

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

Absent: Fahlen and Pagnucco

Also Present: Village Building Official, Byrwa
Council Liaison, Downey

Chairperson Verdi-Hus presided and called the meeting to order at 7:30 p.m. in the Southfield Township office at 18550 W. Thirteen Mile Road.

APPROVE MINUTES OF ZONING BOARD OF APPEALS MEETING HELD ON MONDAY, SEPTEMBER 13, 1999

MOTION by Kamp, supported by Clark, that the minutes of a Zoning Board of Appeals meeting held on Monday, September 13, 1999 be approved as submitted.

Motion passes unanimously.

CASE NO. 983

Petitioner and Property: Bradleigh Simpson
32843 Bassett Woods Ct.
Lot 6 of Bassett Woods
TH24-03-127-018

Petition: Petitioner requests a deviation for a detached garage to encroach 12' beyond the rear of the house into the side yard open space.

Bradleigh Simpson stated that his application to the Village for a permit to build a detached garage was made in good faith. He requested and received instructions regarding erecting a garage on his property from the Village office. Based on those instructions, a plan was developed and presented to the neighborhood homeowner association. The Valley Woods Homeowners Association representative approved the plan on August 28, 1999. The Village approved the plans and issued a building permit on August 31. A problem was not indicated at the time the Village inspected the footings prior to pouring the cement.

The cement was poured and the structure was three-quarters constructed when the Village informed Simpson that there was a code violation. Simpson stated that he was not made aware of a violation of side yard restrictions through any of the paper work received for this project. The structure has been erected. Simpson maintains that moving it back 12 feet to meet ordinance requirements will cause extreme physical and financial hardship. Another concern is that moving the garage back 12 feet will cause his family to lose a mature 60 foot walnut tree.

It was clarified that a variance is being requested to allow this structure to be built 12 feet beyond the rear of the house into the side yard open space. There are no other variances required relating to the proposed structure. The five foot side yard setback and size of the garage meet ordinance requirements and are not an issue.

Verdi-Hus read a letter dated October 14, 1999 to the Zoning Board of Appeals from Sandra and Eugene Tomlinson of 32820 Bassett Court. Reference was made to the ordinance section that states that no accessory buildings shall be erected in the front or required side open space. The structure under construction has been placed 12 feet 10 inches forward from the back of the house. The Tomlinsons think that the deviation must be denied for this reason and because of fire hazard concerns. The letter goes on to say that this is an oversized garage with a front facing door opening. There are no unattached garages in the entire area. The Tomlinsons believes that there is an attempt to operate a business from a residence.

Eugene Tomlinson was present in the audience. Verdi-Hus asked if he had anything further to state. Tomlinson questioned whether the structure should also have to be set back at least 6 feet from the back of the house to be in compliance with the ordinance. This would require moving the garage back 19 feet from its present location.

Tomlinson asked why notice of the variance was not mailed to area residents prior to construction to allow them an opportunity to voice their concerns. He stated that the petitioner is a paint contractor which raises concerns from people in the neighborhood that large vehicles will be parked on the property. Storage of paint in a potentially hazardous location should also be considered.

Tomlinson remarked that the lots in the area are one-half acre or larger which could accommodate a garage with a side or rear entrance. He does not think that a hardship exists and requests that the Board deny this variance.

Byrwa responded to Tomlinson's questions regarding setbacks and fire rating. With regard to notifying area residents, Byrwa explained that the Village discovered after the fact that there was a deviation from the zoning ordinance due to an oversight on his part.

Simpson clarified that he is president and supervisor of a painting company but is only in possession of one truck. He does not store paint on the premises. His company repaints apartment complexes. All the paint is stored at each site. His employees come from their home to the site. There are no other vehicles owned by his company. Neighbors do not have to be concerned about storage of vehicles or paint.

The reason why the additional garage is needed is because his truck is 19'-6" long. The garage attached to his house is 20' long, leaving him with about 2" on each end of his vehicle when the door drops. The height of the door is also a problem. The petitioner has another vehicle which he parks in his attached garage.

Simpson observed that all of the homes in the area are of a similar type and were erected at the same time. They do not have front facing garages. He noted that there are whole streets of front facing garages on Evergreen Road.

Peter Zemnickas of 21050 Smallwood thinks that the character of the area should be maintained and would like the petitioner to be required to move the garage back to meet ordinance requirements.

Parks commented that it should be understood that the only thing this body has the power to decide tonight is whether this building can remain 12 feet forward of the rear of the house toward the street in the side yard open space. The Board can grant or deny the variance requested.

Parks asked if there are any deed restrictions relative to a side or front opening garage door. Bob Walsh, President of the Valley Woods Homeowners Association, commented that the association consists of eight or nine different subdivisions with deed restrictions that vary slightly between subdivisions. Walsh contacted the Oakland County Register of Deeds and found that there are no deed restrictions requiring a front entrance garage in that area. He noted that the Village does not enforce subdivision deed restrictions.

Walsh indicated that he asked the homeowner if he talked to his neighbors, particularly to the neighbor to the south. Simpson indicated that he had.

Pete Regan of 32821 Bassett Woods asked Walsh if Bassett Woods is part of Valley Woods Subdivision Association. Walsh indicated that he is the association president representing their subdivision due to the proximity of Bassett Woods to Valley Woods.

Ronald Chewning of 32842 Bassett Woods Court stated that he and his wife do not have a problem with the front entrance or size of the structure. They would like to see the garage moved 12 feet further from the street to comply with Village code, but they hope that it is a Village responsibility.

Katherine Regan of 32821 Bassett Woods Court distributed photographs showing the view of the structure from her property and pictures of other houses on the street. She asserted that the placement of this garage is not in harmony with the house or with the neighborhood. To allow this structure to remain would detract from the property values of the neighborhood. She urges compliance with the code.

Regan expressed concern that the garage in this location will increase existing storm drainage problems in the area. The drainage should be restricted to the applicant's property so it does not flow towards the adjacent property.

Regan is concerned that there was no formal survey done. The mortgage survey was used to obtain the building permit. She thinks that the property lines need to be firmly established since the structure is going to be so close to the lot line. Regan wants to maintain the quality of the neighborhood by having the Zoning Ordinance upheld.

Kamp asked if there is estimate of the cost that would be incurred to move the garage 12 feet back.

Daniel Pepera, contractor erecting the garage, estimated that the cost to move the garage would be about \$7,000 for demolition of the existing walls, excavating, new concrete work, construction and materials. He thinks that moving the structure back would probably kill a 60-year-old tree in the rear yard. Pepera maintains that everyone coming around the cul-de-sac will see the structure whether it is moved back or not. With respect to comments on the appearance of the structure, Pepera emphasized that the garage is not completed yet.

In response to an inquiry, Pepera stated that this is the first garage he has built in Beverly Hills. He affirmed that he would have applied for a variance if the ordinance had not been brought to his attention after the fact. It was noted that Simpson purchased the house in October of last year.

The drainage issue was addressed. Pepera stated that a gutter system was not incorporated on the structure. There is an overhang around all four sides of the garage and it is not attached to the house. Pepera maintains that it is not necessary to incur the cost of a guttering system to bring the runoff down to the ground and shoot it towards the slope of the land to the rear.

Verdi-Hus asked what would change if the garage was attached with a roof to the house. Byrwa stated that it would change the side yard setback requirement from 5 feet to a 15 foot side yard setback. The property owner could then bring the garage forward to the front of the house.

Simpson displayed pictures of the garage and the location of the tree.

Eugene Tomlinson referred to the dimensions indicated on the mortgage certificate and questioned whether moving the garage will infringe on the tree. Keith Regan would like to see a tree expert's opinion in writing.

Pfeifer commented that, if the garage were moved 12 feet back and six feet of depth were removed, the structure would only encroach another 6 feet behind where the back wall is now. He suggests that the petitioner can choose to build 24' deep garage in lieu of a 30' deep garage.

Pfeifer understands that this is an unfortunate situation, but he cannot approve the structure in its current location forward from the rear of the house. He realizes that the property owner had a building permit. There may be an agreement reached between the property owner and the Village with respect to the cost of moving the garage.

Parks questioned whether the contractor had asked the Village about the restrictions before building the garage. Pepera displayed the sheet he received from the building department when he inquired about the garage. It is entitled "Garages" and does not mention side yard open spaces. He was given this sheet and the application for a building permit.

It was noted that both sheds and unattached garages are accessory buildings. Another sheet which the petitioner apparently did not receive is entitled "Accessory Buildings". This handout states that "no building shall be permitted on any front or side open space or within permanent easements."

There was discussion about the process for issuing permits and distributing information. It was agreed that the building official and staff will prepare a handout that will combine the information for garages and accessory buildings on one sheet that clearly indicates setback requirements in order to prevent this situation from occurring in the future.

Kamp stated that, fundamentally, the Village does not have the legal obligation to advise a property owner of the legal requirements to comply with the ordinance. People look to their government officials for advice and assistance in a practical world, and everyone recognizes that it is preferable to have that assistance. It is unfortunate that this happened. Who is at fault is outside of the determination of the Board at this time. The question is whether or not the garage can remain 12 feet forward from the rear line of the house.

Freedman stated that another question is whether there is a hardship due to the configuration of the lot. The application to appear before the Board indicates that the enforcement of the ordinance creates a peculiar or exceptional practical difficulty, and the enforcement of the ordinance creates an exceptional or undue hardship. She asked the petitioner what he believes those difficulties or hardships are.

Simpson mentioned the financial hardship of moving the structure. The site hardship involves the location of a 60-70 year old tree and the fact that the site slopes away quite dramatically to the rear, which would pose difficulties in moving the structure back.

Freedman voiced concern for the large tree, which she thinks adds to the community. It has been noted that the petitioner could consider building the garage less deep to accommodate the tree.

Simpson responded that he chose to build the garage 30 feet deep to provide a work area. It could be made smaller.

Pfeifer stated that the Board must consider whether a hardship exists that allows that building to stay where it is. If there is no hardship demonstrated, the request must be denied. The homeowner will then approach the Village regarding financial arrangements for moving the garage.

Paul Kleppert of 20855 W. 14 Mile Road stated that his home is on the original eight acres from which this subdivision was platted. Kleppert stated that he is in the construction business and would move the garage for less than \$7,000. He commented on specifics involved with moving the garage.

Kleppert commented that the entire back area of the petitioner's house and the house behind it floods in the spring. He talked about drainage in the area and questioned whether eliminating gutters on the garage would result in a problem for the home to the north.

Verdi Hus read letters from the following residents who object to the variance request on the basis that it would have a negative impact on the property values in the vicinity: Veronica Tan of 32867 Bassett Woods Court and Rhoda Kutzen of 21000 Smallwood.

A letter was received from Joe Richert of 20805 14 Mile Road stating he has no objection to the variance request.

Decision: MOTION by Parks, supported by Pfeifer, that the variance be denied on the basis that the petitioner has failed to show that the ordinance creates a peculiar or exceptional practical difficulty or that the enforcement of the ordinance creates exceptional or undue hardship.

Roll Call Vote:

Clark - no
Dery - yes

Freedman - yes
Kamp - yes
Parks - yes
Pfeifer - yes
Verdi-Hus - yes

Motion passes (7 - 1).

ZONING BOARD COMMENTS

Board members voiced support for Byrwa and reinforced the importance of reworking the information distributed to residents and contractors.

Pfeifer referred to discussion at the last meeting regarding procedures for making motions. This issue came up at a recent Council meeting. Ryan indicated that it is not necessary to phrase a vote in the positive as suggested in his memo of August 12, 1999 to the Village. The Board can move to deny a request for variance. The intention is that the Board members be clear on what is being voted on and the result of that vote. The chairperson should clarify what a “yes” vote and “no” vote means prior to the roll call.

Verdi-Hus referred to a recent case that resulted in the Board denying a request for variance to allow a gate across the driveway of a home on 13 Mile Road. She has observed that the property owner erected the gate.

Byrwa responded that this property owner has received a court appearance ticket. He is also working on another case involving the Board’s denial of a variance to retain an existing fence on Beaconsfield at Bedford.

The meeting was adjourned at 8:45 p.m.

**MaryAnn Verdi-Hus, Chairperson
Zoning Board of Appeals**

**Ellen E. Marshall
Village Clerk**