

Present: Chairperson Verdi-Hus; Vice-Chairperson Kamp; Members: Fahlen, Freedman, Johnson, Needham and Schafer

Absent: Pagnucco and Parks

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

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

APPROVAL OF MINUTES

MOTION by Fahlen, supported by Schafer, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, October 9, 2000 be approved as submitted.

Motion passes unanimously.

REHEAR CASE NO. 1000

Petitioner & Property: David Patton
16252 Reedmere
Lots 1437 and part 1438
Beverly Hills #3, TH24-01-402-012

Petition: Petitioner requests deviations for two 1-story rear additions. In order to continue with the existing line of the house, a side yard deviation is requested from the required 12.5' open space to 10' for the addition on the west side and a rear yard deviation from the required 40' to 19' open space. **ALSO**, a rear yard deviation for the addition on the east side from the required 40' to 17' open space and a side yard deviation from the required 17.5' open space to 17'.

The petitioner David Patton described the proposed additions that require two variances from the Zoning Ordinance. He proposes to add a master bathroom to the rear of the house and convert an existing Florida room to a year around family room. Patton explained that he and his wife appeared before the board in August. At that time, they were asking to extend the back of the family room about three feet further into the rear yard open space. The board presented them with the opportunity to table the request for variances in order to further review their plans and reconsider their petition.

Patton informed the board that they decided not to extend the family room any further into the back yard than the existing non-conforming Florida room. They propose to extend the addition toward the middle of the house and east toward the existing side line of the house. Side yard deviations are requested for both additions to continue with the existing line of the house.

Patton answered questions from the board regarding the proposed addition. The additions to the house will accommodate necessary living space for a relative who will stay with the property owners and may live with them in the near future.

Decision: MOTION by Johnson, supported by Kamp, to grant the variances requested on the basis that enforcement of the ordinance creates exceptional hardship.

Roll Call Vote:
Motion passes unanimously.

CASE NO. 1002

Petitioner & Property: Mark Whalen
17023 Georgina
Lots 237 and part 238 of Beverly Manor
TH24-01-376-027

Petition: Petitioner requests a side yard deviation from the required 5' minimum open space to 3' for a proposed detached garage.

Mark Whalen is requesting a variance from the side yard requirement of five feet in order to construct an unattached garage. If the garage were constructed five feet from the lot line, it would create access problems to the left bay of the garage due to the proximity of the house and a proposed addition to the house.

The plan submitted shows a six foot utility easement at the rear line of the property. Based on the location of the lot abutting another subdivision, Fahlen questioned whether there is also a six foot utility easement on the west side of the property. The existence of a utility easement in the side yard could not be verified by the petitioner.

Building official Byrwa stated that the Village Ordinance allows a structure to be built up to an easement but not on an easement. It may be prudent to verify the location of the utility easements with a formal document. He suggested that a variance could be approved by the board contingent on the applicant not building on an easement. The case could also be postponed until the petitioner submits a document verifying that there is no utility easement in the side yard.

MOTION by Fahlen, supported by Needham, to table Case No. 1002 until it is determined whether there is an easement on the west property line.

There was discussion on the motion. The applicant was informed that the legal description in the title insurance will often show where the utility easements are located.

The petitioner stated that he made an assumption that an easement did not exist based on the proximity of the garage to his south, which is located within three feet of the lot line, as well as the location of a garage on a lot that is directly southeast.

It was indicated that the property owner could not build in the sideyard if it was found that there was a utility easement on the west lot line.

Roll call Vote:
Motion passes unanimously.

Byrwa suggested that the petitioner obtain a verifiable document that shows whether there is an easement on the west property line. This could be a mortgage survey, a document from a utility company, or information from MISS DIG.

Freedman expressed concern that tabling the petition for a month would prevent the property owner from building the garage before the winter weather. It has been indicated that the property owner could not build in the sideyard if it was found that there was a utility easement at that location. If the board is inclined to approve the request for variance, it would be a matter of verifying that there is no easement in the side yard.

Schafer asked for discussion on the merits of the petition.

Byrwa reiterated that a variance could be granted by the board contingent upon the petitioner providing the Village with a legal document verifying that there is no easement on the west property line. Byrwa will not issue a building permit until such documentation is received.

MOTION by Freedman, supported by Schafer, to take Case 1002 off the table for discussion.

Roll Call Vote:

Motion passes unanimously.

Board members asked questions of the petitioner. The proposed garage abuts a corner lot on Rutland. The proposed garage is 41 feet from the residence on that lot. The petitioner is proposing to build a standard 22' x 22' two-car garage.

Possible redesign of the garage that would permit the required setback was discussed with the applicant. Whalen did not consider moving the garage farther east based on the floor plan he wants to achieve with the addition. Angling the garage would make it difficult to back out cars on a curve.

Byrwa remarked that this is a narrow lot. A two-car garage located a short distance from the back of the house plays into the configuration. Byrwa noted that there are a number of houses on adjacent streets with similar two-car detached garages.

Decision: MOTION by Fahlen, supported by Freedman, to grant the deviation with the hardship being that the area between the house and the garage is not sufficient to have adequate access to the garage if it were built five feet from the lot line. A condition of granting the variance will be for the petitioner to submit evidence satisfactory to the Village Building Official that there is no conflicting easement under the proposed structure.

Roll Call Vote:

Needham - yes
Schafer - no
Verdi-Hus - yes
Fahlen - yes
Freedman - yes
Johnson - yes
Kamp - yes

Motion passes (6 - 1).

CASE NO. 1004

Petitioner and Property: Brian Forman
31245 Sheridan
Lots 451 and 452 of Beverly Manor #1
TH24-01-452-019

Petition: Petitioner requests a rear yard deviation from the required minimum 40' open space to 30' for a rear addition and a deviation to 36' open space for the second rear addition.

The petitioner Brian Forman stated that two variances are being requested from the rear yard setback in order to construct two additions on the home that will provide a bedroom, space for a home office, mud room, and an additional bathroom. The property owners have lived in the home six years and now require additional space for themselves and two children. Forman explained the layout of the house with the proposed additions. Brian and Tamara Forman answered questions from board members.

It was noted that the shape of the lot is irregular. If the west lot line were to continue in a straight line going north, the amount of the variance requested would be small. The board questioned the accuracy of the 30' dimension shown on the drawing from the proposed northern addition west to the rear lot line. It appears from the mortgage survey drawing that this distance may be more than the 30' indicated. There was discussion of the possible discrepancy in the measurement indicated on the drawing.

Decision: MOTION by Freedman, supported by Fahlen, that the variance be granted due to an exceptional or undue hardship on this property based on the peculiar shape of the lot. The coverage on the lot does not seem excessive as the proposed additions are drawn.

Concern was expressed that granting the variance as presented in the application would allow the property owner to construct a larger addition that encroaches into the rear yard further than shown on the mortgage survey diagram. Before voting, members wanted to be clear that they are approving the configuration of the proposed additions as submitted in the application regardless of the precise dimensions. The petitioners do not have construction plans that would provide detailed dimensions of the additions.

MOTION by Schafer, supported by Fahlen, to amend the motion to condition the approval of the variances to require that the new structures be no less than 36 feet from the rear property line.

Freedman accepted the amendment to the motion. The petitioners indicated that they are willing to abide by this condition.

Roll Call Vote on motion with amendment:

Motion passes unanimously.

ZONING BOARD COMMENTS

Verdi-Hus asked Byrwa about the status of the lawsuit involving a property owner on Thirteen Mile Road who erected a gate that is in violation of the Zoning Ordinance. Byrwa responded that this case is in a second round of appeals. He will keep the board informed on the status.

At the last meeting, Fahlen requested an opinion from the Village Attorney on whether he should have excused himself from voting on a case for which he received notification due to living within 300 feet of the property in question.

Byrwa stated that the Village Manager spoke to the Village Attorney about this matter. It was Mr. Ryan's opinion that this is not an issue, and the Zoning Board member had a right to vote. There is no conflict of interest when a ZBA member is within the 300' radius area of the petitioner's property. The member is entitled to voice their opinion like anyone else in the community.

Fahlen read from a booklet published by the Michigan Municipal League on the topic of what constitutes a conflict of interest. It addressed the possibility of declaring a conflict of interest if your home falls within the notification radius used by the community for Zoning Board of Appeals action. Ultimately the declaration of a conflict becomes a personal issue that should be up to the individual members.

PUBLIC COMMENTS

Council Liaison Munguia stated that a ballot proposal committee submitted to the Village Clerk over 1,500 signatures of Beverly Hills residents who request a dedicated millage proposal of 0.25 mill to improve Beverly Park on the March 2001 ballot. That proposal will be on the March ballot pending certification of those signatures.

Munguia informed the board that, at a joint meeting of the Council and Planning Board, there was discussion of the pathway plan developed by the Planning Board. He thinks there may be some zoning issues involved as the plans progress.

A resident in the audience stated that she received notification in the mail that Case No. 1003 would be heard this evening.

Byrwa stated that there was some confusion on the availability of the petitioner of Case 1003, and the notices were inadvertently mailed. Case No. 1003 was removed from the agenda because the petitioner was unable to attend tonight's meeting. Byrwa apologized for the resident's

inconvenience. This case will be scheduled for the December ZBA meeting. Residents within 300 feet of the property will be re-notified.

Steve Gerwin of 31165 Sheridan was present to observe the meeting. He has a house in Beverly Hills and is considering an addition to his garage that will require a variance from the side yard setback. Several of his questions were answered by Byrwa.

MOTION by Fahlen, supported by Freedman, to adjourn the meeting at 8:40 p.m.

Motion passes unanimously.

MaryAnn Verdi-Hus, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk