

Present: Vice-Chairperson Kamp; Members: Dery, Fahlen, Freedman, Johnson and Schafer

Absent: Pagnucco, Parks and Verdi-Hus

Also Present: Village Building Official, Byrwa
Council Liaison, Munguia
Council Members, Pfeifer and Walsh

Vice-Chairperson Kamp presided and called the meeting to order at 7:30 p.m. in the Village municipal building at 18500 W. Thirteen Mile Road. Kamp welcomed new member Carl Johnson.

APPROVAL OF MINUTES

MOTION by Fahlen, supported by Dery, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, April 10, 2000 be approved as submitted.

Motion passes unanimously.

CASE NO. 989

Petitioner and Property: Paul Kleppert
20855 West 14 Mile Road
Part of Lot 1 of Bassett Woods
TH24-03-127-020

Petition: Petitioner requests a variance to allow the use of original 125 year old fence posts and gates. The ordinance states that vertical support posts may extend up to six inches above the allowable fence height.

Paul and Ann Kleppert are requesting a variance to use original 1870's cast iron gates and posts in order to erect a fence along the front of their property. Paul Kleppert displayed a post and a section of gate and demonstrated the integral function of the decorative top portion of the post. The cast iron posts have a fixed mounting bracket for fence and gates and would not function if the posts were shortened. Kleppert stated that the post without the top portion is 42" high and meets ordinance requirements. The post with the top portion is about 10" higher than the ordinance allows. He mentioned that a top decoration on the gate extends above 36".

There will be 14 posts installed on 8' centers with fencing extending 130' across the front property line. The fence meets ordinance requirements. The posts are period to the home. The fence will be painted dark green.

Freedman asked if the petitioner gave any thought to burying part of the post. Kleppert stated that burying a portion of the post would take the fence into the ground because of the way the gate and fence is attached to the post. Kamp stated that it appears that the top piece of the post is functional as well as aesthetic.

Freedman commented on how beautifully the Klepperts have restored their home. She feels the hardship in this case is based on aesthetics and is not comfortable supporting a variance on that basis.

Fahlen referred to the ordinance allowing front yard fences at a maximum height of 36 inches and questioned the reasoning for language that says, "Vertical support posts may extend up to six inches above the allowable fence height". He stated that the Village has allowed four foot high fences with posts that were more than six inches higher than the fence.

Byrwa remarked that the phrase quoted by Fahlen does not address reasonable decorative attachments. It refers only to support posts. He believes that the proposed post is in compliance with the ordinance without the decorative attachment.

Freedman asked why a variance is required if the ordinance allows the proposed post. Byrwa responded that it is a question of interpretation of the ordinance by the Zoning Board of Appeals. In matters that are questionable, the board has a right to determine the technical aspects of the ordinance.

Kamp read four letters received by the Village regarding this case. The following residents wrote in support of the deviation requested that would allow the Klepperts to construct the proposed fence:

Laura Deibel	32805 Eastlady
Eugene M. Tomlinson	32820 Bassett Woods Court
Rhoda Kutzen	21000 Smallwood Drive
Elaine M. Simpson	32843 Bassett Woods Court

Fahlen commented that the petition states that enforcement of the ordinance creates an exceptional or undue hardship. He asked the petitioner to define the hardship.

Kleppert stated that, due to the way the posts are designed with the attachments to the gate and fence, any attempt to lower it would take the gate into the ground. The structure was originally designed with rings at the base that would allow water to flow out and not rot the bottom of the cast iron post. Burying the post would cause it to deteriorate.

Decision: MOTION by Fahlen, supported by Kamp, that the request be granted with the hardship being the construction of the posts in conjunction with the character of the house.

Roll Call Vote:

Dery	- yes
Fahlen	- yes
Freedman	- no
Kamp	- yes
Johnson	- yes
Schafer	- yes

Motion passes (5 - 1).

CASE NO. 994

Petitioner and Property: Kristin L. Lumsden
16980 Beechwood
Lot 2179 and 2180 of Beverly Hills #5 Subdivision
TH-01-181-009

Petition: Petitioner requests a deviation from the required 12.5' side yard open space to 7' for an addition to an attached garage.

Property owners Kristin and Dave Lumsden were present with architect Art Lang. Kristin Lumsden outlined their request for a variance. She related that there are 14 houses on Beechwood between Bates and Pierce with only two houses having a one-car garage. Their house was the first house built on that block. Lumsden stated that a one-car garage presents a hardship for her and her husband.

Lumsden distributed photographs showing that there is a large space between the houses on the west side of the lot. She informed the board that the neighbor to the west, who would be most affected by the variance, supports the proposed garage addition.

Johnson noted that the distance from the petitioner's house to the adjacent house to the east is 19.8'. The distance between the Lumsden's house and the house on the west would be about the same distance with the proposed garage.

Lang maintains that the proposed attached garage would be less intrusive to the petitioner's house and to the abutting neighbors with respect to their windows and glare from headlights. He added that it would be difficult to maneuver a car into a 20' detached garage in the rear yard. It was thought that the plan proposed would be the simplest way to add garage space with the least amount of impact all around.

Lumsden commented that removing the current attached garage would harm the character of the house. The house was purchased two years ago.

Questions from the board were addressed by the petitioner and their architect.

Kamp stated that one-car garages are quite common in this area. He questioned how the petitioner's situation distinguishes itself from the situation of anyone else in the Village with a one-car garage. This board has to find that there is a peculiar or exceptional practical difficulty in order to grant a variance. He added that the petitioners knew the condition of the house when it was purchased. The ordinances were in place at that time.

Lumsden stated that most of the houses on their block are built on double lots. Their house is one of only two houses on the street that have a one-car garage. She mentioned that they plan to stay in the area for a long time. Lumsden has observed that a lot of people are adding two-car garages. She maintains that having a one-car garage is a hardship for a family and also for resale purposes.

Fahlen noticed that a number of houses on the block have detached garages in the rear yards. He asked if the petitioner has talked to those people about whether they have problems getting in and out of their garage. He stated that the petitioner may want to consider building a garage in the rear yard and converting the existing garage into additional living space.

The architect reiterated the view that the proposed plan to add to the existing attached garage is preferable to constructing a large, new structure on the property.

David Lumsden stated that they want to raise a family in Beverly Hills. They love the house and the neighborhood but feel that a one-car garage is a hardship. He emphasized that the neighbor to the west has no objections to the garage addition.

Schafer asked if the building official knows how many variances have been granted for side yards in this neighborhood. Byrwa did not have that information. He indicated that many of the houses in that area were built in the early 1950's with 5-8 foot side yard setbacks. The Village Zoning Ordinance was adopted in 1959 requiring a minimum side yard setback of 12.5 feet.

Decision: MOTION by Fahlen, supported by Freedman, that this request be granted on the basis that the house was built with only a one-car garage and also considering the size of the lot and the location of the house on the lot.

Roll Call Vote:

Fahlen - no
Freedman - yes
Kamp - no
Johnson - yes
Schafer - no
Dery - no

Motion fails (4 - 2).

ZONING BOARD COMMENTS

Byrwa updated the Board on the District Court hearing of the Dana Palmer vs. Village of Beverly Hills case. A property owner on 13 Mile Road erected a 5' high gate supported by 6' high pillars in his front yard after a request for variance was denied by the Zoning Board of Appeals. The jury

found Mr. Palmer guilty of violating the Village of Beverly Hills Zoning Ordinance which prohibits constructing an accessory structure on the front yard setback.

Byrwa stated that the property owner has the option of removing the structure within 30 days or appealing his case to Circuit Court.

BUILDING OFFICIAL COMMENTS

Byrwa anticipates that there will be cases on the agenda for a June meeting of the Zoning Board of Appeals.

PUBLIC COMMENTS

Council liaison Munguia commented that he was re-elected to the Council in March after a two year absence and will be serving as the liaison to the ZBA. He welcomed new board member Carl Johnson.

Freedman referred to tonight's request to erect a 1870's era fence in front of a 19th Century farm house and questioned whether the issue of a historical designation in the Village has ever been brought up. There was some discussion on the pros and cons of an historical district and accompanying restrictions.

MOTION by Fahlen, supported by Freedman, that the meeting be adjourned at 8:24 p.m.

Motion passes unanimously.

James Kamp, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk