

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

Absent: Dery and Johnson

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

Chairperson Verdi-Hus presided and called the meeting to order at 7:34 p.m. in the Village municipal building at 18500 W. Thirteen Mile Road.

#### **APPROVAL OF MINUTES**

MOTION by Kamp, supported by Fahlen, that the minutes of a regular Zoning Board of Appeals meeting held on Monday, May 8, 2000 be approved as submitted.

Motion passes unanimously.

#### **APPROVE ONE-YEAR EXTENSION OF VARIANCE GRANTED ON 2/8/99 TO BUCKLES & BUCKLES - CASE 953**

Verdi-Hus read a letter dated June 6, 2000 from Michael Buckles to the Village Council. Buckles is requesting a one-year extension of the site plan approval for an addition to the office building at 17845 W. 14 Mile Road. He states that he has been unable to begin the project due to multiple factors including the extensive engineering of the water retention system and the difficulty in obtaining contractors for a relatively small but complicated job. Buckles indicated that he has entered into an agreement with a builder, Panetta Construction, and anticipates breaking ground within 30-60 days. In addition to requesting an extension of the site plan approval from Council, Buckles requests an extension of the variances granted by the Zoning Board of Appeals for a one and one-half story building height for an addition and a variance to allow a greenbelt in lieu of a brick wall at the south property line of the building.

Byrwa stated that Buckles had one year to commence construction of this addition. There has been some conversation between the Public Services Director and Buckles regarding the improvements that are anticipated as part of the 14 Mile Road reconstruction. Buckles has expended considerable resources on engineering the drainage on the site to meet County standards. He was delayed by the engineering required for the project and the uncertainty of the timing for the 14 Mile Road reconstruction. Buckles did not want to have the work performed and have it torn out by the County as part of the road reconstruction. He has also had some difficulty locating a builder. Due to these circumstances, Buckles is requesting an extension of the approval of the site plan and variances. Byrwa recommends approval of his request.

Freedman questioned how long the construction would take to complete once it begins. She questioned why an extension is requested for an entire year. Byrwa responded that the County has a time frame for proceeding with the reconstruction of 14 Mile Road between Southfield and Greenfield Roads. He does not think that a one-year extension is unreasonable given the magnitude of the addition and what is going on with 14 Mile Road.

Schafer asked if the Village Council has dealt with the request for an extension of the site plan approval. He questioned whether the Zoning Board should condition its approval to extend the variances on Council approving a one-year extension of the site plan.

Byrwa responded that this will be an agenda item for the Monday, June 19 Council meeting. The ZBA is being asked tonight to consider extension of the variances granted on this site.

MOTION by Parks, supported by Pagnucco, to grant a one-year extension of the variances approved by the Zoning Board of Appeals in conjunction with Case No. 953 for the reasons outlined in the February 8, 1999 meeting minutes. The request for extension is exacerbated by a situation beyond the petitioner's control relative to the reconstruction of 14 Mile Road.

Roll Call Vote:  
Motion passes unanimously

**CASE NO. 987 (rehearing)**

**Petitioner and Property:** Rick Urquhart  
20555 W. 13 Mile Road  
Lot 1 of Coryell Estates; TH24-10-226-003

**Petition:** Petitioner requests permission to retain the existing shed, after the completion of a new detached garage, to house lawn and pool pump and equipment.

The Village Zoning Ordinance states that no more than one accessory building shall be located on a single-family residential lot. The petitioner constructed a two-car detached garage on his property. He is requesting permission to retain an existing shed. Verdi-Hus reviewed that the reason that this petition is back before the board is due to an error made by the Village with respect to notification of property owners of this hearing. Case No. 987 was tabled at the January 10, 2000 meeting. Notices of today's hearing were mailed to property owners within a 300 foot radius of the property in question.

The petitioner Rick Urquhart stated that he would like to retain the existing shed that is used as an accessory building to his swimming pool with some additional storage. The shed is needed for storage of pool and lawn equipment. The accessories for the swimming pool are attached to the shed and include the electricity for the pool light, pump and cover. Moving the pool equipment to the garage would involve redoing the plumbing and electrical lines, which would be a hardship. It is an important building in its current location for the operation of the pool. Urquhart explained that his family has a need for additional storage because their small ranch home has no basement.

Schafer stated that the shed appears to be well constructed, and it is landscaped heavily. However, the petition involves a financial hardship and does not involve unusual circumstances.

**Decision:** MOTION by Pagnucco, supported by Parks, that the petition be approved based on a hardship involved with respect to moving the mechanical and electrical swimming pool apparatus to another location. There is also a hardship due to the lack of storage space in the house because there is no basement.

Fahlen stated that he will not support the motion for the reason that the ordinance is very specific about allowing one accessory building. He referred to a letter dated October 20, 1999 from the petitioner to the Village building official stating that he understands that the Village Ordinance does not allow him to have two accessory buildings and that he will have to obtain a waiver or tear down the garden shed shortly after completing the garage.

Freedman thinks that the Village has been faced with similar requests in the past. She does not see anything peculiar or exceptional about the hardship presented.

Roll Call Vote:  
Kamp - no  
Pagnucco - yes  
Parks - yes  
Schafer - no  
Verdi-Hus - no  
Fahlen - no  
Freedman - no

MOTION FAILS (5 - 2).

MOTION by Freedman, supported by Fahlen, that the request for variance be denied for failure to demonstrate a peculiar or exceptional practical difficulty.

Roll Call Vote:

Pagnucco - no  
Parks - no  
Schafer - yes  
Verdi-Hus - yes  
Fahlen - yes  
Freedman - yes  
Kamp - yes

MOTION PASSES (5 - 2).

Verdi-Hus stated that the variance is not approved. Urquhart voiced his objection to the decision of the board.

**CASE NO. 995**

**Petitioner:** Kathleen and Jeremy Tomkinson  
16141 Amherst  
Part of Lot 1304 and all of Lot 1305  
Beverly Hills Subdivision #3, TH24-01-401-002

**Petition:** Petitioner requests a side yard deviation from the required 12.5' open space to 3.5' and a rear yard deviation from the required 40' open space to 32.3' to expand existing attached garage.

Jeremy Tomkinson stated that the existing garage is about four feet short of being a two-car garage. The proposal is to follow the front and rear lines of the garage and extend the structure to the east to create a two-car garage.

Schafer questioned whether there was a variance granted previously on this property because the existing garage encroaches into the required sideyard setback.

The petitioner addressed questions from the board members. Tomkinson stated that he did not believe that the garage was built at the same time that the house was constructed, but he did not know this for a fact. He purchased the house three years ago.

The petitioner was asked to elaborate on the hardship that is created by enforcement in the ordinance in this case. Tomkinson stated that his family has a need for additional storage. They plan to finish the basement making it into a living area rather than a storage and work area. They propose to construct a tool bench in the garage.

Kamp related that a similar case was considered by the board last month and denied. He has concerns with these kinds of cases in which a petitioner bases a request for variance on the fact that storage and convenience is enhanced by having a two-car garage. Unfortunately, Kamp does not think that hardship is peculiar or exceptional for the petitioner's neighborhood. The problem with the petition is that there are so many other people in potentially similar circumstances, which does not distinguish this case as being peculiar or exceptional.

Kamp stated that he drove around a few of the streets in the northeast quadrant of Beverly Hills and observed many houses with one-car garages. There are eight or nine other people with one-car garages on the petitioner's street. Kamp stated that the Village Council adopted a Zoning Ordinance with required setbacks for a reason. If the ZBA were to consider granting these kinds of requests on the basis of storage and convenience, which applies uniformly to a large section of the Village, it would be making a fundamental change in the Ordinance.

Tomkinson stated that his adjacent neighbor to the east has about four feet between his garage and the side lot line. He is asking for the same side yard that was granted for his neighbors.

Byrwa stated that he visited the site today and measured the side yard of both the petitioner's property and the adjacent neighbor to the east. The petitioner has approximately 8 feet from his garage to the property line. The neighbor has five feet from his attached garage to the property line. Byrwa referred to the building code and recommended maintaining a minimum of 10 feet between the structures for fire separation purposes. There is a high probability of a fire jumping from one structure to the next when buildings are closer than 10 feet apart.

Byrwa suggested that there may be a way of extending the garage from the front or the rear. The petitioner could also consider amending his request to retain a five foot sideyard setback.

Verdi-Hus commented that she could not approve a variance that would create a potential fire hazard for the properties.

Fahlen asked if a deviation was granted for a side yard variance on Lot 1304. Byrwa did not have that information, but indicated that he could check the records. It was indicated that the house on lot 1304 was built in 1950. The petitioner's house was built in 1952.

Parks asked the petitioner if he considered the option of adding more space to the front or back of the garage. Tomkinson stated that he does not want to lose space in his back yard. Extending the garage towards the front of the house would block light to his dining area.

Tomkinson said that the standard size for a two-car garage is between 18 and 20 square feet. This standard would be met with a three foot addition to his existing garage. Tomkinson asked that his petition be amended to request a variance to maintain a five foot side yard. Any construction will not come closer than five feet to the lot line in order to maintain 10 feet of separation from the adjacent building.

Kamp reiterated that he does not see the issue of storage and convenience as being a peculiar or exceptional practical difficulty. When people buy a house, they look at all the factors. One of the factors is whether there is a one or two-car garage. He thinks that, if the board were to grant this variance, it would have to treat all similar requests in the same fashion.

Schafer stated that he has a problem granting this on the rationale that was presented by the petitioner. He requested further information before voting on this request for variance. He would be disposed to tabling this case to determine whether a side yard variance was granted for Lot 1304 and whether there was a variance granted previously for a one-car garage on Lot 1305. If there was a side yard variance granted for the adjoining property, the rationale brought forth in that case may be of interest to the petitioner and the board.

Byrwa stated that many of the houses in this area were built in the early 1950's with five to eight foot side yard setbacks, which do not conform to the Zoning Ordinance adopted in 1958. The petitioner is requesting a variance from the ordinance requirements. Byrwa thinks that each case should be decided on its own merit without consideration of a variance granted on the house next door.

Byrwa asked for clarification on whether the request for variance has been modified by the applicant. Tomkinson stated that he will modify his petition to request a variance that would result in a five foot side yard setback instead of the 3.5' setback shown on the petition.

Freedman commented that she might be more favorably disposed to view this case as an exceptional practical difficulty if the property next door was permitted a five foot side yard setback. She would like to know if other houses were permitted five foot side yard setbacks and on what basis. Parks stated that this information may have an affect on how he votes as well.

Kamp stated that the Village Council set a requirement for a 12.5' setback. He thinks that there is a clear expression of legislative policy against granting these kinds of setbacks. Given that fact and the fact that there are at least 100 houses in that portion of the Village that are in a similar situation, Kamp stated that there is probably nothing peculiar or exceptional that would drive him to grant this petition. He is opposed to granting variance of this type which would change the character of the neighborhood.

MOTION by Schafer, supported by Fahlen, to table Case No. 995 pending receipt of more information on the construction timing of the garage for the house at 15041 Amherst and the construction timing and whether there has been a variance granted for the adjacent house on Lot 1304.

Kamp questioned how that information is going to make a difference in terms of this petitioner's burden to demonstrate a hardship.

Schafer responded that he would like to know what rationale was used if there was a variance granted for Lot 1304.

Pagnucco	- abstain
Parks	- yes
Schafer	- yes
Verdi-Hus	- no
Fahlen	- yes
Freedman	- yes
Kamp	- no

4 yes - 2 no - 1 abstention

There was a question as to whether this motion passes with four votes. It was also questioned whether board members are permitted to abstain from voting.

Byrwa suggested that the board defer a decision on this case for ten minutes to allow him the opportunity to search the records to determine whether there was a side yard variance granted for 16029 Amherst (Lot 1304).

The board agreed to continue with the next case and delay a decision on Case No. 955 until the end of the meeting.

#### **CASE NO. 996**

**Petitioner and Property:** Diane Wolfe  
15766 Buckingham  
Part of Lot 176 of Birwood Subdivision  
TH24-01-228-027

**Petition:** Petitioner requests a side yard deviation from the required minimum 12.5' open space to 4.4' for a one story rear addition in order to continue with the existing line of the house.

The petitioner Diane Wolfe stated that she is requesting a side yard deviation that continues with the existing line of the house in order to build an addition on the rear of the house. She explained the current layout of the house and the proposed addition, which will increase the living space of the house. The house has no basement.

Byrwa stated that the measurement from the property line to the bearing wall is 5 feet rather than 4.4 feet as indicated on the application. He noted that the house to the west is situated about five feet in front of the current back wall of the petitioner's home. There is well over the 10 foot minimum fire separation distance in this case.

In answer to a question, the petitioner stated that she believes that the house was built in 1948.

**Decision:** MOTION by Fahlen, supported by Freedman, that the request for variance be granted. It is an extension of an existing deviation that came about due to the house being built before the Zoning Ordinance was adopted.

Roll Call Vote:

Parks - yes  
Schafer - no  
Verdi-Hus - yes  
Fahlen - yes  
Freedman - yes  
Kamp - yes  
Pagnucco - yes

MOTION PASSES (6 - 1).

MOTION by Fahlen, supported by Freedman, for a brief recess at 8:25 p.m.  
Motion passes unanimously.

The meeting was reconvened at 8:40 p.m.

**Discussion of Case No. 995**

Byrwa stated that he checked a list of all the Zoning Board of Appeals cases extending back to August of 1958 to the current date. There was no record of a variance granted for 16029 Amherst. The supposition is that the house was built in 1952 with a five foot side setback. When the Zoning Ordinance was adopted in 1958, the existing setbacks became non-conforming.

Schafer withdrew his motion to table Case No. 995.

Tomkinson asked how his case differs from the situation in case No. 996. It was explained that the request for variance in Case No. 996 does not increase the existing non-conformity in terms of the side setback.

**Decision:** MOTION by Kamp, supported by Fahlen, that the petition be denied because of a failure to demonstrate a peculiar or exceptional practical difficulty in that the reasons given of storage and convenience are not distinguishable from other similarly situated houses.

Roll Call Vote:

Schafer - yes  
Verdi-Hus - yes  
Fahlen - yes  
Freedman - yes  
Kamp - yes  
Pagnucco - yes  
Parks - no

MOTION PASSES (6 - 1).

**ZONING BOARD COMMENTS**

Kamp questioned the status of the Dana Palmer vs. Village of Beverly Hills case. Byrwa informed the Board that nothing has been received in writing although the Village Attorney thinks that the case is likely to go to Circuit Court.

**BUILDING OFFICIAL COMMENTS**

Byrwa apologized to Mr. Urquhart for how his appeal case was handled. The petitioner was advised at the time he submitted plans for a garage that he would be required either to remove his shed or petition for a variance upon completion of the detached garage. Byrwa will direct future applicants to go before the Zoning Board of Appeals for a variance before a building permit is issued. If this had been done, Mr. Urquhart may have been able to modify the size or location of his garage if the variance was heard and denied by the ZBA. The manner in which the request was handled placed undue pressure on everyone.

Rick Urquhart stated that he attempted to follow the guidance of the Village. He accepted Byrwa's apology.

**PUBLIC COMMENTS**

Council Liaison Munguia informed the board that there will be a joint meeting of the Council and Parks and Recreation Board this Thursday, June 15 at 7:30 p.m. in Beverly Park.

Munguia stated that he made the first announcement of a vacancy on the Zoning Board of Appeals at the last Council meeting. Lisa Dery asked not to be reappointed to the ZBA.

MOTION by Parks, supported by Freedman, to adjourn the meeting at 8:48 p.m.

Motion passes unanimously.

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

**Ellen E. Marshall**  
**Village Clerk**