

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

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.

APPROVE MINUTES OF A SPECIAL ZONING BOARD OF APPEALS MEETING HELD ON MONDAY, AUGUST 30, 1999

MOTION by Pfeifer, supported by Parks, that the minutes of a Special Zoning Board of Appeals meeting held on Monday, August 30, 1999 be approved as submitted.

Motion passes unanimously.

CASE NO. 979

The applicant, Clifton Roesler, withdrew his request for a variance due to recent opposition from neighbors.

CASE NO. 980

Petitioner & Property: Carol Culham
21843 Hampton
Lot 24 of Berkshire Grove
TH24-03-302-005

Property: Petitioner requests a deviation from the maximum 720 square feet to 864 square feet for an accessory building.

Petitioners Carol Culham and Peter Costigan are requesting a variance to construct an accessory building/garage in their rear yard that is larger than the maximum size permitted under the Zoning Ordinance. Culham explained that there would be a practical difficulty using the building for the purpose intended if it were not the size requested.

Costigan clarified that he is an artist and a cabinet maker and has accumulated woodworking machines. He needs the extra room in order to use these machines effectively. He stated that this is his hobby and he does not plan to start a business out of his garage. At the Board's inquiry, Costigan stated that he plans to build cabinets and furniture for his house and possibly make custom pieces for his friends which he may sell.

Culham commented that the building design will retain the historic integrity of their property. She presented a drawing of the proposed structure. Culham added that they are complying with the neighborhood regulation that the garage door not face the street. She indicated that they may eventually convert an existing, attached two-car garage into a recreation room.

Pfeifer remarked that the petitioner's neighbor is building a new garage. That individual appeared before the Zoning Board of Appeals a couple of months ago requesting a variance to build a larger building which the Board denied. The petitioners are aware of this.

Questions from Board members were addressed by the petitioners. Pagnucco commented that the ordinance was designed for the entire community considering the desire for open space. The petitioner's equipment does not fit into an accessory structure allowed by the ordinance. Pagnucco suggested that the homeowner may need to rent space to accommodate the equipment. He does not think a hardship has been demonstrated.

Verdi-Hus read a letter received from Virginia Watson of 31680 Lahser Road asking the Board to deny the variance to allow a large accessory building on the basis that it will ruin the character of the area.

Mark Stielow of 21891 Hampton stated that he lives next to the petitioners and is building a garage. He supports the petitioners' request for variance to build an accessory building.

Decision: MOTION by Fahlen, supported by Pfeifer, that the request for variance be denied on the basis that there has been no hardship proven.

The Board discussed what form a motion should take considering the August 12 letter from the Village attorney advising that motions should be made in a positive or affirmative fashion as a general rule. Ryan stated that the correct procedure should be to allow a motion to approve to be made first. If that motion fails, a motion to deny should be made immediately so that the record of the Zoning Board of Appeals is clear that the variance request has been denied.

Kamp mentioned that Ryan's letter did not cite any law or ordinance. The Village Ordinance states that the Zoning Board of Appeals is to adopt its procedures. Historically, this Board has accepted motions to deny a request and passed them. Unfortunately, there was some confusion at a meeting a couple of weeks ago which has been clarified.

It was the sense of the Board that the chairperson should clarify what an affirmative or negative vote would mean after a motion is made. When the motion is called, the chair should state whether the motion passes or is denied so there is no confusion.

Roll Call Vote:
Motion passes unanimously.

CASE NO. 981

Petitioner & Property: Paul Pietrzyk
15741 Amherst
Part of Lot 1290, Lot 1291 of Beverly Hills #3
TH24-01-433-002

Petition: Petitioner requests a deviation from the required minimum 12.5' side yard open space to 7.2' open space for a 1' story rear addition in order to continue with the existing line of the house.

Pietrzyk explained his request to build an addition on the back of the house which would maintain the current line of the building. The house is currently 7.2' from the lot line which does not comply with the ordinance requirement for a 12.5' sideyard setback.

It was questioned whether the addition could be located anywhere else on the property. Pietrzyk explained that any other location would encroach on the driveway. Also, the layout of the house precludes a plan other than continuing with the existing line of the house due to the layout of the existing rooms. It is impractical to build the addition anywhere other than where it is shown on the drawing submitted. Pietrzyk stated that the addition will be 1' stories, similar to the rest of the house.

Verdi-Hus read a letter dated September 8, 1999 from Raymond and Esther Travis of 15725 Amherst, adjacent neighbors to the east. They state that the proposed addition would have a greater impact on their property than other adjacent property owners. They do not think that the variance should be granted on the basis that it would continue with the existing line of the house. The house next door is closer than it should be and allows them no sense of open space or privacy. There is no room next to their driveway to plant any vegetation for screening to soften the presence of that house. The Travis' driveway parallels the property line all the way back to their detached garage. The proposed 13.3' addition would continue to dominate that side of the driveway towards the garage. They would lose more open space and privacy in their driveway and back yard.

The Travis' have concerns about the construction process and future maintenance of the addition. It is their position that, regardless of the status of the present structure, any future extensions and additions to the house next door including the proposed extension should be subject to the current Village Ordinance. They depend on that ordinance to protect their rights in the matter, and the proposed deviation would seriously compromise those rights. The Travis' ask the Board to deny this petition.

Pietrzyk stated that he spoke to the neighbor to the west who had no complaints. He attempted to contact the neighbors to the east but was unable to meet with them. He left a note in their mailbox informing them of his desire to build an addition.

In response to questions from Board members, Pietrzyk stated that the side of the addition that abuts the neighbors to the east would be a kitchen. There may be a window on that side but the emphasis would be to have windows towards the back end of the house. He is working with the builder on the plans and would adjust the floor plan to place few windows on that side. There will be no sliding door on the east side.

Ray Travis stated that, with or without windows, the presence of that house in such proximity to their driveway gives them a feeling of being claustrophobic.

Pietrzyk stated that the addition is being proposed because their existing kitchen is very small (7' x 9'), and the bathroom and bedroom upstairs is small with no storage space. They need additional space to feel comfortable in their house and expand their family. He emphasized that the only sensible location for the addition is along the east side of the house.

Kamp asked if Mr. and Mrs. Travis realized that the petitioner would be able to build a two-story addition in the rear yard that extends another 42 feet towards the back lot line if it were to be located five feet west from the current building line. This would not be in violation of the ordinance.

Travis commented that such an addition would be behind their garage which would have little affect on them.

Pietrzyk stated that building the addition another five feet from the side lot line than the existing house would completely change the shape and size of the addition and make it difficult to conform with the existing layout of the house.

Decision: MOTION by Freedman, supported by Pagnucco, that the petition be granted due to the practical difficulty with the placement of the house on the lot which makes it impractical to locate an addition on any other portion of the house.

Roll Call Vote:
Motion passes unanimously.

CASE NO. 982

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

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

Petition: Petitioner requests a variance in the parking requirements of 210 spaces to 173 parking spaces.

The petitioner Paul Weisenbach from Frank Rewold and Son was present representing the Bed Bath & Beyond organization and the property of Linden Nelson on Southfield Road. He appreciates the

opportunity to make a presentation before the Zoning Board of Appeals for a variance from the ordinance relative to parking requirements. Weisenbach asked Carmen Avantini from the Strader Group to present information that will have a bearing on this case.

Avantini outlined the changes made to the plan in this application. The applicant has removed 3,000 square feet of the original floor plan of the building which reduces the overall usable square footage thus reducing requirements for parking spaces.

At a previous meeting, Zoning Board members asked for information with respect to parking at other stand-alone Bed Bath & Beyond stores. Avantini reported that information was received today regarding stand-alone stores in different locations throughout the country. He distributed material including a chart listing representative stand-alone Bed Bath & Beyond facilities, building area, usable retail area, and total parking spaces per 1,000 SF of usable retail floor area. The stores listed have 5.5 spaces, 3.7 spaces, 5.2 spaces, 5.5 spaces and 4.9 spaces per 1,000 SF of usable retail floor area.

Kamp asked if any of the facilities mentioned require variances from the ordinances that apply at these locations. Avantini did not have that information available.

Another handout indicates that the total square footage of the proposed Bed Bath & Beyond building in Beverly Hills less the non-public areas dedicated to mechanicals, shipping, storage, etc. (9,669 SF) results in total usable retail floor area of 31,424 SF.

Avantini introduced Brad Strader with the Strader Group who is an expert in transportation planning. Strader understands that the task of the Zoning Board of Appeals is to look at the request and apply certain standards. It has been stated at a previous meeting that the courts have defined that the test to be met for a dimensional variance is practical difficulty.

Strader outlined the practical difficulties involved in this case which would allow the Board to grant a variance request. The building, the parking lot, and the parking configuration already exist. There is no practical ability to expand the site to accommodate a permitted use and meet the parking requirements for another use. The site is zoned for this use. The use being requested is a less intense use than the previous use on the site in terms of traffic impact and impact on the surrounding area and more consistent with the commercial character of this part of Beverly Hills.

It has been noted at previous meetings that the site plan has been modified to become more conforming with the Zoning Ordinance. Bed Bath & Beyond has rearranged the building to reduce the retail space and the area that generates parking to conform closer with the ordinance and reduce the extent of the variance being requested.

Strader maintains that the proposed use is unique. The Zoning Ordinance as written classifies all the commercial uses together. There is a complexity to commercial uses today in terms of parking generation and demands that is not reflected in the Village ordinance. The current ordinance is not written to accommodate this type of use where so much of the merchandise is on display. It is a practical difficulty to apply commercial standards for general retail use to this particular use.

Another point that has been made at previous meetings is that other similar requests for a variance from the parking standards have been granted without being followed by changes to the parking section of the ordinance. Strader noted that there has been discussion about amending the parking requirements of the Zoning Ordinance. It is a practical difficulty to delay the process to look at an amendment to the Zoning Ordinance.

Strader stated that there are other uses that the Zoning Ordinance permits to occupy this building that would need more parking. The Village would either be confronted with limiting the uses that are allowed here or have to grant an even greater variance than is being requested.

Strader commented that there is evidence in Beverly Hills where too much parking has been requested or required. At least 50% of the parking spaces at McDonald's are never used. The same is true with The Corners shopping center. While some of the uses are completely occupied, most of

the spaces between the restaurant and the bank are never occupied. Requiring too much parking leads to unaesthetic conditions and additional storm water runoff. Imposing this burdensome restriction on this applicant leads to other implications in terms of aesthetics on the site and storm water. Adding parking to the site would require removing landscaping that is being provided.

Strader is requesting that the Zoning Board of Appeals grant the variance on the basis of the facts on the record that there is a practical difficulty. The information provided by Bed Bath & Beyond demonstrates that other communities have been comfortable with a parking ratio similar to the one being requested here. The Board could condition any variance approval on site plan approval by the Planning Board and Council. Conditions could address the concerns about customers or employees of Bed Bath & Beyond parking on adjacent uses.

Freedman asked Strader if his firm has taken a look at the traffic along Southfield Road in this area. Strader responded that his firm is here to address the variance from the parking section of the Village Zoning Ordinance. It is his opinion that it is beyond the purview of this body to look at traffic. This is an issue that the Council and Planning Board could review.

Strader stated that there has been information provided by the previous tenant on the number of employees and parking generated by that use that the Planning Board could review. Strader indicated that he has done calculations based on the trip generation manual and found that the traffic generated by the Bed Bath & Beyond store would be less than the traffic from the McDonald's up the street. Even though the property in question has more square feet, the traffic generation would be less. The traffic generated would be similar or lower than places like Brady's and Vic's fruit market.

Strader added that there are no conflicting uses nor conflicting turning movements on the east side of Southfield Road. There is a cemetery on that side of the road. There are future plans for a boulevard on Southfield Road which would improve traffic operations along the corridor. Strader thinks that the percentage of traffic that this use or another use on this site would generate is very insignificant considering the traffic that already exists on Southfield Road.

Kamp asked Strader to elaborate on his comment that the proposed use is a less intense use than the previous use. He asked if Strader is saying that the proposed use would generate less traffic than the previous use.

Strader stated that many factors go into consideration of the traffic impact including noise, hours of operation, intensity of traffic, lighting, and improved landscaping. All those things would make the use more conforming and less intense in terms of its negative impact on the surrounding area. Strader indicated that there are no traffic studies on the previous use for comparison purposes. He believes that the Bed Bath & Beyond store is likely to generate less traffic during peak hours than the previous use. Southfield Road operates at a good level of service most of the day, other than the peak hours.

In response to a comment about recommendations on the current parking regulations, Strader indicated that the Village's planning consultant, Birchler Arroyo, prepared information for the Planning Board on the site plan for Bed Bath & Beyond which addressed traffic and parking. Birchler Arroyo supported the parking ratio proposed by Bed Bath & Beyond. Strader stated that the Board could make a motion conditioned on site plan approval and request that the Planning Board consider the traffic impact and circulation on the site.

Kamp asked if there was an assessment of the current experience with the reduced number of parking spaces at Medical Village. Strader thinks that there is a distinction between retail use and office use for purposes of these parking requirements. There was no comparison done on the office uses.

Kamp brought up the issue of the access point on the proposed site. Avantini stated that there has been discussion at previous meetings on the issue of access points with the adjacent properties. The applicant has indicated a willingness to work with the adjacent property owners on a mutually benefiting arrangement. It is a site plan issue that would be addressed by the Planning Board.

Strader stated that the Village could work with the Road Commission on the possibility of two egress lanes, a right and left turn, to minimize delays within the site. It is something that could be looked at as part of the site plan.

Kamp asked if there has been any discussion with the surrounding landowners since the special meeting of August 30 to work out an arrangement to ease concerns about parking and traffic congestion in this area.

Linden Nelson related that he was given a list of requests from the surrounding businesses. One of the requests was that a hedge be installed on the north side of the building to separate the Beverly Hills Club and Bed Bath & Beyond property to prevent anyone from parking in their lot and going into our building. This was agreed to along with the request to create a landscape barrier south of the property line at Beverly Hills Grill and Steve Petix building. Nelson also agreed to construct a fence at the north and west property lines.

It was requested that the Bed Bath & Beyond employees park in the front area of the building. Nelson agreed to install parking lights on the north side of the building that will flood onto the Beverly Hills Club parking lot.

The neighboring businesses asked Nelson to look at whether parking could be increased with angle parking spaces. The parking consultants researched this and found that angled parking did not add spaces.

Nelson was asked to revisit the site concerns in a year. The applicant was also asked to conduct necessary traffic studies and pursue the installation of a traffic signal at the driveway with Oakland County with any expenses to be paid by Bed Bath & Beyond. Nelson stated that the applicant looked at this earlier with the County and was told that a traffic signal is not necessary. There is a signal at Thirteen Mile Road and one at Beverly Road.

Nelson summarized that the applicant has agreed to six out of the ten requests from neighboring businesses. They have no control over Oakland County deeming it appropriate to install a traffic light nor can they agree to revisit the site concerns in a year. Nelson informed the neighbors that, once this variance is granted and the applicant is working with the Planning Board, they would revisit the issue of a parking study to determine if the space is being used correctly in terms of ingress and egress and shared driveways.

Kamp stated that the Board has heard discussion and received data from all parties. His concern is with substantial detriment to the public good. His own experience is that there is heavy congestion near this location on Southfield Road at certain times of the day. The applicant has asserted that the Village ordinance has too stringent of a requirement for parking in proportion to this use. Kamp stated that a determination was made to include this ratio in the ordinance because it must bear some proportion to the expected traffic here. There is a possibility that decreasing the parking requirement by 37 spaces might worsen traffic congestion and potential for traffic backups onto Southfield Road. Consideration should be given to whether or not granting the variance will realistically increase the risk of traffic congestion in and out of the site to the point where a hazard is created.

Strader stated that there is not always a direct correlation between the amount of parking spaces and traffic generation due to the variation in turnover. He gave examples of how the size of a parking lot influences trip generation or traffic flow but it is not the sole determinant.

There is an expectation that the road system can handle the traffic generated by the uses that are permitted in the zoning district and in the master plan for the Village. Strader stated that the traffic issues would be extremely relevant if we were talking about a rezoning to permit this use. The Village has already determined that Southfield Road is a high volume, high capacity road that can handle additional traffic. Strader commented that making a left turn out of any of the businesses along the Southfield Road corridor can be difficult. The traffic lights at Beverly Road and at 13 Mile Road provide some gaps to get in and out of this site and the other sites. The "no turn on red" signs at 13 Mile and Southfield Road and the green arrows on the signal have created more gaps on this corridor. Strader asserted that whatever use goes into this site will increase traffic on Southfield

Road and create some conflicts with other uses. He maintains that it is not fair to directly tie the variance request for this site plan to the traffic impact.

Fahlen suggested that consideration be given to prohibiting left turns out of some of the lots on Southfield Road. This would be a matter for public safety, Planning Board and Council to consider.

Stephanie Simon, attorney with Hoffert and Associates representing Steve Petix, distributed a report containing documentation in support of opposition to Case No. 982. She referred to a document in the report which is an affidavit from Nicholas G. Banda, City of Southfield planner. Banda reviewed the latest plan attached to the petition from Bed Bath & Beyond. The conclusion of his affidavit is that he would never allow a use like Bed Bath & Beyond to go into the site proposed without a traffic study being done first. Reasons cited include public safety and welfare concerns. The city of Southfield is requiring a similar high volume use, Walgreens, to complete a traffic study before considering approval of the site plan. A traffic study was required for Home Depot prior to granting approval.

Simon commented on the National Boatland case and the tests it provides for determining practical difficulty. She believes that Bed Bath & Beyond has failed to demonstrate a practical difficulty. The first test of whether or not there is an unreasonable burden has not been met in this case. She has found several other uses in the Zoning Ordinance that could go on this site and comply with parking requirements such as retail establishments for furniture, major appliances, household equipment, and certain types of personal service and repair shops, showrooms for plumbers, decorators, and electricians.

Simon contends that holding the other businesses in the district to square footage limitations which in essence limits the size of their businesses while making an extreme exception for only one business is unjust, inequitable, and constitutes an unequal application of the Zoning Ordinance and the law.

The spirit of the ordinance will be not be preserved and public safety and welfare will substantially be put at risk and made insecure by granting this variance. Simon stated that allowing this use will be in direct contradiction to the Preamble of the Village of Beverly Hills Zoning Ordinance which she quoted.

Simon summarized that, according to the National Boatland tests, it cannot be said that there is an undue burden placed on this parcel. It cannot be said that the variance, if granted, will be fair and just to the other property owners in the area. It cannot be said that the public safety and welfare and the spirit of the ordinance itself is upheld. For that reason, Steve Petix would ask that the variance be denied.

Larry Sherman representing the Beverly Hills Club followed up on the question of whether or not the proposed variance requested will pose a problem for the property owners in the area. It is Sherman's opinion that it would be a dereliction of the duty of the Board not to look at the facts. The facts have not been determined at this time in terms of the critical issues before the ZBA which are whether 173 parking spaces at that site are adequate and whether a serious traffic problem will be created for the Bed Bath & Beyond site and for all of the property owners in that area.

After the Zoning Board of Appeals voted 4-4 on the parking variance at its August 30 meeting, the parties met on September 3 in good faith to discuss issues of mutual concern. The parties have not been able to agree on the key issue which is a parking study to determine whether or not 173 parking spaces on that site is adequate. Secondly, the applicant has not agreed to conduct a traffic study to determine if parking is sufficient or whether there will be dangerous traffic movement that will cause concern for this community and everyone who uses that site.

The applicant is asking the ZBA to look at a cosmetic change by saying they have increased the warehouse space by 3,000 square feet in order to ask for a lesser variance. Sherman contends that it is an artificial change because there is stock from the floor to the ceiling in this particular use.

Sherman has asked Mike Labadie, traffic consultant to be present to explain the need for a traffic engineering study.

Parks interjected that whatever use goes into that building will increase traffic.

Sherman agreed and added that they are not opposed to any use of the site. The proposed use has eight cash registers at the front of the store and generates a high amount of traffic volume which is the reason for requesting a traffic impact study in addition to determining whether there are adequate parking spaces for the site.

Village Manager Hanlin interjected that it is not the policy of the Village of Beverly Hills to conduct a traffic study at this stage in the process. If a traffic study is warranted, it will be done at the Planning Board level. She added that the procedures followed by the City of Southfield are not relevant.

Sherman is asking the Zoning Board of Appeals to exercise caution in their deliberations. He stated that the facts could be ascertained within a matter of a couple weeks to make an informed decision as to whether 173 parking spaces at that site would be sufficient. If the Board does consider granting this parking variance, Sherman asked that it be with the conditions that have already been agreed to by the parties.

Sherman related that he has been advised by the developer and his representatives that the Thanksgiving and Christmas opening date for Bed Bath & Beyond is no longer a reality. If the required approvals are received, they are looking at a spring opening. Sherman fails to see the necessity for ruling on the parking variance if the data would be available to a consultant to conduct the necessary studies to protect the Village and all properties on Southfield Road. He mentioned that the approach may end up being securing mutual access easement agreements to permit crossover parking to alleviate traffic problems.

A recess was called at 9:10 p.m. The meeting reconvened at 9:15 p.m.

Mike Labadie, traffic engineer, stated that he was contacted by Sherman and is present to offer some assistance as an informed citizen. Labadie outlined items that he determined would require review before approving the parking and traffic issues on this site.

Strader stated that Mr. Labadie and his firm did a traffic and parking study for a shopping center in Northville Township that included a Bed Bath & Beyond facility. They concluded that 4.5 spaces per 1,000 square feet was adequate.

Strader reiterated that it is important to realize the use is permitted. The site exists and the parking exists. This is not a special use or a rezoning where it may be more appropriate to get into the traffic impact issues.

Strader remarked that, while it is true that some of the permitted uses in the zoning district might generate less traffic and less parking demand, there are also uses that would generate more traffic and parking demand than the proposed use. Key issues are traffic circulation, the stacking space and operation of the driveway, and where the driveway should be located. The architects have looked at these things. These are issues that the Planning Board and Road Commission will consider. Strader added that the Village's planning consultant Birchler Arroyo has a well respected transportation planner and a traffic engineer on staff who can work with the Planning Board to determine what type of traffic impact analysis is needed.

Strader concluded that his firm thinks it is reasonable to grant a variance. It is consistent with the Zoning Ordinance and with the trend of uses along the corridor.

Parks thanked everyone for their time. All parties have taken this issue very seriously. Parks believes that the Planning Board has some work to do if this variance passes. Traffic will increase regardless of what use goes on that site. The building is existing and it is has to be used.

Parks thinks that the 3,000 square feet removed from the original floor plan of the building reducing the overall usable square footage is significant and reduces the extent of the variance. The Zoning Board of Appeals is not bound by precedent along the Southfield Road corridor; however, variances are needed for parking. It is compelling that the Village's planning consultant Birchler Arroyo has recommended the parking ratio requested by the applicant as the proposed standard for this type of retail use. The fact that another use could go in this site that could generate more traffic or be less than consistent with the spirit of Beverly Hills is a concern. Parks stated that he will make a motion to grant the variance for these reasons.

Decision: MOTION by Parks, supported by Freedman, that the variance be granted because of the practical difficulty of utilizing the building for a business use which is permitted under the Village Zoning Ordinance and considering that the parking request is within the limits as outlined by the Village planning consultant.

Roll Call Vote:

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

Motion passes (7 - 2).

Fahlen requested that the applicant provide additional information to the handout listing off-street parking for stand-alone stores that indicates whether parking variances were granted in any of these instances.

ZONING BOARD COMMENTS

There was discussion on the procedures for making motions. There was agreement of the Board not to change its procedures but to clarify the vote after the motion is made. The chair will state, "If this motion passes, the variance will be approved (or denied)". It is a clarification issue and not the positive or negative wording of a motion that is a problem.

MOTION by Freedman, supported by Clark, that the meeting be adjourned at 9:38 p.m.
Motion passes unanimously.

MaryAnn Verdi-Hus, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk