piano-shaped lot on Allerton. The property backs up to the Beverly School ball field and faces the park across the street. It is proposed to locate an addition on the side of the house which encroaches on the required rear setback. There is no other location for the addition on the lot.

Decision: MOTION by Pfeifer, supported by Kamp, to grant the variance based on the hardship that exists because of the odd shape of the land and the placement of the home on the lot. There is no other place where an addition could be constructed.

Roll Call Vote:
Motion passes unanimously.

CASE NO. 978

Petitioner & Property: Hektor Peshkopia
31575 Evergreen
Acreage, TH24-03-430-024

Petition: Petitioner requests a deviation to locate a shed in the side yard open space.

The petitioner's son, Kevin Peshkopia, was present on behalf of his father. He explained that this is a keyhole lot. It is proposed to erect a 10' x 14' shed in the backyard. The location allowed by the ordinance would place the shed closer to the neighbor's property. The side of the house has more open space and abuts the Groves High School tennis courts. The proposed location is a better place to locate the shed from the petitioner's and the abutting neighbor's point of view.

Decision: MOTION by Parks, supported by Freedman, to grant the variance based on the peculiar configuration of the keyhole lot. Placement of the structure to conform with ordinance requirements is more egregious than where is it proposed to be located and creates an exceptional, peculiar difficulty because of the lot configuration.

Roll Call Vote:
Motion passes unanimously.

There was a recess called at 8:40 p.m. The meeting reconvened at 8:45 p.m.

CASE NO. 973 (rehearing)

Petitioner: Paul Weisenbach
Frank Rewold and Son
333 East Second Street
Rochester 48308

Property: 31535 Southfield (former HaLo building)
Part of Lot 17, Crystal Springs Subdivision
TH24-02-427-009, 010, 011

Petition: Petitioner requests a variance in the parking requirement of 239 spaces to 173 parking spaces or 166 parking spaces with more landscaping.

Steve Auger with Stephen Auger and Associates Architects, Inc. was present representing Bed Bath and Beyond along with Brian Garity from Bed Bath & Beyond and Carmen Avantini, parking consultant with the Strader Group. Auger reviewed that there was discussion at the last Zoning Board of Appeals meeting regarding the proposal for Bed Bath & Beyond to move into the former Halo Creative Concepts in Marketing building located at 31535 Southfield Road. There are two site plans proposed at this time, one with 173 parking spaces and the other having 166 spaces.

A variance is being requested from the Zoning Ordinance which requires 239 parking spaces. Auger related the hardship as being that the petitioner is caught between two parking requirements in the zoning ordinance. The retail category requires one parking space for each 150 SF of usable floor area while the warehousing operation requires one space for each 800 SF of usable floor area. That stand-alone retail operation that Bed Bath & Beyond represents parks out at about 1:225 which is close to the national average. The petitioner is proposing to increase that level.

Auger explained that the site plan has been revised to move the main entrance from the east elevation of the building to the rear of the building which would draw most of the traffic away from the Southfield side and to the rear parking lot further from the neighboring properties. The existing front office which was damaged by fire will be torn down which will provide more parking area than currently exists. Auger maintains that there will be less traffic at the Bed Bath & Beyond site than there was with the former warehousing use which had 180 employees parking at the facility.

Kamp understands that the applicant is saying that they are caught between parking requirements for a retail use and parking required for a warehouse use. It was previously stated that all of the merchandise inside of the store would be available for retail purchase and that there will be no storage at this location.

Auger stated that this type of retail did not exist when the Village ordinance was written. This is a stand-alone retail environment where the goods are stored in high bays. The Village planning consultants have recommended adding a parking requirement to address this type of operation. Auger maintains that the ordinance description of a warehousing use is much closer to what goes on at Bed Bath & Beyond.

Kamp asked whether or not the petitioner or his potential lessee are claiming that the new facility will be a wholesale storage warehousing establishment.

Carmen Avantini stated that the Strader Group, community planners, have been asked to look at the parking on this particular project. He clarified that this is not going to be a warehousing type of operation. There is one broad category in the Zoning Ordinance for retail use. There is a difference between high intensity retail uses and other less intense retail uses. That intensity translates itself into not only the amount of parking that is generated but also the hours in which it is generated.

Avantini distributed copies of a table that shows the Village's ordinances requirements and the requirements of various different communities. It also lists parking standards from publications that planners use in terms of normal parking requirements.

The Village ordinance requires 230 spaces for retail use for this project which is about 6.6 spaces per 1,000 SF of gross usable floor area. Birmingham requires 137 spaces for this project. Novi requires 214 spaces under its Big Box Development standard. The city of Southfield also requires 230 spaces. Avantini stated that the National Parking Association recommends one space per 303 SF of gross floor area for general retail use which computes to 136 spaces for this project. He referred to the Institute of Transportation Engineers standards which range from 99 spaces up to 163 spaces, depending on how the use is categorized. Any of these standards are well within what the applicant is requesting.

Avantini stated that the Strader Group does research in this area as part of writing zoning ordinances for communities. He indicated that communities are no longer requiring 1:150 SF or 6.6 spaces per 1,000 SF of usable floor area. Communities are now typically requiring between 4 and 4.5 spaces per 1,000. Original parking standards were based on peak volume on the highest sales day of the year which is the day after Thanksgiving. That is no longer the philosophy. Communities are looking at the normal parking needs of an establishment.

It is Avantini's opinion that between 4.5-5 spaces per 1,000 is plenty of parking for this type of use. Another thing to consider is that people will be parking closest to the entrance near the parking lot at the rear of the property. It will be recommended that the employees park towards the front. The Strader Group does not see a problem with the number of parking spaces that Bed Bath & Beyond is requesting which should be more than adequate to serve the needs of this particular use.

Avantini stated that communities will take the entire building square footage and multiply it by 85% to get the gross leasable area, the actual space that will be used for retail purposes. He calculates that to be close to what Bed Bath & Beyond is indicating is its actual usable square foot area. His firm feels that the figures that have been presented are acceptable. The use being proposed for the number of square feet is much less intense than the previous use and less intense than uses that are permitted in the zoning district for this particular building. There are other operations that could generate more parking. Avantini feels this is one of the better uses for this site in terms of parking generation. There should be enough space for the adjacent uses to spill over during their peak hours. He does not anticipate that this use will spill over onto neighboring lots.

Kamp stated that there was a distinction drawn between retail stores and wholesale storage and warehousing establishments. He questions whether or not the petitioner or the proposed lessee is going to contend that their use is wholesale storage or warehousing establishment within the meaning of the ordinance. Avantini affirmed that Bed Bath & Beyond is a retail store.

Parks asked for clarification of the comment that other uses for this site would be worse with respect to parking than a destination retail store. Avantini mentioned that a home improvement type of store would generate more activity during peak hours. A Dave & Busters type of restaurant/video arcade would generate more traffic.

Kamp noted that the Ordinance does distinguish between certain kinds of retail establishments. He asked the petitioner to address the peculiar or exceptional practical difficulty or undue hardship compared to any other retail store that might fall within the 1:150 SF ratio requirement.

Avantini stated that there is a practical difficulty in that there is an existing site which is zoned for retail use. It would be difficult for different retail uses to apply that standard and fit the site. This is addressed in some zoning ordinances by breaking out different retail uses in more detail. Uses that are more intense and require more parking such as restaurants are being given a different standard in zoning ordinances than other types of retail use.

Avantini referred to a handout from Village planning consultant Dave Birchler who is recommending 3.3 to 4.0 spaces per 1,000 SF of gross leasable area as a proposed standard for this type of retail store. The current ordinance tries to fit all retail uses in one retail category. It is part of

the Zoning Board of Appeal's job to differentiate between these uses and make a reasonable decision as to what is the appropriate parking for this particular use. Avantini added that, if the use changes and the new use is not similar to this, the Board would have an opportunity to review the site again for parking requirements.

Parks questions whether it is the Zoning Board of Appeals' charge to review the Ordinance and to determine what is meant by retail use for each applicant. It is another body's responsibility to rewrite an ordinance. The ZBA has to follow the ordinance to the best of its ability. The Ordinance requires one parking space for each 150 SF of usable floor area. The applicant is asking the ZBA to determine how this retail use is special and why a variance should be granted. Parks is struggling with how this Board can do that under the current Ordinance.

Avantini maintains that it is a responsibility of the ZBA and within its authority to make interpretations. There has to be some level of interpretation to decide whether the parking variance request being made is reasonable. The applicant has provided background information to demonstrate what is appropriate and what the experts are saying in terms of appropriate use.

Kamp stated that all establishments that fall within the retail store requirement have to meet the same requirement. Within the ordinance itself, there are distinctions between different types of uses. He is having difficulty determining the exceptional practical difficulty or undue hardship in this case given that the requirement that is established by the Ordinance applies uniformly for retail stores.

Avantini clarified that the applicant is requesting a 25% reduction from the parking requirements set forth in the ordinance. This is a permitted use for an existing building. The practical difficulty is that the property cannot be developed for normal uses permitted in this district given the parking requirements on the existing site. Use after use could come in and request the same amount of parking without some kind of variance. This site does not meet the requirements of the Ordinance which the applicant feels is excessive.

Kamp stated that this is a Board of limited powers. It considers the Ordinance as it is written and determines whether a variance is justified. Part of the applicant's comments address whether or not the Ordinance adopted by the Village Council is appropriate or is antiquated considering the current business norms. Kamp does not believe it is within the purview of this Board to adjust the Ordinance to bring it up to current standards.

Pfeifer stated that the applicant and his representatives maintain that there is enough parking for the use proposed. A variance cannot be granted without demonstrating a hardship and that hardship has not been determined.

Fahlen questioned whether the hardship could be that there is no more land available. The problem with this rationale is that the Racquet Club, shopping center, and office building on Southfield Road are all within the accepted limits of the standard but experience parking problems. Other buildings along Southfield Road adhere to the rules even though there is a lack of land for increased parking. Fahlen commented that he has a problem with changing the current standard for parking. Council can amend the Ordinance if it sees fit. This Board has limited authority.

Avantini stated that the owner would have to take off 10,000 SF of the building to meet the ordinance. It is not practical to do that. The practical difficulty is the standard for granting this type of variance.

Parks asked if the adjacent neighbors agreed with the revised plans. Avantini stated that not all of the neighbors are satisfied.

Village Manager Hanlin stated that, over a course of years, there have been parking variances granted to the following properties on Southfield Road: Taco Bell, McDonald's, Emil's, and Medical Village. McDonald's received a variance in 1990 from 129 required parking spaces to 113 spaces; Taco Bell in 1983 from 25 spaces to 20 spaces to allow a drive-through window; Emil's received a variance in 1992 from 70 spaces to 64 and received a further variance to allow 59 spaces; Medical Village received a variance from 235 spaces to 189 spaces in 1996.

Brian Garity from Bed Bath & Beyond stated that they have many stores in the Detroit market in close proximity to this store. He has worked for the company for nine years and thinks that there is ample room for parking on the site for the store. In answer to an inquiry, Garity stated that Bed Bath & Beyond is a destination type of store where people are in and out quickly.

Fahlen asked if Bed Bath & Beyond has other free-standing stores in the area. Garity responded that most of the stores in the area are located in strip malls. There is not a free standing single unit store in his district. Fahlen asked what Bed Bath & Beyond would do if the calculations were incorrect and there was not enough parking available on the site. An answer was not forthcoming. Avantini stated that there may be one or two days a year when there may not be enough parking spaces. This could be said for any retail use. Auger stated that Bed Bath & Beyond requires 150 parking spaces on its site to accommodate customers.

Pfeifer understands that there is a push to open the store before the holidays. He questioned whether the applicant would still be interested in the site if the opening were delayed for three months.

Auger could not answer that question. He affirmed that the holidays are the best time of the year for retailers.

Pfeifer stated that the Village's planning consultant has indicated that an adequate level of parking would be provided with either of the Bed Bath & Beyond parking proposals. He remarked that changes to the parking standard have not been reviewed by the Planning Board and approved by Council.

Jean Martell of 32231 Verona Circle questioned the number of employees. She was informed that there would be 12-20 employees in the store at one time depending on the season. Deliveries will be made at the rear loading deck early in the morning or late at night.

Martell questioned the traffic congestion coming in and out of the structure. Auger stated that this use will generate less volume than the previous use which had 180 employees and large trucks loading. It should be considered that there is a warehouse on this site which needs to be renovated to be a nice addition to the community. He feels that Bed Bath & Beyond is a perfect fit for this community and for the building.

Philip Vestevich stated that he has interest in the office building at 31333 Southfield Road and also the McDonald's property. He thinks that the request should be denied and that the arguments for the variance are built on a number of fallacies. The petitioner is resorting to an analysis that the building is partially a warehouse use because merchandise is stacked up vertically in a tall building which relieves the floor space utilization. Vestevich contends it does not. There is 40,000 SF of floor space that is to be used for retail purposes except for approximately 15% of storage and bathroom area which do not figure into the parking formula. The 1:150 formula requires in excess of 230 parking spaces. The idea that it is a warehouse function merged with retail should have no role in the Board's consideration.

Vestevich thinks it is a fallacy that other communities have lower requirements. The reference to Birmingham is not applicable because Birmingham has parking structures that fill much of the parking demand. To his knowledge and experience, the 1:150 parking ratio is a common formula which is found in many surrounding communities. Vestevich does not think Beverly Hills has a highly restrictive parking formula for retail.

Vestevich quoted from the Ordinance with respect to the discussion about practical difficulties or unusual hardship. The criteria for granting a variance requires that the variance not be contrary to the public interest nor inconsistent with the spirit and intent of the Ordinance. A variance cannot be injurious to the surrounding neighborhood or imperil public safety. The potential of excess parking on neighboring properties does not satisfy the requirement of the Village Ordinance. There is a parking problem along Southfield Road with almost all of the property. An usual hardship and practical difficulty are not satisfied merely by an owner's wish to use all of the building that once was a warehouse.

Retail developments with 42,000 SF are found to generate a certain number of trips. The parking requirements of the Village Zoning Ordinance took that into account. Those trips need to be accommodated by adequate parking, driveways, and stacking capacity. Taking away those capacities will mean that these trips are not going to be properly accommodated and public safety could be diminished. For those reasons, Vestevich thinks that the request should be denied.

Stanley Satovsky, co-owner of the Beverly Hills Club, referred to a handout distributed to Board members which lists retail parking requirements of neighboring communities. Those communities listed have seen fit through their experience not to alter their ordinances. He questions what would happen if this tenancy ceased and the next retail or business use would inherit a site with diminished parking. The reduction in parking requested is a devastating amount and would have a devastating affect on the surrounding merchants.

Tom McCarthy from the Beverly Hills Club questioned the typical size of a Bed Bath & Beyond store. He noted that, if the building was 31,000 SF, the parking requirements could be met on the site. He stated that the Racquet Club has nothing against Bed Bath & Beyond locating at that site provided that the parking is sufficient not to jeopardize other merchants on Southfield Road.

Tony Vettraino, owner and operator of Steve Petix Clothiers, stated that the situation with traffic and parking has worsened over the years. The proposed use will add to the current problems. He is concerned that the store proposed may create a hazard to the pedestrians and bicyclists using the sidewalk on Southfield Road. Public safety should be considered.

Ernest Beren was present on behalf of Mr. Vettraino, owner of Steve Petix property at 31455 Southfield Road. He posed questions about the proposal which were answered by representatives of the applicant. The store hours are from 9 to 9 Monday through Saturday and 10 to 7 on Sunday. There will be 12 to 20 employees working at one time using approximately 12 parking spaces. The average number of customers on a daily basis varies from store to store. A majority of their business is in the afternoon. The minimum number of parking spaces required for a store based on Bed Bath & Beyond national figures is 150.

Beren commented on the original and revised proposals submitted by Bed Bath & Beyond. The current site plan reduces the number of parking spaces while providing additional landscaping.

He referred to a letter written to the contractor by the Strader Group stating that a site plan application has been made to renovate an existing warehouse into a specialty retail store. The second page says that evidence of excessive parking requirements is demonstrated at the Corners shopping center in adjacent Southfield Township. Much of the large parking lot east of the center is never occupied. Beren does not think there is a 40,000 SF tenant in that shopping center. Beren made the point that the proposed store is not in a shopping center; it is a free standing store. Therefore, the statistics and assumptions in this report do not fit the subject at hand.

Beren believes that the parking being requested involves an administrative change in an ordinance which he does not believe is within the purview of the Zoning Board of Appeals. It is up to the Village Council to change the ordinance.

Avantini thinks the applicant has proven that the Village's parking standard is excessive and that what is proposed is reasonable. There has been a listing of parking variances that were granted on Southfield Road by the ZBA in the past. He finds it hard to believe that other arguments were different from the one that Bed Bath & Beyond is making. The applicant is asking to be treated the same as other petitioners in similar circumstances. Based on the information provided, the petitioner feels they have met the criteria and would like to receive the variance that others have received with similar reasonable requests.

Parks questioned the average size of Bed Bath & Beyond stores throughout the United States. Garity stated that the prototypical store is 40,000 SF.

Linden Nelson, owner of the building at 31535 Southfield Road, stated that he bought and moved into this building nine years ago. He was the owner of a company called Creative Concepts in

Advertising. At the time of the fire, there were over 180 employees working at this facility. Between 40 and 50 were sales people and another 20 were sales assistants. There were 180 people coming into the site in the morning and the same number leaving between 5 and 5:30 p.m. Clients were coming and going all day long. Nelson maintains that the traffic flow should not be an issue.

When he was looking at tenants for the building, Nelson did not think that a video arcade restaurant would be the right thing for the Village. A medical center or an office building would cause more use of parking and generate more traffic than what is being proposed with Bed Bath & Beyond. He brought a tenant into the community that has shown overwhelmingly that they want to be in the Village. They will be adding over 100 parking spaces and helping to cure problems on Southfield Road. Nelson clarified that the parking requested is a 25% variance from the ordinance requirements, contrary to a recent newspaper article.

Nelson explained that the original plan for the Bed Bath & Beyond store had a Southfield Road entrance. The entrances were moved to the side and rear of the building to gain the support of the neighboring business. Nelson feels that the Village would be fortunate to have a corporate citizen like Bed Bath & Beyond. The company is in fine financial shape.

Philip Vestevich remarked that it does no good to revisit other variances in this Village. The facts of those individual requests for variance are not before us. The Ordinance requires demonstration of an undue hardship and a practical difficulty in order to obtain a variance along with a finding that the variance is not contrary to the public interest, inconsistent with the spirit and intent of the ordinance, injurious to the surrounding neighborhood, nor does it imperil public safety. Vestevich feels that the requirements of the ordinance have not been satisfied nor have they been addressed.

MOTION by Kamp, supported by Fahlen, that the request for variance be denied for the following reasons. Village Ordinance Section 22.38.040 (c) authorizes this Board to issue a variance when the Board finds that the strict application of the regulations would result in a peculiar or exceptional practical difficulty to, or exceptional or undue hardship upon, the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Ordinance. In Case No. 973, the petitioner requests a variance on the ground that the enforcement of the Ordinance creates exceptional or undue hardship. The petitioner argues in his presentation that the standard set out in the Ordinance is excessive and that their proposal for a variance is reasonable. However, the petitioner has failed to demonstrate any exceptional or undue hardship in applying this Ordinance as compared to any other retail store or application in the Village. Because the petitioner has failed to make that showing, the petition should be denied.

Freedman stated that she will oppose the motion on the basis that it is an exceptional difficulty not being able to utilize this building. She thinks that it is a reasonable use for the building. She concurs that there is significant congestion on Southfield Road at certain times, particularly on Saturdays. Based on the fact that the Village's planning consultant has suggested that there is sufficient parking, Freedman does not believe that the petitioner needs to go further than that. It is her view that the petitioner has created a case for exceptional or undue hardship.

Roll Call Vote:

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

Motion fails (5 - 4).

MOTION by Freedman, supported by Verdi-Hus, that the petition be granted due to the demonstration by the petitioner that the enforcement of the Ordinance creates exceptional or undue hardship in that the parking requirements of the Ordinance preclude a legitimate and usable function for the subject space.

Pfeifer asked if the petitioner will entertain the idea of setting aside a portion of the building for non-use so that the 166 spaces would be adequate for the space being used. Full use of the building would be available if the Ordinance is changed.

Linden Nelson responded that the chairman of Bed Bath & Beyond is not present to make that decision. Avantini stated that it is the opinion of the planning consultant that the parking proposed is more than enough parking spaces to accommodate this particular use. To make a drastic cut in the square footage being occupied would not accomplish anything and would be difficult to control.

Kamp stated that the grounds for the motion is that enforcement of the Ordinance would prevent use of the space as retail space. The point of the Ordinance as he understands it is to require a certain ratio between the retail space and parking. The Ordinance was adopted to take into account public safety concerns, appropriate use of space, etc. He questioned what distinguishes this case from any other case where the Board might be called upon to consider a variance from this ordinance.

Freedman stated that the Board has been asked to look at other businesses on Southfield Road when there has been an insufficient amount of parking spaces to comply with the letter of the Ordinance. The Board acted favorable on those requests when there was a demonstrated need for a parking variance and when it was not detrimental to the nearby businesses.

Parks commented that this space cannot be used for retail of any sort under the Ordinance unless it has 230 spaces or a variance is granted. He questioned what other uses it would support under the current zoning other than retail.

Nelson mentioned that the zone district would allow a warehouse, office building, restaurant or medical building, all of which would have a heavier concentration of people going and coming. He feels this is the best use for the building.

Satovsky remarked that a furniture retail store would not require 230 parking spaces.

Kamp commented that this Board considers each case on its own merit. The Board does not have the facts of the other cases before it. He does not find that to be much comfort in terms of permitting him to support the motion on the table.

Doyle Downey of 30865 Lincolnshire West asked if the motion on the table was to grant a variance for 173 spaces or 166 spaces on the site.

Freedman intends the motion to allow either 173 or 166 parking spaces at the discretion of the Planning Board. The Village planning consultants suggest in their analysis that an adequate level of parking could be provided with either 173 or 166 spaces.

Roll Call Vote:

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

Motion fails (6 - 3).

A two minute recess was called the meeting was reconvened at 10:20 p.m.

ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON

Verdi-Hus opened the floor for nominations for Chairperson of the Zoning Board of Appeals.

MOTION by Pfeifer, supported by Parks, to elect MaryAnn Verdi-Hus as chairperson of the Zoning Board of Appeals by acclamation.

Motion passes unanimously.

Nominations were accepted for the office of Vice-Chairperson of the ZBA.

MOTION by Pfeifer, supported by Parks, to elect Kamp as Vice-Chairperson of the Zoning Board of Appeals by acclamation.

Motion passes unanimously.

ZONING BOARD COMMENTS

Board members expressed some concern as to the resolution of Case No. 973. Action to deny the variance for reasons stated in the motion was defeated by a vote of five to four. The second motion to approve the request for variance on the basis of exceptional or undue hardship was defeated by a six to three vote. It was suggested that there could have been further consideration given to the petition.

Andy Craig of 31239 Sunset, Council President, commented that there were two separate motions supported by different reasons and neither motion had positive support. He thinks that the Board should have come to a conclusion with positive support.

Linden Nelson returned to the meeting room. Freedman explained that the application was not denied by the first vote. A motion to approve the variance did not pass, but Freedman is not sure that the action taken by the Board resulted in a decision.

Fahlen suggested that public notice be re-issued and this discussion be continued at the next meeting.

The Village attorney will be asked to review the motions and opine on whether the Board's action resulted in a decision on this case.

Hanlin will provide Board members with copies of meeting minutes including cases in which parking variances were granted for Southfield Road property.

MOTION by Pagnucco, supported by Parks, that the meeting be adjourned at 10:34 p.m.

Motion passes unanimously.

MaryAnn Verdi-Hus, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk