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

Absent: None

Also Present: 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.

APPROVE MINUTES

Motion by Needham to approve as submitted the minutes of a regular Zoning Board of Appeals meeting held on January 14, 2002.

Motion passed unanimously.

CASE NO. 1032

Petitioner: Michael Cameron
Michael's Carpentry & Building

Property: 15766 Buckingham
Part of Lot 176, Birwood Subdivision
TH24-01-228-027

Petition: Petitioner requests a side yard deviation from the minimum 12.5' open space to a 9.6' side yard open space for a one-story rear addition.

Michael Cameron, builder, spoke on behalf of the homeowner. He explained that this variance request was heard and approved by the Zoning Board of Appeals in June of 2000. The variance expired a year later because the building did not take place. The applicant is now submitting the same proposal with a lesser variance from the required 12.5' open space to a 9.6' side yard in lieu of the 4.4' side yard requested in 2000.

The proposed one-story addition at the rear of the structure (600 S.F.) will expand the house with a master bedroom, bath, closet space and family room to provide needed living space for the family.

The petitioner was asked if the addition could be constructed without the extra three feet. Cameron explained that the proposed configuration is necessary to facilitate the use of the existing house as it relates to the addition.

Decision: Motion by Fahlen to grant the request for variance from the required 12.5' open space to a 9.6' side yard open space in order to build a one-story addition. The house was built prior to the adoption of the Village Zoning Ordinance.

Roll Call Vote:
Motion passed unanimously.

CASE NO. 1033

Petitioner/Property: Michael Taormino
18435 Devonshire
Lot 1958 and Part 1959 of Beverly Hills #4
TH24-02-280-007

Petition: Petitioner requests a side yard deviation from the minimum 15' open space to 10.1' and a rear yard deviation from the minimum 40' to 38.8' rear yard open space to attach an existing detached garage to the house. Also requested is a front yard deviation from the minimum 40' open space to 35.6' for a covered porch.

Chris Aldrich, builder, stated that the petitioner is asking for three variances, two relating to the existing garage. It is proposed to attach the existing garage to the house, which requires compliance to new setbacks. The petitioner requests to add a 5' x 5' front porch that will be in line with the existing front line of the house. Aldrich stated that neither the house nor garage will be any closer to a lot line than it is currently. Questions from the board were addressed by Aldrich.

Mary Dorsey of 18484 Devonshire lives across the street and commented that the house in question has been neglected. The former residents moved out last summer and the house is now vacant. She mentioned that a dumpster was parked in the driveway of the house for months. It was removed after she notified the Village building official, who contacted the owner. Dorsey asked if there will be a timetable for completion of the work if the variances are granted. She stated that the neighbors would love to see the house fixed up with a family living in it. Dorsey and her husband have no objections to changes that will improve the house.

Verdi-Hus responded that this board cannot provide assurances relative to when the work will be completed. Byrwa remarked that the Village has a property maintenance code that controls certain situations. Property owners are responsible for maintenance of the sidewalk in front of their property. The Village does not have an ordinance that requires leaves to be raked or bushes to be trimmed.

In response to an inquiry, property owner Michael Taormino commented that he may or may not occupy this home as a residence.

Parker Finn of 31219 Foxboro Way asked when the work would start and end. Byrwa related that a petitioner has one year from the date that a variance is approved to obtain a building permit to start construction. Construction must begin within six months of obtaining a building permit or the permit is null and void.

Decision: Motion by Kamp to approve the variances as requested on the basis that, although the construction will create a non-conformity, the actual physical non-conformity will not increase any deviation beyond that which exists on the property.

Roll Call Vote:
Motion passed unanimously.

CASE NO. 1034

Petitioner/Property: Joseph M. Keusch
18488 Beverly Road
Lot 2014 of Beverly Hills #4, TH24-02-280-022

Petition: Petitioner requests a rear yard deviation from the minimum 40' open space to 15' rear yard open space for an attached two-car garage and a rear yard deviation from the 40' minimum open space to 32' for a mud room.

Joe Keusch stated that he proposes to convert an existing attached garage to living space, add a mud room, and build a new two-car garage. He is asking for a rear yard deviation from the minimum 40' open space to 15' for an attached two-car garage, and a rear yard variance to 32' for a mud room. The triangular shape of the lot makes building a conforming addition impractical. He noted that building a conforming detached garage would place the garage closer to the rear property line than the requested variance.

Keusch answered questions from the board. The proposal will add approximately 550 square feet of living space. The existing garage will be converted to a master bedroom suite.

Paul Brewer of 18605 Devonshire, who lives directly behind the petitioner, objected to the proposal due to the proximity of the addition to his residence.

Board members discussed whether the shape and dimensions of the lot warrant the variance for an addition that will result in a non-conformity.

Keusch indicated that the house to the east of his lot is within 10 feet of the lot line. A detached garage would be closer to the lot line than the proposed attached garage. Byrwa added that a detached garage would be allowed to come within five feet of the rear lot line. It was noted that there are a number of detached garages on the street that are within five feet of the property line.

The applicant was asked if he has considered any options to alter the mud room expansion to be in conformance with the ordinance. Keusch answered that the intent of expanding the mud room is to have an entrance to the house from the garage.

Decision: Motion by Freedman to approve the variances requested based on a practical difficulty due to the shape of the lot.

Roll Call Vote:
Motion passed unanimously.

CASE NO. 1035

Property/Petitioner: Donald MacDonald
31208 Foxboro Way
Lot 46 of Metamora Green, TH24-04-478-010

Petition: The petitioner requests a rear yard deviation from the minimum 40' rear yard open space to 15.8' open space and a deviation to exceed 60% of the ground floor area of the principal building (918.6 S.F.) to 988 S.F. for a proposed attached garage.

Don MacDonald stated that he is requesting a variance from the required 40' rear setback to 15.8' and a deviation on the total square footage of the proposed garage. He is proposing to build an addition to his family room and add onto the existing garage to create a four-car garage. MacDonald stated that a hardship exists due to the shape of the lot, the existence of an easement running on the north side of the property, and the placement of the house on the lot. There is no other practical area for an addition to the house.

MacDonald informed the board that he consulted with all of his neighbors who would have a view of the addition, and none have concerns with the proposed addition.

MacDonald stated that the garage would have a brick exterior. The additional space will be used to store and work on his two classic cars. He would like to keep his two classic cars in the garage along with the car he drives.

Parker Finn of 31219 Foxboro has no objections to the proposed variances. He asked a question about Village ordinance provisions regarding accessory buildings, which was addressed by Byrwa.

The petitioner was asked if he could build the garage at 20' x 24' to bring it into conformance with the ordinance provision stating that the floor area of the accessory building shall be limited to 60% of the ground floor area of the principal building. MacDonald stated that the larger space would give him room for cleaning and detailing his classic cars and would prevent damage to the cars. MacDonald noted that he would still require a variance from the rear yard setback requirement with a 20' x 24' garage.

Kamp questioned the particular hardship in this case as it applies to the garage. He is uncertain of how this proposed use is distinct from similar situations that other people with the same hobby may have. It is the burden of the applicant to convince the board that a deviation from the ordinance should be granted.

Freedman expressed concern with the request for additional garage space. She does not believe that the petitioner has demonstrated a peculiar hardship relative to the requested garage size.

Byrwa stated that the ordinance would allow a detached garage to come within five feet of the lot line and would permit a maximum size of 720 S.F. It was noted that the nearest house is more than 140' away on the east side.

MacDonald stated that he has worked with an architect to situate the family room addition to tie in with the setback of the new garage. He is limited with respect to the configuration of the family room due to the floor plan of the home. He remarked that he would not do anything to devalue the property.

Schafer pointed out that a larger family room addition would provide the ground floor area that would permit the requested garage size.

Linda Lochen of 32076 Rosevear urged the board to approve the request if it does not negatively affect the abutting neighbors.

Decision: Motion by Fahlen to approve the deviation requested based on an exceptional practical difficulty due to the configuration of the lot.

Roll Call Vote:

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

Motion passed (5 – 4).

CASE NO. 1029

Byrwa informed the Board that the petitioner Michael Goodman representing McDonald's restaurant on Southfield Road asked that the petition be tabled to a future meeting.

Motion by Needham to table Case 1029 at the applicant's request until the next regularly scheduled meeting of the Zoning Board of Appeals of April 8, 2002.

Motion passed unanimously.

CASE NO. 1036

Property/Petitioner: Jennifer and Anthony Roma
19745 Beverly Road
Part of Lot 20, Supervisor's Plat #13, TH24-02-302-003

Petition: The petitioners are proposing a 36' lot width instead of the required 100' lot width. Lot width is measured at a point 40' back from the right-of-way.

Property owners Anthony and Jennifer Roma were present requesting a variance from the required 100' lot width in an R-1 zoning district. Tony Roma explained that they have a application before the Village to divide their 2.264 acre lot at 19745 Beverly Road to create two lots.

Roma referred to a map of their property colored to designate proposed Parcels A and B. They plan to build a house in which to live on Parcel B near the tree line and more than 300' behind the existing house on Parcel A. The Romas currently live in the existing house. The existing home has a circular drive with two entrances from Beverly Road. One of the entries will serve the existing house and the other entry will be used to access Parcel B from a strip of land west of the existing home site.

Roma indicated that they are before the Zoning Board of Appeals to request a variance for insufficient lot width. Although the main portion of Parcel B is 150' wide, a variance is required due to the way lot width is measured. The ordinance requires that lot width be measured at a point 40' back from the front property line. The lot width of Parcel B is only 36' at that point.

Verdi-Hus asked the petitioners to state the hardship in this case that would convince the board to grant a deviation from the ordinance.

Tony Roma stated that the legal description of their lot indicates that they own two separate pieces of property, Parcels A and H of Lot 20. He maintains that these two pieces of property were intended to be separate building sites in the 1940's before the subdivision was established. The hardship is that there is a practical difficulty in accessing the rear portion of their property. They wish to build and live in a house on the rear piece of property. The strict enforcement of the 100' lot width requirement is a practical difficulty in this case.

Roma stated that he has a letter from the Beverly Hills Department of Public Safety indicated that the proposed access road does not impose any undue safety concerns. There are no engineering issues with respect to accessing sewer and water service. A variance is needed from the Zoning Board of Appeals to build a house with access to Beverly Road.

Byrwa outlined what must happen in order for the Romas to build on the site. He referred to the site plan and noted that a lot is not buildable unless there is access to a road. Byrwa drew a diagram to explain how lot width is measured on the petitioner's property. A variance is needed from the ZBA to allow the lot width (measured at a point 40' back from the front property line) to be only 36' instead of the required 100'.

If the ZBA grants the variance, the Village Planning Board would review the applicant's request for lot division and refer its recommendation to the Village Council. Council would consider the lot split proposal, hold a public hearing, and make a decision. In order for the applicant to proceed, Council would also have to allow a variance from the width to depth ratio for Parcel B. The Ordinance states that depth to width ratio of a resulting parcel created through land division shall not exceed 4:1. The lot width is 36 ft. (taken at the R-1 required front setback line of 40 ft.) and the lot depth is 700 feet.

In answer to an inquiry, Roma stated that the land has one property identification number. The proposed land division will move the lot line further forward, which will allow them to build a house in the cleared front portion of Parcel B without disturbing many trees.

Kamp suggests that there is no hardship with respect to the property as it exists. It is the proposed lot split that creates the difficulty. A fundamental problem with the petition in his view is that the owners bought a piece of property recognizing its limitations and knowing that the prospective use would require a fair amount of deviations from the law. It is the desired plans that create the potential difficulty. While there may have been a property use intended by previous property owners, zoning ordinances change and impose limitations on properties to comply with the law as it currently stands. Kamp has difficulty finding that an exceptional practical difficulty exists today on the parcel.

Roma mentioned conversations with Village staff about this parcel and his impression that the proposal was not exceptional. He noted that the lot resulting from the split is more than 3.5 times larger than the average size of the lots within 500 feet of their property. Roma thinks this proposal is the best use for the land.

It was clarified that the lot in question is recognized by the Village as one piece of property. Council would have to grant a lot split to recognize Parcel A and Parcel B and grant a variance on the width to depth ratio requirement of the Ordinance. If a lot split is not granted, the owners would be able to build the house they desire to build if there were not another home on the property.

Freedman questioned whether this case is before the Zoning Board of Appeals prematurely. If Council does not approve the lot split, the Zoning Board's decision would be moot. Schafer remarked that one body has to act before the other, and an approval could be made conditional in either case.

Linda Lochen of 32076 Rosevear objected to the proposal to build a house in the middle of the property.

Jennifer Roma explained that they propose to build a home in the clearing behind the existing house so that most of the trees can be retained. Tony Roma stated that they will incur the cost of adding another fire hydrant if needed depending on the location of the house.

Larry Smith of 31749 Waltham Court thinks that the proposal for a second building site on the property would take away from the character of the neighborhood. He commented that he purchased his home because of the way the houses are configured and the wooded area. Smith commended the Romas on doing a good job improving their house on Beverly Road.

Mark Williams of 19845 Beverly Road believes that the ordinance regulates lot width to prevent flag lots that do not have adequate road frontage or spacing between houses. He does not think that the proposal presented fits with the character of the area. He suggests that the best option in this situation would be to tear down and build up.

Ray Wronski of 31761 Waltham Court objects to the variance requested.

Vera Gray of 19823 Beverly Road, whose backyard abuts the property in question, stated that they purchased their property 25 years ago because of the spaciousness, wooded area, and wildlife. She understands the flag lot concept and believes that the ordinance prevents people from building houses in back of houses. Flag lots detract from the community. Gray urged the board to uphold the ordinance.

Ted Dobski of 19746 Wilshire commented that there is an equally large lot that abuts the Roma property. He asked what variances would be required to allow multiple homes if those properties were combined.

Byrwa stated that the ordinances require certain criteria to be met when land is consolidated to create a subdivision or cluster development. He quoted from a letter dated November 14, 2001 from the Village attorney regarding Roma lot division issues: “It would be prudent for the Planning Board to consider the history of this property and the adjoining property into a possible more efficient and appropriate land assemblage.”

Vic Marshall of 19905 Beverly Road commented on the way that this request for variance has been marketed in the neighborhood by the Romas. The residents have been told that there are two choices. One is to allow a flag lot. The other option is to combine and develop property, which would result in multiple lots. Marshall objects to the way this case has been handled. He does not think that the petitioners have proven a hardship.

Ann VanDam of 31737 Waltham Court stated that she is a new resident who bought a home in Beverly Hills because of the established neighborhoods with mature trees. Her property abuts the site in question. She questioned the size and location of the proposed house.

Howard Blitstein of 19790 Wilshire expressed concern about the precedent setting nature of this proposal.

Jennifer Roma stated that she submitted 18 letters to the Village from area residents who do not object to the lot split.

John Whitcomb of 19465 Waltham, President of the Westwood Homeowners Association, suggests that an option is to leave the property the way it is. The people present tonight support that option. A primary concern of the area residents is that they expect to look out at a wooded area. Another issue is the danger of setting a precedent in the area.

Maureen Marshall of 19905 Beverly Road stated that the petitioners purchased the property with the intent of splitting the lot. Residents in the area bought their homes because they like the neighborhood, and they have maintained their homes. The proposal will change the nature of the neighborhood.

George Johnson of 19846 Beverly Road commented that the owner of the property that abuts the Roma site to the east lives in Bloomfield. He understands that this person is interested in combining and developing his property. Johnson thinks that such a development would devalue property in the neighborhood.

Kamp articulated his understanding of the issues that the Zoning Board can address. This board does not address proprietary use of property. He commented that the notion of property value is speculative.

The issue brought to the Zoning Board is whether it is an exceptional, practical difficulty to prohibit this applicant from having a parcel that is 36' wide at one point. Kamp finds that this issue begs the question of whether the lot should be split. He questions whether there is an alternative to the variance requested, which would be to grant an easement across the front lot for access to the rear lot if the lot split is permitted.

Tony Roma stated that they have looked into this, and found that it would require a variance. Byrwa related that the Village's Private Road Ordinance states that there must be a minimum of 25 feet of access on a public or private road to make it a buildable lot.

Kamp thinks that the issue for the board to consider is not whether the petitioner can build a structure in the back of the existing house. While he respects the comments about where a house should be built, it does not impact the issue of whether the petitioner has demonstrated an exceptional practical difficulty that justifies the variance from 100' to 36'. It is Kamp's view that the issue of whether the lot should be split should be addressed first. There can be no exceptional practical difficulty until there is some impairment of the proposed use of the proposed lot.

Roma stated that they have been investigating the proposal to build a house on the lot for a long time. It was determined that a public access road easement would require a variance. They are in the process of a lot split request. An advantage to a lot split is that moving the lot line closer to Beverly Road would allow the house to be built in the clearing without disrupting as many trees. This would be preferable to the neighbors. Roma stated that their practical difficulty is that they need a variance one way or another.

Freedman thinks that a determination needs to be made as to whether this is one or two lots. She added that this body is being asked for a variance on something that does not exist. Freedman thinks that the lot split issue should be decided by Council.

Freedman made the general comment that neighbors have no legitimate expectation that anybody else is going to continue to treat their property the way that they did when that neighbor bought their home. It is up to each one of us to improve our own lots and not rely on someone else to retain the green space.

Verdi-Hus does not think that this board can make a decision on something that does not exist. She agrees that this issue should be decided by Council.

Kamp commented on the functions of different boards. The Planning Board looks at things prospectively. Council is a broad policy board. This board considers what is set out in front of it and asks why the law should be changed in a petitioner's favor. The Zoning Board is limited in that sense.

Schafer commented that he does not have a problem with acting prospectively and conditioning approval or denial of a variance on what Council will ultimately do. He has a problem acting if there is a question on whether the petitioners have one or two lots.

Byrwa referred to Section 22.30.020 of the Village Ordinance dealing with nonconforming lots. It states that, when two or more nonconforming lots are contiguous and owned by the same person, said combination of lots or portions thereof shall be considered a single, individual lot for the purposes of this Ordinance, and no portions of said lot shall be used, occupied, divided or sold in any manner which would diminish compliance with the regulations of this Ordinance or which would leave remaining any lots that do not comply with the minimum lot width, minimum area of any other requirements of this Ordinance.

Byrwa maintains that the Zoning Board of Appeals has the authority to grant a variance with respect to lot width. He believes that the petitioner is entitled to a decision unless the petitioners ask that their case be tabled.

Fahlen stated that he would vote against this proposal if it came back to this board in the same form after consideration by the Planning Board and Council. He does not believe that a hardship has been proven.

Decision: Motion by Fahlen to approve the request for variance due to a hardship.

Roll Call Vote:
Motion denied (9 – 0).

BUILDING OFFICIAL COMMENTS
Byrwa distributed material prepared by Bob Bliven indicating when the house on each lot in the Village was built.

The Zoning Board of Appeals will not meet in March due to the Village Election falling on its regular meeting day. The next regularly scheduled meeting will be on Monday, April 8.

PUBLIC COMMENTS
Liaison Randy Munguia announced that he will be retiring from Council after this term. He served on Council for a total of six years and served on the ZBA prior to that for five years. Munguia said that it was good working with this board.

Munguia stated that Andy Craig will not be running for re-election. There are four seats to be filled on March 11. Candidates include Dorothy Pfeifer, Bob Walsh, Hugh Woodrow, Paul Lison, and Janet Mooney.

Motion by Fahlen to adjourn the meeting at 9:37 p.m.

Motion passed unanimously.

MaryAnn Verdi-Hus, Chairperson
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary